

FOI #12700

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January 26, 2012

VIA FIRST CLASS MAIL AND
FACSIMILE (212) 435-7555

Office of the Secretary
The Port Authority of NY & NJ
225 Park Avenue, 17th Floor
New York, NY 10003
Attn: Daniel Duffy, FOI Administrator

Re: Freedom Of Information Request
Project Jobsites: World Trade Center, Tower 1
and World Trade Center Transportation HUB

Dear Mr. Duffy:

Under the provisions of the New York Freedom of Information Law, Article 6 of the Public Officers Law, I hereby request copies of all structural steel bids, notice to bidders, awards to bidders, regarding said structural steel, copies of any and all payment bonds, any and all contracts, correspondence, memos or the like regarding obligations to secure payment bonds, default and enforcement thereof under said Contracts, with DCM Erectors, Inc. and/or Solera/DCM, a Joint Venture. If my request appears to be extensive or fails to reasonably describe the records, please contact me in writing or by phone at (516) 248-6757.

If there are any fees for copying the records requested, please inform me before filling the request.

As you know the Freedom of Information Law requires that an agency respond to a request within five business days of receipt of a request. Therefore, I would appreciate a response as soon as possible and look forward to hearing from you shortly.

COLLERAN, O'HARA & MILLS L.L.P.

Daniel Duffy, FOIL Administrator
January 26, 2012
Page 2

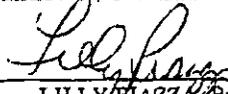
If for any reason any portion of my request is denied, please inform me of the reasons for the denial in writing and provide the name and address of the person or body to whom an appeal should be directed.

Thank you for your cooperation in this regard.

Very truly yours,

COLLERAN, O'HARA & MILLS, L.L.P.

By:


LILLY PIAZZA, Paralegal

3003-0444A

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

January 30, 2013

Ms. Lilly Piazza
Colleran, O'Hara & Mills, L.L.P.
1225 Franklin Avenue, Suite 450
Garden City, NY 11530

Re: Freedom of Information Reference No. 12965

Dear Ms. Piazza:

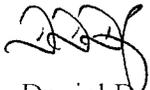
This is a response to your January 26, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for copies of records related to contracts with DCM Erectors, Inc. and/or Solera/DCM, a Joint Venture.

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/12965-WTC.pdf>. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to exemptions (1) (2a) and (4) of the Code.

Please refer to the above FOI reference number in any future correspondence relating to your request.

Very truly yours,



Daniel D. Duffy
FOI Administrator

WORLD TRADE CENTER

GLAZED ENCLOSURE AT PODIUM

LUMP SUM CONTRACT

CONTRACT WTC-1001.09-19

June 17, 2008

HQ

PROJECT: WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK

TRADE: GLAZED ENCLOSURE AT PODIUM

OWNER: 1WTC, LLC
225 Park Avenue South
New York, New York 10003
(herein called "1WTC")

**CONSTRUCTION
MANAGER:** TISHMAN CONSTRUCTION CORPORATION
666 Fifth Avenue
New York, New York 10103
(herein called the "Construction Manager"
as Agent for the "Owner")

CONTRACTOR: Soiera Construction, Inc./DCM Erectors, Inc., A Joint Venture
110 East 42nd Street, Suite 1710
New York, New York 10017
(herein called the "Contractor")

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be duly executed as of the day and year first above written.

ACCEPTED:

CONSTRUCTION MANAGER:

TISHMAN CONSTRUCTION CORPORATION
(as Agent for the "Owner")

(Contractor)

BY:



BY:



(Signature)

LARRY DAVIS VICE PRESIDENT

Martin Adelman, Vice President

(Print Name & Title)

DATE: AUG 13/08

DATE: SEPT. 3, 2008

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LIST OF RIDERS

1. Rider "A", General Addendum, dated June 17, 2008 (Revised)
2. Rider "B", List of Drawings and Specifications, dated January 16, 2008
3. Rider "C", Alternatives & Unit Prices, dated June 17, 2008 (Revision #1)
4. Rider "D", Insurance Rider, dated November 30, 2006
5. Rider "DX", Owner Controlled Insurance Program (or OCIP), including Attachment DX-1, dated May 18, 2007
6. Rider "E", [Intentionally Deleted]
7. Rider "F", Non-Disclosure and Confidentiality Agreement, dated May 11, 2007 (incl. Exhibits A,B,C)
8. Rider "G", Sustainable Construction Requirements, dated May 11, 2007 (Revision #6)
9. Rider "H", [Intentionally Deleted]
10. Rider "I", Sales And Use Tax Requirements, dated October 23, 2007
11. Rider "J", Above and Below Grade Temporary Services For Construction Purposes, dated May 29, 2008
12. Rider "K", Project Corruption Prevention Program, dated May 28, 2008
13. Rider "L", Payment Procedures, dated December 14, 2006
14. Rider "M", Tishman Construction Safety Guidelines, dated November 2, 2005
15. Rider "N", Port Authority of New York & New Jersey WTC Site Rules and Regulations, dated January 1, 2006
16. Rider "O", Available Documents, undated
17. Rider "P", [Intentionally Deleted]
18. Rider "Q", Above and Below Grade Site Logistics Plans, dated October 17, 2007
19. Rider "R", [Intentionally Deleted]
20. Rider "S", Site Security Requirements, dated April 9, 2008
21. Rider "T", Milestone Dates, dated June 17, 2008
22. Rider "U", Additional Provisions, undated

INSTRUCTIONS FOR BIDDERS AND BID PROPOSAL FORM

1. FORM AND SUBMISSION OF PROPOSALS

Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103 ("Construction Manager"), as agent for 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York 10003 ("1 WTC"), invites Proposals in the annexed form. Proposals will be received at a date and time designated by Construction Manager at Construction Manager's office located at 170 Broadway, New York, New York 10038. Each Proposal must be contained in the envelope furnished by the Construction Manager, which shall be sealed and conspicuously endorsed with the bidder's name and the number of this Contract in the space provided. This Contract booklet shall not be unstapled or taken apart.

The Proposal must be submitted upon the blank form bound herewith and must give all information required. The Proposal must be signed and the acknowledgment taken on the appropriate form following the Proposal.

No effort is made to emphasize any particular provision of the Contract, but bidders must familiarize themselves with every provision and its effect. All Bid Proposal information (i.e., Lump Sum, unit price, alternates, etc.) is to be formatted on a spreadsheet prepared for the bid opening and available from Construction Manager. The spreadsheet should be prepared in a Lotus or Excel format and the computer file accessible to only the Construction Manager and approved personnel. Information to be contained on the spreadsheet may include, at the discretion of the Construction Manager, the following (or other additional items):

- a. Project date, trade
- b. Contractor's name, address, phone number
- c. Contact
- d. Lump Sum
- e. Budget (Adjusted to reflect bid package)
- f. Unit Prices
- g. Alternates
- h. Bidder's Alternates
- i. Schedule Duration
- j. Qualifications
- k. Exclusions.

All revised information is to be documented on a new spreadsheet and denoted as revised.

¹ While two or more copies of this booklet may be furnished to each prospective bidder, only one should be submitted. The extra copies are for the bidder's use.

Bidder shall assume for purposes of its Proposal that no New York State sales, use or other tax applies to any materials or equipment purchased in connection with the performance of the Bidder's Work. Therefore, Bidder represents that any prices in its Proposal including, but not limited to, the Lump Sum, Unit Prices and Alternates do not include any such tax. For more detailed information, please see the tax provisions in this Agreement, including, without limitation, Sections 19 and 20 herein.

2. PAPERS ACCOMPANYING PROPOSALS

Each Proposal must be accompanied by the following papers, which, unless otherwise indicated, should be enclosed with the Proposal:

- A. If the bidder be a corporation, a statement of the names and residences of its officers, which should be included on the page following the Proposal.

If the bidder be a partnership, a statement of the names and residences of its members, indicating which are general and which are special partners, which should be included on the page following the Proposal.

If the bidder be an individual, a statement of his residence, which should be included on the page following the Proposal.

B.

- 1.) If requested, Contractor may be required, within seven (7) days of such request, certified financial statements, including applicable notes, reflecting the bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the bidder's most recent fiscal year.
- 2.) Where such certified financial statements are not available, then either reviewed or compiled statements from an independent accountant setting forth the information described in paragraph 1, above.
- 3.) Where neither certified financial statements nor financial statements from an independent accountant are available, then financial statements containing the information described in paragraph 1, above, prepared directly by the bidder. However, such financial statements must be accompanied by a signed copy of the bidder's most recent federal income tax return and a statement in writing, signed by a duly authorized representative of the bidder, that such statements accurately reflect the current financial condition of the bidder.

Where statements submitted pursuant to either paragraph 1 or 2, above, show the position of the bidder as of a date more than forty-five (45) days prior to the date on which Proposals are opened, the bidder shall also submit a statement in writing signed by a duly authorized representative of the bidder, that the present financial condition of the bidder is at least as good as that shown on the statements submitted.
- 4.) A statement of work which the bidder has on hand, including any work on which a bid has been submitted, containing a description of the work, the dollar value, the location by city and state, the current percentage of completion and the expected date for completion.
- 5.) Fill in below the name and address of the bidder's chief banking representative handling the bidder's account.

Banking Institution: _____
 Address: _____

 Bank Representative: _____
 Telephone Number: _____

- 6.) Fill in below the bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes); the bidder's Dun and Bradstreet number, if any; the name of any other credit service to which the bidder has furnished information and the number, if any, assigned by such service to the bidder's account.

| | |
|-------------------------------------|------------|
| _____ | |
| Federal Employer Identification No. | |
| _____ | |
| Dun and Bradstreet No. | |
| _____ | _____ |
| Other Credit Service | Account No |

- 7.) A letter from bidder's surety (a letter from a broker is unacceptable) confirming that such bidder shall be capable of providing a payment and performance bond in the full amount of the bidder's bid.
- 8.) Bidder shall complete and submit the certifications and all necessary disclosure forms required under Rider K (Project Corruption Prevention Program) to this Contract.
- C. With the bid, the bidder's analysis of bid filled in on the form furnished herewith. The Contractor will be required to furnish a more detailed analysis of bid at a later date in accordance with the requirements of the Section of Division 1 of the Specifications referring to the Analysis of Bid.
- D. The Form of Contract bound herewith, with the bidder's Lump Sum inserted in the clause thereof entitled "General Agreement." The amount must be given both in figures and in writing and, in case of discrepancy, the writing shall control. One copy of each addendum, if any, issued during the bidding period shall be initialed and attached to the Proposal, but any Proposal submitted without such addendum initialed and attached will nevertheless be construed as though such addendum had been initialed and attached.

3. QUALIFICATION INFORMATION.

At any time after the opening of Proposals, the Construction Manager may give oral or written notice to one or more bidders to attend a pre-award meeting and to furnish the Construction Manager with information relating to his qualifications to perform the Work, including the following, which information shall be furnished within seven (7) days thereafter:

- A. The bidder's MBE/WBE Participation Plan submitted in accordance with Section 8, "Minority and Women's Business Enterprises Program," and a detailed list of the plant and equipment which the bidder proposes to use, indicating which portions it already possesses.
- B. Detailed information relating to work which the bidder has completed for others, including personal and corporate references, sufficient to the Construction Manager to determine the Contractor's responsibility, experience and capacity to perform the Work. If required by the Construction Manager, the foregoing information shall include information to demonstrate to the satisfaction of the Construction Manager that the contractor has within the past five years been a contractor on at least one contract of the same general type, extent and complexity as the Contract on which the Proposal has been submitted, and completed the work skillfully, in a satisfactory manner and on time.
- C. Information to supplement a) data shown in the financial statements and the statement of work on hand required to be submitted with the Proposal; and b) any statement submitted under the clause hereof 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", Certification of Participation in a State-Registered Apprenticeship Program or "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee".
- D. Moreover, in the event that the bidder's performance on a past Construction Manager or Authority or PATH contract or contracts has been rated less than satisfactory, the Construction Manager may give oral or written notice to the bidder to furnish information demonstrating to the satisfaction of the Construction Manager that, notwithstanding such rating, such performance was, in fact, satisfactory, or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of the Contract, and that such performance will be satisfactory.
- E. If the bidder has performed a contract for the States of New York or New Jersey, or any governmental entity within such States and has filed a questionnaire or other document required to be submitted in order for the bidder to qualify to perform the contract, the bidder may be requested by the Construction Manager to submit the most recent completed questionnaire or other such document, or if the most recent completed questionnaire or other such document is not available, to submit a written statement indicating the approximate date of the contract and the name of the governmental entity which awarded them the contract.
- F. Any additional information relevant to the bidder's Proposal including information to supplement the bidder's initial analysis of bid.

In the event that any of the foregoing is requested and is not furnished within seven days thereafter or within such additional time as the Construction Manager, in his sole discretion, may allow, the Construction Manager may not be in a position to determine whether the bidder is qualified, whether the bidder understands the requirements of the contract or whether the bid is responsive and may, in its sole discretion, reject the bidder's Proposal.

The giving of such notice to the bidder in connection with any of the foregoing lists, statement or information shall not be construed as an acceptance of his Proposal. However, the Construction Manager reserves the right in its sole and absolute discretion, to accept the Proposal of a bidder despite the fact that said bidder has not submitted any information, list or statement required pursuant to this Section within the above-stated time period.

4. ACCEPTANCE OR REJECTION OF PROPOSAL

Within one hundred eighty (180) days after the opening of the Proposals, the Construction Manager may, in its discretion, accept one of the Proposals, if Construction Manager accepts any. The acceptance of a Proposal will be only by mailing to or delivering at the office designated in the Proposal a notice in writing specifically indicating acceptance signed by Construction Manager. No other act of the Construction Manager shall constitute acceptance of a Proposal. Such notice will state whether or not the Construction Manager elects to require the bidder to furnish a Performance and Payment Bond. Rejection of a Proposal will be only by either (a) a notice in writing specifically stating that the Proposal is rejected, signed by Construction Manager and mailed to or delivered at the office designated in the Proposal or (b) omission of the Construction Manager to accept a Proposal within one hundred eighty (180) days after the opening of Proposals; and no other act of the Construction Manager shall constitute rejection of a Proposal, including any counter offer or other act of the Construction Manager.

The Construction Manager reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, seek modifications to one or more Proposals, or to accept that Proposal if any, which in its judgment will under all the circumstances best serve the public interest and to waive defects in any Proposal.

In the event that a successful bidder defaults upon the Contract by failing to furnish a satisfactory Performance and Payment Bond, if required, and the Construction Manager terminates the Contract, the Construction Manager reserves the option to accept the Proposal of any other bidder within one hundred eighty (180) days after the opening of Proposals, in which case such acceptance shall have the same effect as to such other bidder as though he were the originally successful bidder.

5. INTENTIONALLY DELETED

6. DISPOSAL OF CONTRACT DOCUMENTS

All recipients of Contract documents, including bidders and those who do not bid and their prospective Subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Construction Manager.

7. AVAILABLE DOCUMENTS

Certain documents, specified in **Rider O** (Available Documents), are available for reference and examination by bidders by contacting Construction Manager at Construction Manager's office to review such documents during regular business hours. These documents were not prepared for the purpose of providing information for bidders upon the present Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Construction Manager makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the bidders merely for the purpose of providing them with such information as is in the possession of the Construction Manager, whether or not such information may be accurate, complete or pertinent or of any value to the bidders. Bidders accept all risks of inaccurate or incomplete information.

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

The Construction Manager and 1 WTC adopt the Authority's 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.

"Minority-owned business" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned and controlled 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 fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned and controlled 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:

- A. Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
- B. Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central, or South American culture or origin, regardless of race);
- C. 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);
- D. Native American 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).

To ensure meaningful participation of MBEs and WBEs on this Project, I WTC has set goals of twelve percent (12%) for firms owned and controlled by minorities, and five percent (5%) for firms owned and controlled by women. The MBE/WBE Participation Plan, described below, should meet or exceed these goals. If such goals are not met, Contractor shall be responsible for demonstrating its "good faith" efforts to achieve the goals.

Each Bidder's Proposal shall be accompanied by a complete Minority Business Enterprises/Women Business Enterprises Participation Plan ("MBE/WBE Participation Plan") on a form approved by Construction Manager. The MBE/WBE Participation Plan must be approved by Construction Manager before award of the Contract. The MBE/WBE Participation Plan shall include the following information:

- A. Name and telephone number of designated MBE/WBE contact person;
- B. Names and addresses of proposed MBE/WBE contractors; the proposed MBE/WBE contractors must be approved as described below in this Section 8;
- C. Description of work and approximate dollar value of work to be performed by each MBE/WBE contractor;
- D. Percent of participation in relationship to the cost of the overall Project for each MBE/WBE contractor.

Subsequent to contract award, the Contractor shall use and document every good faith effort to comply with its MBE/WBE Participation Plan and to permit its MBE/WBE Subcontractors to perform. Participation percentages shall be monitored throughout the performance of this Contract. Such good faith efforts shall include at least the following:

- A. Attendance at pre-bid meetings, if any, scheduled by the Construction Manager;
- B. Utilization of the Authority's Directory of certified MBE/WBEs available on-line (see MBE/WBE Directory Letter in back of Contract Book) 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 or Proposals 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 in order to increase the likelihood of achieving the MBE/WBE goals;
- F. Providing a sufficient supply of plans and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review;

- G. Utilizing the services of available minority and women's community organizations; contractor's groups; local, state and federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;
- H. Ensuring that progress payments are made in a timely fashion in accordance with the requirements of this Contract;
- I. Not requiring bonds from and/or providing bonds and insurance for Subcontractors where appropriate;
- J. Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Construction Manager's staff responsible for such participation;
- K. 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.);
- L. Establishment of impress funds to facilitate MBE/WBE cash flow; and
- M. Directing other contractors to solicit MBE/WBE subcontractor participation.

Subsequent to contract award, the Contractor shall also provide the Construction Manager, at its 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 Construction Manager, on a monthly basis, the Statement of Subcontractor's Payments in a form approved by Construction Manager.

In order to assure that the planned goals are being met, a monthly Statement of Payments Reports reflecting the actual payments to MBE/WBE contractors must be submitted throughout the duration of performance of the Contract.

In calculating the progress toward meeting the goal, Contractor shall receive credit for only sixty percent (60%) of the amounts paid to materialmen/suppliers who are MBE/WBE firms, except in the case of firms who manufacture materials. Contractor shall receive one hundred percent (100%) credit for suppliers who manufacture products or make material changes to products before sale.

In the event that, prior to contract award and following review of the MBE/WBE Participation Plan submitted by the bidder pursuant to the clause hereof entitled "Qualification Information", the Construction Manager determines that the Contractor has not made a good faith effort to meet the MBE/WBE participation goals set forth above and that the Contractor has not demonstrated that a full or partial waiver of such goals is appropriate, the Construction Manager may advise the bidder that it is not responsible and may reject the bidder's Proposal.

If, during the performance of the Contract, the Contractor fails to demonstrate good faith in carrying out its MBE/WBE Participation Plan and in permitting its MBE/WBE Subcontractors to perform and the Contractor has not demonstrated that a full or partial waiver of the above referenced MBE/WBE participation goals is appropriate, then, upon receipt of a future Proposal or Proposals from the Contractor, the Construction Manager may advise the Contractor that it is not a responsible bidder and may reject such Proposal(s).

Either prior or subsequent to acceptance of the bidder's Proposal, the bidder may request a full or partial waiver of the above described MBE/WBE participation goals by providing a reasonable demonstration to the Construction Manager that its good faith efforts will not result in compliance with the goals set forth above because participation by eligible MBE/WBEs could not be obtained at a reasonable price or that such MBE/WBEs were not available or refused to perform as Subcontractors. The bidder shall provide such documentation to support its request as the Construction Manager may require.

Once approved, the MBE/WBE Participation Plan submitted by the bidder may be modified only with the written approval of the Construction Manager.

Following approval by the Construction Manager 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 Construction Manager in accordance with this numbered clause, 1 WTC may, at its sole option, provide to said approved MBE/WBEs, without charge, whatever appropriate consultant services may be available under the L.E.A.P. Program; provided, however, that such consultant services will only be furnished pursuant to a request in writing from the Contractor to the General Manager, Small Business Programs, Office of Regional and Economic Development 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 General Manager, Small Business Programs, Office of Regional and Economic Development 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 MBE/WBE Subcontractor. Prior to being accepted as a participant in the L.E.A.P. Program, the MBE/WBE Subcontractor will be required to release the Construction Manager, 1 WTC and the individuals furnishing consultant 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 Construction Manager 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 required 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 General Manager, Small Business Programs, Office of Regional and Economic Development 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 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 Construction Manager to determine whether the firm is in fact an MBE/WBE and technically competent to perform portions of the Work.

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| 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 | 2. | Hispanic American Chamber of Commerce of Essex County P.O. Box 9146 Newark, NJ 07104 (973) 484-5441 Fax (973) 350-9238 |
| 3. | Association of Minority Enterprises of NY, Inc. 135-20 Liberty Avenue Richmond Hill, NY 11419 (718) 291-1641 Fax (718) 297-2986 | 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 |
| 5. | Newark Opportunity Center 17 Academy Street, Suite 501 Newark, NJ 07102 (973) 622-4537 Fax (973) 622-3914 | 6. | Jamaica Business Resource Center 90-33 16th Street Jamaica, NY 11432 (718) 206-2255 Fax (718) 206-3693 |

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 Construction Manager for a determination as to eligibility as provided above.

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| 7. | <p>Council for Airport Opportunity 90-04 161st Street Jamaica, NY 11432 (718) 523-7100 Fax (718) 526-3472</p> | 8. | <p>Urban Business Assistance Corp. New York University Stern School of Business 44 West 4th Street, Suite 5-61 New York, NY 10012 (212) 995-4404 Fax (212) 995-4255</p> |
| 9. | <p>Greater Jamaica Development Corp. 90-04 161st Street Jamaica, NY 11432 (718) 291-0282 Fax (718) 291-7918</p> | 10. | <p>NYS Assn. Of Minority Contractors Brooklyn Navy Yard Building 280, 4th Floor, Suite 414 Brooklyn, NY 11205 (212) 246-8380 Fax (718) 246-8376</p> |
| 11. | <p>Professional Women in Construction 315 E. 56th Street, Suite 202 New York, NY 10022 (212) 486-7745 Fax (212) 486-0228</p> | 12. | <p>NY/NJ Minority Purchasing Council 205 East 42nd Street New York, NY 10017 (212) 573-2385 Fax (212) 522-4004</p> |
| 13. | <p>Jamaica Chamber of Commerce 90-25 161st Street, Room 505 Jamaica, NY 11432 (718) 657-4800 Fax (718) 658-4642</p> | 14. | <p>Queens Overall Economic Development Office 120-55 Queens Boulevard, Suite 309 Kew Gardens, NY 11424 (718) 263-0546 Fax (718) 263-0594</p> |

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| <p>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</p> | <p>16. Small Business Development Center - Rutgers University, University Heights 49 Bleeker Street Newark, NJ 07102 (973) 353-1927 Fax (973) 353-1110</p> |
| <p>17. Small Business Development Center - Kean University East Campus, Room 242 Union, NJ 07083 (908) 527-2946 Fax (908) 527-2960</p> | <p>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</p> |
| <p>19. Caribbean-American Chamber of Commerce Brooklyn Navy Yard Brooklyn, NY 11205 (718) 834-4544 Fax (718) 834-9774</p> | <p>20. Manhattan Hispanic Chamber of Commerce P.O. Box 3494 Grand Central Station New York, NY 10163 (212) 683-5955 Fax (212) 683-5999</p> |
| <p>21. Asian Women in Business 358 Fifth Avenue, Suite 504 New York, NY 10001 (212) 868-1368 Fax (212) 868-1373</p> | <p>22. Asian American Business Development Center 80 Wall Street, Suite 418 New York, NY 10005 (212) 966-0100 Fax (212) 966-2786</p> |

23. New York State Federation of Hispanic
Chambers of Commerce
2710 Broadway
New York, NY 10025
(212) 222-8300
Fax (212) 222-8412

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

Please note that the Contractor must 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. However only sixty percent (60%) of the amounts paid by the Contractor to such Materialmen who are MBEs/WBEs, except in the case of firms who themselves manufacture materials for use under the Contract, shall be allowed in computing the percentages of the Lump Sum required to be paid to MBEs/WBEs hereunder.

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

9. INSPECTION OF SITE

Each bidder or his authorized representative must make proper arrangements with the Construction Manager at the construction site before inspecting the construction site. To make such arrangements call Construction Manager at 212.748.1001.

10. QUESTIONS BY BIDDERS

Questions by prospective bidders concerning the Contract may be addressed to Construction Manager, who, however, is authorized only to direct the attention of prospective bidders to various portions of the Contract so that they may read and interpret such portions for themselves. Neither Construction Manager nor any other employee or representative of the Construction Manager is authorized to give interpretations of any portion of the Contract or to give information as to the requirements of the Contract in addition to that contained in the Contract. Interpretations of the Contract or additional information as to its requirements, where necessary, shall be communicated to bidders only by written addendum, which addendum shall be considered part of this Contract. Accordingly, nothing contained herein and no representation, statement or promise, oral or in writing, of the Construction Manager, or 1 WTC its Directors, officers, agents, representatives or employees shall impair or limit the effect of the warranties of the Contractor contained in the clause of the Form of Contract entitled "Contractor's Warranties" or elsewhere in this Contract. The provisions of this clause shall apply to questions addressed by prospective bidders both before and after their receipt of Contract documents.

11. AUTHORITY SECURITY REQUIREMENTS

Bidder shall comply with the security requirements set forth herein both pre- and post-contract award, including, without limitation, the requirements set forth in **Bidder S (Site Security Requirements)**.

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. 1 WTC and Construction Manager reserve the right to impose multiple layers of security requirements on the Contractor, its staff and Subcontractors and their staffs depending upon the level of security required, as determined by 1 WTC. This includes the Contractor's responsibility to perform Contractor/Subcontractor identity checks and background screening, including, but not limited to: inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history. The Contractor shall, and shall instruct its Subcontractors, to cooperate with Construction Manager's staff in adopting security requirements. These security requirements may include, but are not limited to the following:

- a. Access identification to include some form of biometric security methodology such as *fingerprint, facial or iris scanning, or the like*;
- b. Issuance of photo identification cards:

No person will be permitted on or about the construction site without a photo identification badge approved by the Construction Manager. The Construction Manager will provide such identification badges for Contractor and Subcontractor staff, and Materialmen, if necessary. All employees of the Contractor, Subcontractors and Materialmen shall wear identification badges in a conspicuous and clearly visible position whenever they are working at the construction site.

- c. Access control, inspection, and monitoring by security guards:

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

- d. Neither the Contractor nor any Subcontractors shall issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to 1 WTC or the Authority or the Work performed in connection with this Contract without first obtaining the written approval of 1 WTC. Such approval may be withheld if for any reason 1 WTC believes that the publication of such information would be harmful to the public interest or is in any way undesirable.
- e. Under no circumstances shall the Contractor nor any Subcontractor communicate in any way with any consultant, department, board, agency, commissioner or other organization or any person whether governmental or private in connection with the Work to be performed hereunder, unless required by Law, except upon prior written approval and instructions of 1 WTC, provided, however that data from manufacturers and suppliers of material may be obtained when such data is necessary to the performance of the Work.

- f. Neither the Contractor nor any Subcontractors shall provide access to the construction site to anyone other than their employees and others who are approved by 1 WTC to be directly involved in performing Work at the construction site.
- g. Neither the Contractor nor any Subcontractor is permitted to take photographs or video recordings or make sketches at the construction site, except when necessary to perform the Work under this Contract. Upon request, any photograph, video recording or sketch taken at the construction site shall be submitted to 1 WTC to ascertain compliance with this paragraph.

The Contractor shall be required to have its staff and that of its Subcontractors undergo a criminal history background check and shall furnish proof to 1 WTC, in a form acceptable to 1 WTC, that such check has been performed. No employee of the Contractor or any Subcontractor will be permitted at the construction site without proof that such check has been performed.

In addition, 1 WTC or Construction Manager may increase and/or upgrade security requirements for the Contractor, its staff and Subcontractors and their staffs during the term of this Contract to address changing security conditions and/or new governmental regulations.

Should 1 WTC or Construction Manager increase and/or upgrade security requirements after acceptance of the Contractor's Lump Sum Proposal, the Contractor will be compensated for the additional cost of such increase and/or upgrade in accordance with the clause of the Contract entitled, "Extra Work."

11A. PROTECTION OF SECURITY INFORMATION

1. The Contractor, Subcontractors and others requiring access to Confidential and Privileged (C&P) security information and Sensitive Security Information (SSI) shall also be required to implement uniform security procedures regarding the identification, handling, care and storage of C&P security information belonging to 1 WTC or Construction Manager; and SSI as defined in 49 CFR Parts 15 and 1520. 1 WTC or Construction Manager C&P security information is information that, if subject to unauthorized disclosure, access, alteration, loss or misuse would be detrimental to the public interest and/or might adversely affect, or compromise, public safety or security as it relates to Authority or 1 WTC property, facilities, systems and/or operations, or which might otherwise adversely affect homeland security.

The Authority has developed requirements and other safeguards that are necessary both to prevent unauthorized disclosure of C&P security information and to control the authorized disclosure of this information for use internally within the Authority and when released by the Authority to outside entities for legitimate business purposes. These requirements and safeguards may be found in the Handbook for Protecting Security Information (July 8, 2005) and the Sub-Project's Security Information Practices and procedures manual, both of which will be made available to the Contractor and each Subcontractor. Each Contractor, Subcontractor and their staffs shall follow and implement the requirements and safeguards set forth in the aforementioned Handbook. Further, the staffs of the Contractor, Subcontractors and others requiring access to C&P security information and SSI shall also be required to sign a Non-Disclosure/Confidentiality Agreement (NDA), or an Acknowledgement thereof where an executed NDA is in place, prior to performing work activities in connection with this Contract, the form of which is set forth in **Rider F** (Non-Disclosure and Confidentiality Agreement).

2. The Contractor, each Subcontractor and others requiring access to C&P security information and SSI, shall appoint a senior management level employee to be the company's Security Information Manager (SIM). The SIM is responsible for implementing and maintaining the firm's

Program For Protecting C&P security information and/or SSI. A deputy SIM (DSIM) shall also be appointed in case the SIM is unavailable for any reason.

3. The SIM shall prepare an Authorized Personnel Agreement Sub-Project List - a list of employees who are authorized to access C&P security information and the date each executed the NDA. A copy of this list shall be provided to 1 WTC and the Construction Manager and updated monthly. This list will be used to verify that individuals have been briefed into the program and are certified for access to C&P security information.

Protection of C&P security information and SSI is a material obligation of the Contractor hereunder and failure to do so is grounds for termination for cause.

In addition, an individual's access to C&P security information and SSI may be contingent upon the satisfactory completion of a security background check for such individual and proof of the implementation of satisfactory procedures for safeguarding such C&P security information and/or SSI.

Unauthorized disclosure of SSI may be grounds for a civil penalty and/or other enforcement or corrective action by the United States Department of Transportation and/or the United States Department of Homeland Security against individuals or entities they deem appropriate including but not limited to the Contractor, its Subcontractors and their staffs.

Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

4. The Contractor shall include and require the inclusion of this numbered provision in all subcontracts and contracts for Work, services or supplying materials required for this Contract of every tier.

11B. PREVAILING RATE OF WAGE CERTIFICATION

The bidders' attention is directed specifically to the clause of the Form of Contract entitled "Prevailing Rate of Wage" and to the fact that the Construction Manager requires a certification in writing from the successful bidder, in such form as may be required pursuant to such clause, that he has paid and caused his Subcontractors to pay at least the prevailing rate of wage and supplements required by such clause. This certification is required prior to his receipt of any payment from the Construction Manager hereunder as provided in the clauses of the Form of Contract entitled "Monthly Advances" and "Final Payment" or at any other time.

11C. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, SUSPENSION, DEBARMENT, DISQUALIFICATION, PREQUALIFICATION DENIAL OR TERMINATION, ETC; DISCLOSURE OF OTHER REQUIRED INFORMATION

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder and each parent and/or affiliate of the bidder has not (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal; (f) been denied a contract by any governmental agency for failure to provide the required security, including bid, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local environmental law, rule or regulation; and (k) shared space, staff, or equipment with any business entity.

The foregoing certification as to "(a)" through "(k)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each director and officer, as well as, to the best of the certifier's knowledge and belief, each stockholder with an ownership interest in excess of 10%; if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to complete **Rider K** (Project Corruption Prevention Program) as part of its bid, require all Subcontractors and Materialmen to complete **Rider K** (Project Corruption Prevention Program) and to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by 1 WTC. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

As used in this clause, the following terms shall mean:

Affiliate - An entity in which the parent of the bidder owns more than fifty percent (50%) of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the bidder also owns more than fifty percent (50%) of the voting stock.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, quasi-public agencies, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Employer Identification Number - The tax identification number assigned to firms by the federal government for tax purposes.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting or investigative agency, including an inspector general of a governmental agency or public authority, and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, state, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than fifty percent (50%) of the voting stock of the bidder.

Space Sharing - Space shall be considered to be shared when any part of the floor space utilized by the submitting business at any of its sites is also utilized on a regular or intermittent basis for any purpose by any other business or not-for-profit organization, and where there is no lease or sublease in effect between the submitting business and any other business or not-for-profit organization that is sharing space with the submitting business.

Staff Sharing - Staff shall be considered to be shared when any individual provides the services of an employee, whether paid or unpaid, to the bidder and also, on either a regular or irregular basis, provides the services of an employee, paid or unpaid, to one or more other business(es) and/or not-for-profit organization(s), if such services are provided during any part of the same hours the individual is providing services to the bidder or if such services are provided on an alternating or interchangeable basis between the bidder and the other business(es) or not-for-profit organization(s). "The services of an employee" should be understood to include services of any type or level, including managerial or supervisory. This type of sharing may include, but is not limited to, individuals who provide the following services: telephone answering, receptionist, delivery, custodial, and driving.

Equipment Sharing - Equipment shall be considered to be shared whenever the bidder shares the ownership and/or the use of any equipment with any other business or not-for-profit organization. Such equipment may include, but is not limited to, telephones or telephone systems, photocopiers, computers, motor vehicles, and construction equipment. Equipment shall not be considered to be shared under the following two circumstances: when, although the equipment is owned by another business or not-for-profit organization, the bidder has entered into a formal lease for the use of the equipment and exercises exclusive use of the equipment; or when the bidder owns equipment that it has formally leased to another business or not-for-profit organization, and for the duration of such lease the bidder has relinquished all right to the use of such leased equipment.

**12. NON-COLLUSIVE BIDDING AND CODE OF ETHICS CERTIFICATION;
CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION,
PERCENTAGE, BROKERAGE, CONTINGENT FEE OR OTHER FEE**

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that: (a) the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (b) the prices quoted in its bid have not been and will not be knowingly disclosed, directly or indirectly, by the bidder prior to the official opening of such bid to any other bidder or to any competitor; (c) no attempt has been made and none will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the Form of Contract entitled "No Gifts, Gratuities, Offers of Employment, etc.") or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Bidders"), nor does this organization have any knowledge of any act on the part of an Construction Manager employee or former Construction Manager employee relating either directly or indirectly to this

organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by the bidder for the purpose of securing business, has been employed or retained by the bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency; the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each parent, affiliate, director and officer of the bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the bidder with an ownership interest in excess of ten percent (10%); if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the bidder may be able to make the foregoing certification at the time the bid is submitted, the bidder shall immediately notify the Construction Manager in writing during the period of irrevocability of bids on this Contract or any extension of such period, of any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure. The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager should determine at any time prior or subsequent to the award of this Contract that the bidder has falsely certified as to any material item in the foregoing certification or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certification required to be disclosed, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids on Construction Manager or 1 WTC contracts and may, in addition to exercising any other rights or remedies it may have, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC".

In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

13. BIDDER ELIGIBILITY FOR AWARD OF CONTRACTS - DETERMINATIONS BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC CONTRACTS

Bidders are advised that the Authority has adopted a policy, which Construction Manager and 1 WTC adopt as set forth herein; to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a bidder is not eligible to bid on or be awarded public contracts because the bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The Authority policy permits a bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Authority contract and then to establish that it is eligible to be awarded the contract on which it has bid because (i) the state agency determination relied upon does not apply to the bidder, or (ii) the state agency determination relied upon was made without affording the bidder the notice and hearing to which the bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or a violation of a prevailing rate of wage law.

The full text of the resolution adopting the Authority policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

14. CONSTRUCTION SKILLS 2000 - APPRENTICESHIP PROGRAM

The Authority is a participant in Construction Skills 2000, a cooperative program among New York City schools, unions and public agencies. Construction Skills 2000 creates career opportunities in the construction industry for high school graduates by providing a systematic pathway into union-sponsored, skilled trade apprenticeship programs. The Authority encourages Contractors and their Subcontractors to maximize the use of apprentices under the applicable collective bargaining agreements or as contained in the applicable program approved by the New York State Department of Labor. The Contractor's plan for utilizing apprentices will be discussed at the pre-construction meeting.

Each Subcontractor proposed for approval under the Contract whose total amount of subcontracts under this Contract is greater than \$1 Million Dollars and each bidder (except as set forth in the certification below) will be required to certify as to their participation in a New York State-registered apprenticeship program.

15. CERTIFICATION OF PARTICIPATION IN A STATE-REGISTERED APPRENTICESHIP PROGRAM

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder participates in an apprenticeship program registered by the New York State Department of Labor. Participation in such an apprenticeship program shall mean that the bidder either (a) is a signatory to a collective bargaining agreement with a labor organization which sponsors an apprenticeship program registered with the New York State Department of Labor or (b) individually sponsors an apprenticeship program registered by the New York State Department of Labor and, in the case of both (a) and (b) above, such apprenticeship program shall be in the trade(s) in which Work is to be performed. This clause shall not apply to bidders who will perform all Work at the construction site through the use of Subcontractors.

The foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.).

**PLEASE SEE ATTACHED
APPENDIX 'A'
BID PROPOSAL FORM**

**FORM OF CONTRACT
CHAPTER I
GENERAL PROVISIONS**

16. DEFINITIONS

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

"1 WTC" shall mean 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 10003 ("1 WTC"). Any reference to 1 WTC in the context of performing any duty, conducting any action, rendering a decision, or having any discretion shall be performed by the 1 WTC Representative. 1 WTC shall have all rights and benefits of Construction Manager as set forth herein.

"1 WTC Indemnitee Group" shall mean 1 WTC, Authority, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds referred to in **Rider D (Insurance Rider)**.

"1 WTC Representative" shall mean the Director of the World Trade Center Construction Department or his designee. 1 WTC Representative is the only authorized representative to act, or receive, on behalf of 1 WTC with respect to any duty, obligation, notice or other action set forth in this Contract.

"Authority" shall mean the Port Authority of New York and New Jersey.

"Construction Manager" shall mean Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103, acting as agent for 1 WTC hereunder, and shall be generally responsible for the managing, supervision, coordination, and direction of all contractors in regards to the Work.

"Contract" shall mean, in addition to this Form of Contract, the Instructions for Bidders and Bid Proposal Form, Sections 1-15, the Proposal, all Riders listed herein under "List of Riders," the Construction Manager's acceptance, the Specifications and the Contract Drawings (including written addenda issued over the name of the Construction Manager), 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. However, the Riders may be unilaterally amended from time to time by 1 WTC, which amendments constitute terms and conditions of the Contract. To the extent there is any conflict between documents forming the Contract, the provisions of the Riders shall control over all other provisions; followed by the terms of this Form of Contract followed by all other terms and conditions that form the Contract. All Riders that include blanks or forms shall be filled in or completed by Contractor, who shall also obligate Subcontractors and Materialmen to fill in such blanks and complete such forms.

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

"Design Team" shall mean all of the design professionals hired by 1 WTC, either directly or indirectly to provide professional services with respect to the Project including without limitation Architect of Record, Engineer of Record and Design Consultants.

The term "construction site" or words of similar import shall mean the World Trade Center, New York, New York.

"Work" shall mean all structures, equipment, plant, labor, materials (including materials and equipment, if any, furnished by the Construction Manager) and other facilities and all other things necessary or proper for or incidental to performing the construction at the World Trade Center site; and "performance of Work" and words of similar import shall mean the furnishing of such facilities and the doing of such things.

"Work required by the Contract Drawings in their present form" or words of similar import shall include all Work required by or reasonably inferable from the Specifications in their present form (whether or not shown upon the Contract Drawings), all Work shown upon or reasonably inferable from the Contract Drawings in their present form (whether or not mentioned in the Specifications), and all Work involved in or incidental to the accomplishment of the results intended by the Specifications and Contract Drawings in their present form (whether or not mentioned therein or shown thereon)."

"Equipment" and "plant" shall include construction equipment and plant rented as agent for the Construction Manager.

"Extra Work" shall mean Work required by the Construction Manager pursuant to the clause hereof entitled "Extra Work Orders" which is in addition to that required by the Contract Drawings in their present form.

"Contract Drawings" shall mean the drawings and specifications designated in **Rider B** (List of Drawings and Specifications), and, except as used in the phrase "Contract Drawings in their present form", shall include any future alterations and revisions to such drawings and specifications. Any reference herein to Specifications shall mean specifications contained within the Contract Drawings.

"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 Construction Manager 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 Construction Manager to illustrate some portion of the Work.

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

"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.

"Architect of Record" shall mean Skidmore Owings & Merrill LLP.

"Engineer(s) of Record" shall mean the engineers hired by 1 WTC to perform professional engineering services for the Project who have provided professional stamps to one or more of the Contract Drawings.

"Design Consultant" shall mean members of the Design Team who are not the Architect of Record or the Engineer of Record.

"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.

"Integrity Monitor" shall have the meaning set forth in Section 18 (Access to Records) of this Form of Contract.

The term "permanent construction" shall include all construction, installation, structures, equipment and materials (including materials and equipment, if any, furnished by the Construction Manager to be constructed, installed or left by the Contractor at or about the construction site (or elsewhere in the possession of the Construction Manager 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.

"Lump Sum" shall mean the amount stipulated in the clause hereof entitled "General Agreement".

"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 Construction Manager; and "approved", "acceptable", "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to the Construction Manager; and "necessary", "reasonable", "proper", "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of the Construction Manager.

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.

17. GENERAL AGREEMENT³

The Contractor agrees to perform the construction at the World Trade Center site and to furnish all structures, equipment, plant, labor, materials and other facilities and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the Contract Drawings designated in **Rider B** (Contract Drawings and Specifications) and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon him by this Contract. The furnishing of equipment and plant, however, shall be subject to the provisions of the clause hereof entitled "Agency for Rental of Construction Equipment".

The Construction Manager agrees to pay to the Contractor and the Contractor agrees to accept from the Construction Manager, in full consideration for the performance by the Contractor of his duties and obligations under this Contract and the whole thereof, a compensation of:

Seventy-Six Million Dollars and Zero Cents (\$76,000,000) (throughout this Contract called the "Lump Sum"), and such compensation only, subject only to the express provisions of this Contract specifically setting forth actual, defined additions to or deductions from such compensation.

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 Construction Manager, 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, whatsoever Work may be required in addition to that required by the Contract Drawings in their present form, and whatsoever obstacles or unforeseen conditions may arise or be encountered.

18. ACCESS TO RECORDS

The Construction Manager and 1 WTC 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 it should be compensated, by the Construction Manager 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 Construction Manager; 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 Construction Manager and/or 1 WTC 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 (3) year period the Construction Manager or 1 WTC has notified the Contractor in writing of a pending claim by the Construction Manager or 1 WTC 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 six (6) years from the date of Final Payment with respect to the records and documents involved.

³ For sales tax exemptions, if any, see clause entitled "Exemptions from New York State and New York City Sales Taxes".

In the event that the Authority hires an integrity monitor in connection with the Project ("Integrity Monitor"), then the Contractor, and all Subcontractors and Materialmen of any tier, will cooperate fully with the Integrity Monitor, 1 WTC and the Authority, including but not limited to providing complete access to all personnel and records related to the performance of this Contract. Failure to comply with this provision shall be a material breach of this Contract.

No provision in this Contract giving the Construction Manager and/or 1 WTC a right of access to records and documents is intended to impair or affect any right of access to records and documents which the Construction Manager and/or 1 WTC and would have in the absence of such provision.

19. AGENCY FOR RENTAL OF CONSTRUCTION EQUIPMENT AND PURCHASE OF MATERIALS NOT INCORPORATED IN PERMANENT CONSTRUCTION

With respect to the performance of Work in the State of New York:

A. General Provisions

In light of the fact that the Authority has designated 1 World Trade Center LLC as its agent for certain purposes, the Contractor further agrees to act as the agent of the Authority, subject to the provisions of this numbered clause relating to such agency (i) for the rental of all construction equipment necessary or desirable for or incidental to the performance of the Contract (other than construction equipment owned and also used by the Contractor or owned and also used by any subcontractor) and (ii) for the purchase of materials not to be incorporated in the Permanent Construction but to be used or consumed in the performance of the Contract as provided in the clause in the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes" and, in the exercise of such agency, to assume all the obligations and duties imposed upon him by this Contract. The Contractor may authorize any subcontractor to act as his subagent for such rental or purchase, subject to all the provisions of this Contract. "Construction equipment" as used in this numbered clause shall include plant.

The Authority will pay the (i) rental charges for said equipment directly to the lessors thereof, and (ii) purchase prices for said materials directly to the vendors thereof, but the charges so paid shall be deducted from the compensation payable to the Contractor under the Contract; provided, however, that the Authority will pay such charges, and the Contractor is authorized by the Authority to act as such agent, to the extent only that the charges or prices payable for such rental or purchase, as the case may be, do not exceed the compensation payable to the Contractor under the Contract; and provided further that the Contractor performs all the obligations relating to said agency imposed upon him by this Contract.

The Authority will provide the Contractor with a statement or other documentation to be furnished by him and the subcontractors to such lessors and materialmen who will identify this Contract as the one under which the Contractor is authorized to rent said equipment or purchase said materials and which will identify the site to which delivery must be made. The Contractor shall arrange for delivery of said equipment or materials directly to the construction site. Payment of the rental charges or purchase prices shall be made by the Authority on the basis of invoices made out to the Authority in which is contained the place of delivery and on which the Contractor has certified by endorsement that such construction equipment or materials is or are being or has or have been used in the performance of the Contract, said invoices to be submitted through the Contractor to the Authority at the time said equipment or materials is used at the construction site. In the event said invoices are not submitted promptly, at the time stated above, but are submitted at a time when, by reason of prior advances and payments to the Contractor or for his account, the amounts still payable to the Contractor in connection with the Contract are

insufficient to pay said invoices, then the Authority shall not be liable to the lessors *or vendors* for any amounts in excess of said amounts still payable to the Contractor which remain in the possession of the Authority.

Notwithstanding the above agency arrangement, the Authority shall not be liable to lessors of construction equipment for any amounts except rental charges based on time of use of such equipment, nor shall the Authority be liable to vendors of construction materials for any amounts except the purchase price thereof, and the Contractor's agency is limited accordingly. All obligations incurred by the Contractor or subcontractors for any other expenses, including repairs and damages for breach of the rental agreement, shall be obligations incurred by the Contractor or subcontractors as principal not as agent of the Authority. Moreover, as between the Authority and the Contractor, the Contractor shall be responsible for all amounts due to lessors of construction equipment *and vendors of construction materials* notwithstanding the above agency arrangement.

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

The agency provided for under this numbered clause shall not relieve the Contractor of any of his duties and obligations elsewhere provided for under this Contract.

B. Option Not to Act as Agent

Notwithstanding the provisions of A above, the Contractor shall have the right to elect not to act as agent of the Authority for the (i) rental of any particular item or items of said construction equipment, *or (ii) purchase of any construction materials*, in which event, with regard to any such rentals *or purchases* by the Contractor as principal and not agent, the provisions of A of this numbered clause shall be inapplicable as well as those provisions of the clause of the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes", which relate to rental of construction equipment *and purchase of materials not incorporated in the Permanent Construction*.

20. EXEMPTION FROM NEW YORK STATE AND NEW YORK CITY SALES TAXES

A. Materials Incorporated in Permanent Construction

The attention of the Contractor is directed to the following provision of the New York Tax Law:

"§1115. Exemptions from sales and use taxes. (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen, * * * or (ii) adding to, altering

or improving real property, property or land (A) 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.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such tangible personal property.

If (i) any claim is made against the Contractor by the State of New York or City of New York for such sales or compensating use taxes, 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 or compensating use taxes, 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 requirements of law, provided that:

- 1.) 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 taxes and have filed all the forms and certificates required by the applicable laws, rules and regulations in connection therewith;
- 2.) 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
- 3.) 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.

B. B. Rental of Construction Equipment

The rental by the Contractor or a subcontractor of construction equipment not owned by the Contractor or a subcontractor for use in the performance of the Contract will also not be subject to New York State or New York City sales or compensating use taxes, provided that:

- 1.) the Contractor's and any subcontractor's use of construction equipment rented from others, and any agreement for such rental, is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
- 2.) delivery of said equipment is to the construction site;

- 3.) the Contractor or subcontractor has furnished to the lessor the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to rent said equipment and identifying the construction site to which delivery must be made;
- 4.) the invoice for said equipment is made out to the Authority and prescribes the place of delivery; and
- 5.) the amounts payable for rental of said equipment do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such rentals of equipment.

If (i) any claim is made against the Contractor by the State of New York or the City of New York for sales or compensating use taxes on such rental of construction equipment or (ii) any claim is made against the Contractor by a materialman, lessor or a subcontractor on account of a claim against such materialman, lessor or subcontractor by the State of New York or the City of New York for sales or compensating use taxes on rental of said equipment, 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 requirements of law, provided that the provisos listed above in this numbered clause as A.1 through A.3 and B.1 through B.5 are complied with.

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

C. Materials Not Incorporated in Permanent Construction

The purchase by the Contractor or a subcontractor of *materials not incorporated in the Permanent Construction, but used or consumed* in the performance of the Contract, including but not limited to, *tangible personal property for use in (i) maintaining, installing, repairing or servicing tangible personal property or (ii) the Permanent Construction, excluding tools and equipment, and construction supplies or otherwise taxable services used or consumed by the Contractor or subcontractors at the construction site, excluding tools and equipment*, will also not be subject to New York State or New York City sales or compensating use taxes provided that:

1. the Contractor's and any subcontractor's *purchase of materials* is based upon the agency arrangement provided for in the clause hereof entitled, "Agency for Rental of Construction Equipment And Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
2. delivery of said *materials* is to the construction site;
3. the Contractor or subcontractor has furnished to the *vendor* the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to *purchase said materials* and identifying the construction site to which delivery must be made;

4. the invoice for said *materials* is made out to the Authority and prescribes the place of delivery; and
5. the amounts payable for said purchase of *materials* do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such *purchases of materials*. If (i) any claim is made against the Contractor by the State or City of New York for sales or compensating use taxes on such *purchases of materials* 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 or City of New York for sales or compensating use taxes on *purchases of said materials*, 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 requirements of law, provided that the provisions listed above in this numbered clause as A.1 through A.3 and C.1 through C.5 are complied with.

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

20A. PERFORMANCE AND PAYMENT BOND

At the time of accepting a Contractor's Proposal, Construction Manager shall notify Contractor if payment and performance bonds will be required. If bonds are so required, Contractor shall furnish any required bond for the faithful performance of all obligations imposed upon Contractor by the Contract and also for the payment of all lawful claims of Subcontractors, Materialmen, and workers 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 equal to the Lump Sum and such bond shall be signed by one or more sureties⁴ satisfactory to the Construction Manager, and shall include both Construction Manager and 1 WTC as dual Obligees. 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.

If the Construction Manager elects to require the Contractor to furnish a bond, he shall deliver such bond to the Construction Manager within seven days after receipt by him of the acceptance of his Proposal, and the sureties thereon shall be as proposed by him, provided, that if the Construction Manager 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 Construction Manager.

The Construction Manager 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.

⁴ 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 Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Construction Manager 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.

In the event of a default by the Contractor in its obligation to furnish a satisfactory bond within seven (7) days after he received an acceptance of his Proposal, such default shall entitle the Construction Manager in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Proposal, without any liability on the part of the Construction Manager or 1 WTC. Inasmuch as the damages to the Construction Manager 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:

- A. The excess, if any, of the Lump Sum in the Proposal finally accepted over that in the Proposal of the Contractor; and
- B. The expense of such new solicitation of the Contract and related costs, e.g. costs of printing, if any, as may be deemed necessary by the Construction Manager; and
- C. The sum of Five Thousand Dollars (\$5000) for each day after the receipt by the Contractor of the acceptance of his Proposal that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

If the Contractor furnishes a bond in accordance with the requirements of the Construction Manager under this numbered clause, the Construction Manager 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 Construction Manager receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Construction Manager, the Construction Manager shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Construction Manager shall be or become dissatisfied with any surety or sureties, then, upon any bond furnished in accordance with the requirements of the Construction Manager, or if for any other reason such bond shall cease to be adequate security, the Contractor shall, within five (5) days after notice from the Construction Manager 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 Construction Manager to constitute adequate security.

CHAPTER II ADJUSTMENTS AND PAYMENTS

21. ADJUSTMENTS OF LUMP SUM

If any Work required by the Contract Drawings in their present form shall be countermanded or reduced, the Construction Manager shall have full authority on behalf of both parties to make such adjustment by way of reduction in the Lump Sum as he may in his sole discretion deem equitable and reasonable, and in making such adjustment, no allowance to the Contractor shall be made for anticipated profits.

The Construction Manager shall have authority to agree in writing with the Contractor for adjustments by way of reduction in the Lump Sum in lieu of those for which provision is heretofore made in this numbered clause.

22. COMPENSATION FOR EXTRA WORK

Contractor shall not perform or receive compensation for Extra Work without prior written authorization to perform such Extra Work from Construction Manager. The Construction Manager shall have authority to agree in writing with the Contractor upon lump sum, in accordance with **Rider C** (Alternatives and Unit Prices) or such other compensation for Extra Work in lieu of the compensation for which provision is hereinafter made in this numbered clause.

If such agreement on compensation is not made, and Extra Work be performed, the Contractor's compensation shall be increased by the following amounts and such amounts only:

In the case of Extra Work performed by the Contractor personally, or by a Subcontractor of any tier or a Materialman, an amount equal to the actual net cost in money of the labor and materials required for such Extra Work, plus fifteen percent of such net cost in the aggregate for such Extra Work, plus such rental for equipment (other than small tools) required for such Extra Work as the Construction Manager deems reasonable plus the net increase in premiums for Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance charged on the basis of the compensation for labor and materials for such Extra Work.

As used in this numbered clause (and in this clause only):

"Labor" means foremen, surveyors, laborers, mechanics and other employees below the rank of superintendent, exclusive of timekeepers, directly employed at the construction site, whether employed by the Contractor or by the Subcontractors, subject to the Construction Manager's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus a proper proportion of (a) premiums, if any, actually paid by the employer for Workers' Compensation Insurance upon the basis of such wages, (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages; and (c) taxes actually paid by the employer pursuant to law upon the basis of such wages. "Employees" as used above means only the employees of one employer.

"Materials" means temporary and consumable materials as well as permanent materials; and "cost of materials" means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to

the construction site in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

"Work day" in reference to an item of equipment means a day other than a Saturday, Sunday or legal holiday except that if the particular item of equipment is actually utilized at the construction site by the Contractor or Subcontractors under this Contract or any other contract with the Construction Manager, I WTC or the Authority on a Saturday, Sunday or legal holiday said day shall be deemed a work day. 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 Construction Manager on the basis of the following:

A.

- 1.) 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 95131-2398), (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 Extra Work. No amount for operating cost will be allowed during periods when such equipment is not actually engaged in performing Extra 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.
- 2.) If no listing of rental rate and/or hourly operating cost for the item of equipment is in the Blue Book, the Construction Manager shall determine the reasonable rate of rental and/or hourly operating cost of the particular item of equipment by such other means as he finds appropriate.

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

- 1.) The rate to be applied for an item of equipment used on a particular Extra Work order shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of equipment or substitute item of equipment is at the construction site for use by the Contractor or Subcontractors whether under this Contract or any other contract with the Authority. Included within this period will be (i) work days of idleness of the equipment at the construction site whether such idleness results from acts or omissions of the Contractor, Construction Manager, I WTC consultants or third persons, breakdowns in the equipment or any other cause, (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of equipment from the construction site for repairs and the delivery to the construction site of the same or substitute equipment. The number of work days in the period for each rate shall be as indicated below:

| | |
|--|--------------|
| Three work days or less. | Daily Rate |
| More than three work days but not more than fifteen work days. | Weekly Rate |
| More than fifteen work days. | Monthly Rate |

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 daily rental. | 1/8 of daily rental from Blue Book |
| Hourly rate based on weekly rental. | 1/40 of weekly rental from Blue Book |
| Hourly rate based on monthly rental. | 1/176 of monthly rental from Blue Book |

- 2.) The rental rate shall be multiplied by the applicable regional adjustment factor shown for such item of equipment in the Blue Book. The adjustment factor shall not apply to the hourly operating cost.
 - 3.) If the Construction Manager should determine that the nature or size of the equipment used by the Contractor in connection with Extra Work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Construction Manager to be suitable for the Extra Work, the reasonable rental will not be based upon the equipment used by the Contractor but will be based on the smallest or least elaborate equipment determined by the Construction Manager to have been suitable for the performance of the Extra Work.
- C. In the case of equipment utilized only for Extra Work: (a) in addition to amounts determined as provided in subparagraphs A and B above, there will be added to the rental as computed above the reasonable cost of transporting such equipment to and from the construction site, and (b) notwithstanding the number of hours during which such equipment is utilized, the minimum rental therefor will be for a period of eight hours.

In computing the Contractor's compensation insofar as it is based upon Extra Work, and notwithstanding any provision to the contrary appearing in the Blue Book, no consideration shall be given to any items of cost or expense not expressly set forth above, it being expressly agreed that the costs and percentage additions hereinbefore provided cover items of cost and expense to the Contractor of any type whatsoever, including administration, overhead, taxes (other than those enumerated above), clean-up, consumables including gas and oil, drafting (including printing or other reproduction), coordination, field measurements, maintenance, repairs, insurance, profit to the Contractor and small tools.

Whenever any Extra Work is performed (whether by the Contractor directly or through a Subcontractor), the Contractor shall, at the end of each day, submit to the Construction Manager (a) daily time slips showing the name and number of each workman employed on such Work, the number of hours which he is employed thereon, the character of his duties, and the wages to be paid to him, (b) a memorandum showing the rates and amounts of Workers' Compensation Insurance premiums, if any, and state and federal taxes based on such wages, and vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages (c) a memorandum showing the amount and character of the materials furnished for such Work, from whom they were purchased and the amount to be paid therefor, and (d) a memorandum of equipment used in the performance of such Work, together with the rental claimed therefor. Such memoranda and time slips are

for the purpose of enabling the Construction Manager to determine the amounts to be paid by the Construction Manager under this numbered clause; and accordingly, they shall constitute a condition precedent to such payment and the failure of the Contractor to furnish them with respect to any Work shall constitute a conclusive and binding determination on his part that such Work is not Extra Work and shall constitute a waiver by the Contractor of claims for payment for such Work. In the event that the Construction Manager and the Contractor shall agree in writing upon a lump sum or other compensation for Extra Work in lieu of compensation as provided in the second paragraph of this clause, the daily time slips and memoranda required by this paragraph shall not be required subsequent to the date on which such agreement has been reached.

23. COMPENSATION FOR EMERGENCY DELAYS

If the Contractor is specifically directed by the Construction Manager to suspend his operations as stipulated in the Specifications entitled "Conditions and Precautions" or if the Contractor is specifically directed not to start his operations at a time when operations are permitted to start as stipulated in such Section, and if solely because of such suspension or direction not to start any of the Contractor's or Subcontractor's employees or equipment then engaged in or about to start such Work are necessarily kept idle at the construction site, during the hours when they would otherwise be engaged in the performance of the Work, then the Contractor's compensation shall be increased by an amount equal to the salaries and wages in amounts approved by the Construction Manager which the employer is required to pay and actually pays to such employees for the period or periods of such idleness, plus a proper proportion of (a) taxes actually paid by the employer pursuant to law upon the basis of such salaries and wages, and (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligations upon the basis of such salaries and wages, and in addition thereto such rental as the Construction Manager deems reasonable for such equipment during the period or periods of such idleness. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Idle Salaried Men and Equipment".

In the event that the Contractor deems that any payment should be made pursuant to this numbered clause, he shall give prompt written notice to the Construction Manager stating the reasons why he believes such payments should be made and shall moreover, furnish to the Construction Manager at the end of each day, a memorandum showing the name, payroll title, salary rate and employer of each of the workingmen, and description, owner and claimed rental rate for each item of equipment claimed to have been kept idle. Said notice and memorandum are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time. Accordingly, notwithstanding any other provisions hereof, the failure of the Contractor to furnish such notice and memorandum shall constitute a conclusive binding determination on his part that he is not entitled to compensation as provided herein and shall constitute a waiver by the Contractor of all claims for such payment, such notice and memorandum being conditions precedent to payment under this numbered clause.

24. PROGRESS PAYMENTS

Payment Applications shall be on the form and provide all information and documentation as required in **Rider L (Payment Procedures)**, including without limitation all necessary certifications required herein for Prevailing Rate of Wage paid by Contractor and its Subcontractors.

Using the Schedule of Values as a line-item accounting format, Payment Applications shall identify in detail the percent of Work completed less retention withheld.

The percentage completion shall be the percentage of that portion of the Work that has actually been completed, as approved by Construction Manager and 1 WTC.

Construction Manager shall retain ten percent (10%) retention from all Payment Applications. Contractor may, upon its Work being fifty percent (50%) complete, seek Construction Manager's and 1 WTC's approval to reduce such retention. 1 WTC shall have sole discretion to approve or reject such request, regardless of Construction Manager's recommendation.

Each Payment Application period shall be one (1) calendar month ending on the last day of the month. On the 20th of each month, Contractor shall submit to Construction Manager and 1 WTC a pencil draft of the Payment Application for the current month. Contractor, Construction Manager, Design Team representatives and 1 WTC shall meet on or before the 25th to discuss the draft. By the 1st (3rd for February Payment Application) of the following month, Contractor shall submit the official Payment Application in accordance with the approved pencil draft, along with all required information and documentation as set forth in **Rider L** (Payment Procedures). Construction Manager shall have ten (10) days thereafter to review and approve all or a portion of the Payment Application that shall be based upon the information in the approved pencil draft and associated required documentation, inform Contractor of missing required documentation or information, and issue the Certificate for Payment for the approved portion of the Payment Application. Construction Manager shall provide an integrated *monthly progress payment request* to 1 WTC for all contractors on the Project simultaneously. The approved portion of the Payment Application, subject to Construction Manager supplying all required documentation, shall be paid by 1 WTC to Construction Manager. Construction Manager shall pay Contractor no later than three (3) business days, or later if directed by 1 WTC, after receipt of such payment.

Notwithstanding the above, 1 WTC and Construction Manager reserve the right, in their sole discretion, to directly pay Subcontractors and Materialmen.

25. 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 Construction Manager shall certify in writing to 1 WTC and to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon (i) certify to the Construction Manager in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that Contractor has paid and caused its Subcontractors of any tier to pay at least the prevailing rate of wage and supplements required by such clause and (ii) furnish to the Construction Manager a detailed sworn statement of all claims, just and unjust, of Subcontractors, Materialmen and other third persons then outstanding and which Contractor has reason to believe may thereafter be made on account of the Work. (iii) furnish to the Construction Manager evidence of payment of all union fringe and employee benefit obligations; and (iv) furnish to the Construction Manager Final Waivers of Lien and Release from all Subcontractors and Materialmen of any tier.

Within fifteen (15) 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 Construction Manager shall submit all required payment documents to 1 WTC. 1 WTC shall pay to Construction Manager and Construction Manager shall pay to Contractor within three (3) business days, or later if directed by 1 WTC, after the receipt from 1 WTC, 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 1 WTC Indemnitee Group 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 Construction Manager or 1 WTC 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 Construction Manager 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 six percent (6%) per annum for the period, if any, in which such interest is due.

26. WITHHOLDING OF PAYMENTS

(1) If the Contractor fails to perform any of its obligations under this Contract or under any other agreement between the Contractor and 1 WTC (including Contractor's obligation to pay in accordance with the terms of any such contract or agreement any claim lawfully made against Contractor by any Materialman, Subcontractor of any tier, worker, or other person or entity, which claim arises out of or in connection with the performance of this Contract or any other agreement as so described, or (2) if any claim (just or unjust) which arises out of or in connection with this Contract, or any other agreement between the Contractor and 1 WTC, is made against the Authority, or 1 WTC or (3) if any Subcontractor with respect to this Contract, or with respect to any other agreement between the Contractor and 1 WTC, fails to pay any claim lawfully made against such Subcontractor by any Materialman, Subcontractor, worker, or other third person that arises out of or in connection with this Contract or any other agreement so described, or if in the opinion of the Chief Engineer, any of the aforesaid contingencies is likely to arise, then the Construction Manager 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 Construction Manager 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 Construction Manager does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Construction Manager to withhold and apply moneys nor any exercise or attempted exercise of, or omission to exercise, such rights by the Construction Manager 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 Construction Manager or 1 WTC 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, then the Construction Manager, 1 WTC or 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 1 WTC or Authority, so much as may be necessary to pay to union fringe benefit funds, 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 1 WTC or Authority an amount equal to the Construction Manager's, 1 WTC's or Authority's cost of any investigation conducted by or on behalf of the 1 WTC or 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 Construction Manager, 1 WTC or Authority, the Construction Manager may deduct from any amount payable to the Contractor by the Construction Manager, under the Contract or under any other open contract between the Contractor and 1 WTC or 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 1 WTC or the Construction Manager, then the Construction Manager 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

27. TIME FOR COMPLETION

The Contractor shall complete the performance of all Work under this Contract by the date or number of calendar days after acceptance of Proposal, as listed in **Rider T** (Milestone Dates).

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

- A. If a Performance and Payment Bond is required, the date of receipt by it of notice from 1 WTC that the Performance and Payment Bond furnished by it is satisfactory;
- B. If Chapter V of the "Form of Contract" contains a clause entitled "Insurance Procured by Contractor", the date of receipt by it of notice from 1 WTC that the insurance procured by it pursuant to said clause is satisfactory, as evidenced by the certificate to be 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 1 WTC shall give notice to the Contractor within ten days after receipt of the Performance and Payment Bond or certificate of insurance as to whether or not such bond or insurance is satisfactory.

The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. The Contractor guarantees that it can and will complete the performance of the Work within the time hereinbefore stipulated or within the time as extended in accordance with the clause hereof entitled "Extensions of Time".

EXTENSIONS OF TIME

TIME IS OF THE ESSENCE IN REGARDS TO CONTRACTOR'S OBLIGATIONS PURSUANT TO THIS CONTRACT, including without limitation Contractor's obligation to complete its Work in by the date or number of calendar days after acceptance of Proposal, as listed in **Rider T** (Milestone Dates). As may be extended in accordance with the clause entitled "Extensions of Time".

The time for completion of any part of the Contract, as provided in Rider T, shall be extended (subject, however, to the provisions of this numbered clause) only if in the opinion of the Construction Manager, the Contractor is necessarily delayed in completing such part by such time solely and directly by a cause which meets the conditions set forth in A and B below:

- A. Such cause is beyond the Contractor's control and arises without his fault;
- B. Such cause comes into existence after the opening of Proposals on this Contract and neither was nor could have been anticipated by investigation before such opening.

Variations in temperature and precipitation shall be conclusively deemed to have been anticipated before opening of such Proposals on this Contract except to the extent that the actual monthly average temperature varies from a temperature which is ten percent (10%) above or below the monthly normal temperature and except to the extent that the actual number of days of precipitation (of 0.1 inch or more) per month exceeds a number equal to two plus the normal number of days of precipitation per month.

In any case, the variations in temperature and precipitation described in the immediately preceding sentence will be cause for an extension of time only if occurring between the actual time of commencement of the Work at the construction site and the time for completion stipulated in the clause hereof entitled "Time for Completion " (or such time as extended as provided for herein). In the case of portions of months the number of days will be pro-rated by the Construction Manager. Temperature and precipitation shall be as recorded by the U. S. Weather Bureau in its publications, including that entitled "Local Climatological Data with Comparative Data", which is applicable to the area in which the Work is to be performed, and in the case of precipitation, the normal number of days of precipitation (of 0.1 inch or more) per month as abstracted from the aforementioned publications are as follows:

| Month | Normal number of days per month on which precipitation exceeds 0.1 inch |
|-----------|---|
| January | 7 |
| February | 7 |
| March | 8 |
| April | 7 |
| May | 6 |
| June | 6 |
| July | 5 |
| August | 7 |
| September | 6 |
| October | 6 |
| November | 7 |
| December | 7 |

In any event, even though a cause of delay meets the above conditions, in the opinion of the Construction Manager, an extension shall be granted only to the extent that (i) the performance of the Work is actually and necessarily delayed and (ii) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling), whether before or after the occurrence of the cause of delay, and an extension shall not be granted for a cause of delay which would not have affected the performance of the Contract were it not for the fault of the Contractor or for other delay for which the Contractor is not entitled to an extension of time.

Any reference herein to the Contractor shall be deemed to include Subcontractors and Materialmen, whether or not in privity of contract with the Contractor, and employees and others performing any part of the Contract and all the foregoing shall be considered as agents of the Contractor.

The period of any extension of time shall be that necessary to make up the time actually lost, subject to the provisions of this numbered clause, and shall be only for the portion of the Contract actually delayed.

As a condition precedent to an extension of time, the Contractor shall give written notice to the Construction Manager within forty-eight (48) hours after the time when he knows or should have known of any cause which might under any circumstances result in delay for which he claims or may claim an extension of time (including those causes which the Construction Manager is responsible for or has knowledge of), specifically stating that an extension is or may be claimed, identifying such cause and describing, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the various portions of the Contract. Since the possible necessity for an extension of time may materially alter the scheduling, plans and other actions of the Construction Manager, and since, with sufficient opportunity, the Construction Manager might if it so elects attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, **the giving of written notice as above required shall be of the essence of the Contractor's obligations** and failure of the Contractor to give written notice as above required shall be a conclusive waiver of an extension of time.

It shall in all cases be presumed that no extension, or further extension, of time is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Construction Manager that it is. To this end the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, the foregoing presumption shall be deemed conclusive

28. IDLE SALARIED WORKERS AND EQUIPMENT

If any salaried workers or equipment of the Contractor or any Subcontractor are necessarily kept continuously idle and wholly unoccupied at the construction site for a full day on each of two or more full days on which they would be engaged in the performance of the Work but for causes due solely to acts or omissions of Construction Manager and I WTC occurring after the opening of Proposals on this Contract, and if such idleness is not due to any cause within the control of the Contractor or of any of his Subcontractors or Materialmen or its or their employees, then the Construction Manager shall pay to the Contractor and the Contractor shall accept (in addition to any sums otherwise payable under this Contract, and in full satisfaction of and in liquidation of all claims for damages because of such act or omission of the Construction Manager or I WTC) an amount equal to that which the employer actually pays such salaried employees during such full days of idleness, plus a proper proportion of vacation allowances and union dues and assessments actually paid by the employer pursuant to contractual obligations on the basis of such salaries, and a proper proportion of the taxes actually paid by the employer pursuant to law upon the basis of such salaries and plus such rental for such idle equipment as the Construction Manager deems reasonable. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Compensation for Extra Work"; provided, however, that the provisions of subparagraph C of said clause shall not be applicable to such idle equipment.

The Contractor shall give written notice to the Construction Manager before the end of the second of the above mentioned two (2) or more full days (whether or not the Construction Manager is aware of the existence of any circumstances which might constitute a basis for payment under this numbered clause), specifically stating that salaried men or equipment have been kept idle under circumstances which might result in payment under this numbered clause; and he shall furnish with such notice, for all the days that have occurred, and shall in addition furnish at the end of each additional day of the above mentioned two (2) or more full days, (a) a memorandum showing the name, payroll title, salary rate and employer of each of the salaried men claimed to have been kept idle at the construction site, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations based on their salaries, and (b) a memorandum of the equipment claimed to be kept idle, together with the amount claimed as rental therefor. Said notice and memoranda are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time, and of enabling him to take such steps as may be necessary to remedy the conditions upon which the claim is based. The furnishing of such notice and memoranda shall be a condition precedent to payment under this numbered clause, so that the day on which notice is given shall be counted as not later than the second of the above mentioned two (2) or more full days and no subsequent day shall be counted for which the above memoranda are not furnished at the end of such day.

29. DELAYS TO CONTRACTOR

As between the Contractor and the Construction Manager, the Contractor assumes the risk of all suspensions of or delays in performance of the Contract, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to this Contract, including wrongful acts or omissions of any member of the 1 WTC Indemnitee Group, except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this Contract for such suspension or delays and except to the extent, if any, that compensation may be agreed to by the Construction Manager in writing pursuant to the clause hereof entitled "Compensation for Extra Work" for impact costs incurred by the Contractor in connection with the performance of Extra Work. Subject only to such exceptions, the Contractor shall bear the burden of all costs, expenses and liabilities which he may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this Contract; shall conclusively be deemed to have been within the contemplation of the parties.

Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, the Construction Manager make no representation or guaranty as to when the construction site or any part thereof will be available for the performance of the Contract or as to whether conditions at the construction site will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time.

Wherever in connection with this Contract it is required, expressly or otherwise, that the Construction Manager shall perform any act relating to the Contract, including making available or furnishing any real property, materials, or other things, no guaranty is made by the Construction Manager as to the time of such performance and the delay of the Construction Manager in fulfilling such requirement shall not result in liability of any kind on the part of the 1 WTC Indemnitee Group except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for elsewhere in this Contract.

30. CANCELLATION FOR DELAY

If the performance of the Contract or any portion of it shall, in the opinion of the Construction Manager, 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 Construction Manager's own ability to perform it, either directly or through others, the Construction Manager 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 any member of the 1 WTC Indemnitee Group. In the event of such cancellation, no allowance shall be made for anticipated profits.

CHAPTER IV CONDUCT OF CONTRACT

31. SUSPENSION, TERMINATION AND ALTERNATIVE DISPUTE RESOLUTION OF ALL DISPUTES

If at any time it shall be, from the viewpoint of 1 WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of 1 WTC or Construction Manager, Construction Manager shall have authority to suspend performance of any part or all of the Contract until such time as Construction Manager may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of 1 WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of 1 WTC or Construction Manager, Construction Manager 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. Contractor shall be entitled to compensation only for the portion for Work performed less any damages incurred by the 1 WTC Indemnitee Group or reasonably foreseeable to be incurred or resulting from any breach of Contract by Contractor.

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 Proposal and claims of a type which are barred by the provisions of this Contract) or the Project 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 by the Chief Engineer, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by either party 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 Construction Manager or 1 WTC 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.

32. AUTHORITY AND DUTIES OF CONSTRUCTION MANAGER

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which 1 WTC and Construction Manager deems best, the Construction Manager, subject to 1 WTC's opinion, 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 shall be deemed merely his present determination on this point. In the exercise of this authority, Construction Manager shall have power to alter the Contract Drawings; 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.

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Construction Manager and shall perform the Contract to the satisfaction of the Construction Manager 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 Construction Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Contract Drawings and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or men to which the Construction Manager objects, and shall remove no materials, equipment or other facilities from the construction site without permission. Upon request, the Construction Manager shall confirm in writing any oral order, direction; requirements or determination.

The Contractor is requested to orally advise the Construction Manager 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 Construction Manager and others.

The enumeration herein or in the Specifications of particular instances in which the opinion, judgment, discretion or determination of the Construction Manager 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.

33. NOTICE REQUIREMENTS

No claim against the Construction Manager and 1 WTC 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 Proposal 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:

- A. In the case of any claims for Extra Work, extension of time for completion, idle salaried men and equipment, or any other matter for which requirements are set forth elsewhere in this Contract as to notice and information, such requirements shall apply.

- B. In the case of all other types of claim, notice shall have been given to the Construction Manager and 1 WTC, personally, as soon as practicable, and in any case, within forty-eight (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 Construction Manager and 1 WTC, personally.

The above requirements for notices and information are for the purpose of enabling the Construction Manager 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 Construction Manager and 1 WTC.

The above referred to notices and information are required whether or not the Construction Manager or 1 WTC are aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Construction Manager or 1 WTC have 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 Construction Manager or 1 WTC 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 officer, employee or agent of the Construction Manager or 1 WTC 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 Construction Manager to receive it may not be sufficient to come to the attention of the representative of the Construction Manager 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.

All notice requirements for Construction Manager or 1 WTC shall be deemed to be made if sent to the following: (i) Milo Rivero or his successor in duty, Project Executive of 1 WTC, 115 Broadway 10th floor, New York, NY 10006; and (ii) Mike Mennella or his successor in duty, Executive Vice President, Tishman Construction Corporation, 666 Fifth Avenue, New York, NY 10103

34. EQUAL EMPLOYMENT OPPORTUNITY

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

- A. 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.

- B. The Contractor shall send to each labor union or representative of workers with which Contractor 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 clauses A through H (hereinafter called "non-discrimination clauses"). 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 clauses 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 clauses. 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.
- C. 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 clauses A and B and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.
- D. 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.
- E. 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 clauses 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 clauses and such sections of the Executive Law and Civil Rights Law.
- F. This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Construction Manager upon the basis of a finding made by the State Commission for Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State, 1 WTC, 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 clauses. 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 clauses 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.

- G. *The Contractor shall include the provisions of clauses A through F 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 Construction Manager 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 Construction Manager, the Contractor shall promptly so notify the Construction Manager, requesting him to intervene and protect the interests of the Construction Manager.*
- H. *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.*

35. 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.

Each bidder, Contractor or Subcontractor (hereinafter called the Contractor) must fully comply with the clause entitled "Equal Employment Opportunity" and these bid conditions. The Contractor commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of these bid conditions 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 these bid conditions.

- A. 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 Section shall be based on its 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.

B.

- 1.) The Contractor shall provide written notification to the General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, within ten (10) working days of award of any construction subcontract in excess of Ten Thousand Dollars (\$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 starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 2.) The Contractor shall submit a Workforce Projection Schedule, which shall be correlated to the progress schedule, within thirty (30) days after acceptance of the proposal, for the approval of the Construction Manager. The Contractor shall *maintain and periodically update it at intervals as required by the Construction Manager*. 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.

C.

- 1.) As used in these specifications:
 - a. Omitted
 - b. "Manager" means General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race);
 - (iii) 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
 - (iv) Native American 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).
- 2.) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of Ten Thousand Dollars (\$10,000) such provisions as are necessary for the Contractor to achieve the aggregate goals set forth above.

- 3.) Omitted.
- 4.) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a 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 its 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.
- 5.) 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.
- 6.) 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.
- 7.) 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 its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. 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 its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - b. 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 7a above.
 - c. 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.

- d. Provide immediate written notification to the Manager 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 its obligations.
- e. 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.
- f. 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 its 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.
- g. 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.
- h. 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.
- i. Direct its 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.
- j. 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.
- k. Tests and other selection requirements shall comply with 41 CFR Part 60-3.

- l. 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.
 - m. 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.
 - n. 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.
 - o. 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.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8.) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a 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 its obligations under 7a 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 its 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.
- 9.) 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 its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).
- 10.) 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.
- 11.) The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

- 12.) 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 Construction Manager. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.
- 13.) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Construction Manager shall proceed accordingly.
- 14.) 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.
- 15.) 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).

36. 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 Construction Manager and notwithstanding that such rate may be higher than the rate in effect on the date of opening of Proposals.

For purposes of this Contract, the Construction Manager 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 Construction Manager; 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. Neither the Construction Manager nor 1 WTC shall 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.

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 "Construction Manager Access to Records" for all employees employed in the Work. Such records shall contain the name, address and social security number of each such employee, 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 Construction Manager (on forms furnished by the Construction Manager) of all his payroll records and those of each of his Subcontractors as the Construction Manager 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 Construction Manager (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 Construction Manager may at any time request the Contractor to prepare a daily report on the Construction Manager form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained from the Construction Manager. The *Contractor Daily Sign-In Sheet* shall be completed as follows:

- 1.) At the beginning of each workday the Contractor shall:
 - a. fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/Subcontractor name and contract number;
 - b. 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;

- 2.) At the end of each workday, the Contractor shall:
 - a. ensure that each employee, including those of Subcontractors, has signed out and indicated his or her ending time;
 - b. 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
 - c. submit the original completed form to the Construction Manager.

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 Construction Manager 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.

37. EXTRA WORK ORDERS

No Extra Work of any amount shall be performed except pursuant to written orders of the Construction Manager expressly and unmistakably indicating his intention to treat the Work described therein as Extra Work.

In the absence of such an order signed by the Construction Manager, if the Construction Manager shall direct, order or require any Work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within twenty-four (24) hours give written notice thereof to the Construction Manager, stating why he deems it to be Extra Work, and shall moreover furnish to the Construction Manager time slips and memoranda as required by the clause hereof entitled "Compensation for Extra Work". Said notice, time slips and memoranda are for the purpose of affording to the Construction Manager an opportunity to verify the Contractor's claim at the time and (if he desires so to do) to cancel promptly such order, direction or requirement of the Construction Manager, of affording to the Construction Manager an opportunity of keeping an accurate record of the materials, labor and other items involved, and generally of affording to the Construction Manager an opportunity to take such action as it may deem desirable in light of the Contractor's claims. Accordingly, the failure of the Contractor to serve such notice or to furnish such time slips and memoranda shall be deemed to be a conclusive and binding determination on his part that the direction, order or requirement of the Construction Manager does not involve the performance of Extra Work, and shall be deemed to be a waiver by the Contractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips and memoranda being a condition precedent to such claims.

38. PERFORMANCE OF EXTRA WORK

The provisions of this Form of Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise. Extra Work performed other than in accordance with Article 37 ("Extra Work Orders") shall be deemed performed at Contractor's own risk and expense and without any compensation.

39. TITLE TO MATERIALS

All materials to become part of the permanent construction and those other materials purchased under the clause of the Contract entitled, "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction", shall be and become the property of *the Authority* (a) 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 in the case of materials to become part of the permanent construction and (b) in the case of those other materials purchased under the clause of the Contract entitled, "Agency For Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" at the time of purchase, 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 Construction Manager such bills of sale and other instruments as may be required by it properly executed, acknowledged and delivered, assuring to the Authority title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of *the Authority*.

40. 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 moneys due or to become due hereunder and any delegation of any of his duties hereunder without the express consent in writing of the Construction Manager shall be void and of no effect as to the Construction Manager, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Construction Manager 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 Construction Manager 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 "Instructions for Bidders and Bid Proposal Form" 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 Dollars. For each agreement in an amount greater than \$100,000 entered into by Contractor with a Subcontractor or Materialman, or for each agreement greater than \$100,000 with a Subcontractor or Materialman of any tier, the Contractor shall obtain the certifications and all necessary disclosure forms from each such Subcontractor or Materialman of any tier, all as set forth in **Rider K** (Project Corruption Prevention Program) to this Contract. All further subcontracting by any Subcontractor shall also be subject to such approval of the Construction Manager. Approval of a Subcontractor may be conditioned on (among other things) the furnishing, without expense to the Construction Manager, 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. 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 Construction Manager shall create any rights in favor of such Subcontractor and against the Construction Manager; and as between the Construction Manager 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 Construction Manager, the Construction Manager 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.

In the event 1 WTC terminates Construction Manager or enters into agreement with a third party or third parties, for such party or parties to assume management and operation of some or all of the World Trade Center, 1 WTC shall have the right to assign this Contract in whole or in part to such third party or parties following advance written notice to the Contractor, or, to substitute such third party as Construction Manager in this Contract.

41. 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.

42. 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 Construction Manager 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 Construction Manager for other purposes, the Construction Manager may render to the Construction Manager, 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 Construction Manager 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 Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

43. 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 Construction Manager 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, including Extra Work, has been completed in accordance with the Contract Drawings 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 Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

44. 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 Construction Manager, any I WTC or Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing such entities, 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, consultant, or other person or firm representing such entities of duties involving transactions with the Contractor on behalf of such entities, 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 Construction Manager 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 I WTC, 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

45. CONTRACTOR'S WARRANTIES

The Contractor represents and warrants:

- A. 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 Proposal are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- B. 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;
- C. 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;
- D. That no Commissioner, Director, officer, agent or employee of the Construction Manager, the Authority or 1 WTC is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder; and
- E. 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 Construction Manager, 1 WTC or the Authority, its Commissioners, Directors, 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, anything in this Contract to the contrary notwithstanding.

Nothing in the Contract Drawings or any other part of the Contract is intended as or shall constitute a representation by the Construction Manager or 1 WTC as to the feasibility of performance of this Contract or any part thereof. Moreover, the Construction Manager or 1 WTC does not warrant or represent either by issuance of the Contract Drawings 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 Construction Manager to review thoroughly all documents forming this Contract prior to opening of Proposals 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 1 WTC's consent to enter into this Contract and that without such provisions, the Construction Manager would not have entered into this Contract as agent for 1 WTC.

46. 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 Construction Manager, 1 WTC, 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 Construction Manager and 1 WTC subsequent to the opening of Proposals on this Contract with actual and willful intent to cause the loss, damage and injuries describe in subparagraphs A through D below:

- A. 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 Construction Manager or 1 WTC;
- B. The risk of loss, damage to or alterations of the structures to be demolished occurring prior to completion of demolition by the Contractor (such structures being still included, however, in the term "Work"). In the event of such loss, damage or alterations, the Contractor shall nevertheless complete the performance of the Work, including the demolition, without additional cost to the Construction Manager or 1 WTC and without compensation for lost salvage value;

- C. 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 Construction Manager or 1 WTC 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 1 WTC premises, including claims against the Contractor or the Construction Manager or 1 WTC 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;
- D. The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Construction Manager or 1 WTC 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 1 WTC premises or the vicinity thereof.

The Contractor shall, indemnify the 1 WTC Indemnitee Group against all claims described in subparagraphs C and D 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 C and D 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 or 1 WTC 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.

47. NO THIRD PARTY RIGHTS

Except with respect to the Authority as set forth below, nothing contained in this Contract is intended for the benefit of other third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action," or except to the extent indemnitee or insurance obligations provide for third party rights in this Contract.

For the avoidance of doubt, the relationship of the Authority to this Contract and the Project is set forth below in this Section.

- A. The Authority is hereby deemed an intended third-party beneficiary of this Contract. Contractor acknowledges and agrees that the performance of the Work is for the benefit of the Authority, and that the Authority shall have the right to enforce the obligations of Contractor under this Contract against Contractor directly and enjoy the benefits and rights in the entire Contract including, without limitation, Sections 26, 28, 29, and 46.
- B. The Authority, from time to time and on behalf of 1 WTC, either (i) may perform certain obligations of 1 WTC, or (ii) may supply or loan to 1 WTC employees of the Authority for the performance of the obligations of 1 WTC.
- C. Contractor shall have no direct claim, right, or cause of action against Authority (i) by virtue of Authority's rights under this Section 47 (ii) for any acts, errors or omissions of its employees when engaged or acting on behalf of 1 WTC, or (iii) otherwise in connection with this Contract.
- D. Contractor shall look solely to 1 WTC for payment of any amount due and owing Contractor under this Contract or for any claim, cause of action or damages in connection with the Project. Notwithstanding anything to the contrary, Contractor shall have no recourse in connection with this Contract or the Project against (i) the Authority, or (ii) any present or future Commissioner, officer, director, trustee, employee, agent or volunteer of the Authority. Such exculpation of liability is absolute and without any exception, and shall survive any termination, expiration or assignment of this Contract.
- E. From time to time, direct references to the Authority are made in this Contract. Such references are for emphasis only, and no negative inference should be drawn from any omission or absence of a reference to the Authority in a specific provision.

48. INSURANCE PROCURED BY CONTRACTOR

Contractor is obligated to provide coverage as in the attached Insurance Specifications, **Rider D** (Insurance Rider).

The liability policies shall name the entities listed in **Rider D** (Insurance Rider) as Additional Insureds.

In the event, however, that 1 WTC, in its sole discretion, elects at any time to provide an owner-controlled insurance program, such program shall be described more specifically in **Rider DX** ("Owner Controlled Insurance Program" or "OCIP").

If I WTC implements an OCIP, Contractor shall take all steps necessary: (i) to conform its insurance program to the OCIP, (ii) to exclude from calculation of the Lump Sum or the cost of any Extra Work, including the compensation of any Subcontractor of any tier, or any other person or entity performing any portion of the Work or Extra Work, any insurance premiums or other charges for any insurance to the extent such coverage is provided under the OCIP, (iii) to comply with the requirements of Rider DX and the OCIP and, in turn, cause all Subcontractors of any tier to conform their insurance programs to the OCIP, (iv) to avoid any duplication of coverage provided by, under or through the OCIP, and any other savings of any other costs associated with such insurance, and (v) to assist in the orderly transition of insurance programs.

If requested by I WTC, Contractor shall furnish reasonable evidence confirming the amount of any exclusion or reduction in premiums and the total credit received by Contractor, Subcontractors of any tier, or any other person or entity performing any portion of the Work or Extra Work, and any other costs associated with such insurance.

CHAPTER VI RIGHTS AND REMEDIES

49. RIGHTS AND REMEDIES OF 1 WTC

1 WTC shall have the following rights in the event the Construction Manager shall deem the Contractor guilty of a breach of any term whatsoever of this Contract:

- A. 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.
- B. The right to cancel this Contract as to any or all of the Work yet to be performed.
- C. The right to specific performance, an injunction or any other appropriate equitable remedy.
- D. 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 Construction Manager within the time limit specified in the Clause hereof entitled "Insurance Procured By The 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 Construction Manager 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 Instructions for Bidders and Bid Proposal Form 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 Instructions for Bidders and Bid Proposal Form, 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 Construction Manager shall not be deemed to limit any other rights or remedies which the Construction Manager would have in the absence of such enumeration; and no exercise by the Construction Manager 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.

50. 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 Construction Manager, the Contractor expressly agrees that no default, act or omission of any member of the 1 WTC Indemnitee Group shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Construction Manager shall so direct) to suspend or abandon performance. Contractor agrees that under no circumstances shall it have any recourse against the Authority, its Commissioners, directors, employees, agents, successors and assigns for any claim, right or demand arising out of or related to the Contract or performance herein.

51. 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 1 WTC", the Construction Manager 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 Construction Manager.

In the certificate of total compensation earned, for which provision is made in the clause hereof entitled "Final Payment", the Construction Manager will separately state the amount of Work performed by the Construction Manager as agent for the Contractor, credit to the Construction Manager 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 Construction Manager, or vice versa as the case may be. If such difference is in its favor, the Construction Manager 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 Construction Manager 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.

52. NO ESTOPPEL OR WAIVER

1 WTC or the Construction Manager 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 either of them, or any Director, officer, agent or employee of either of them, 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 1 WTC or the Construction Manager 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, approval or certificate issued under this Contract or otherwise issued by the Construction Manager, I WTC or any Director, officer, agent or employee of either of them, nor any permission or direction to continue with the performance of Work, nor any inspection or approval of any portion of the Work, nor any performance by the Construction Manager or I WTC of any of the Contractor's duties or obligations, nor any aid lent to the Contractor by the Construction Manager in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Construction Manager or I WTC or their Directors, 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 Construction Manager or I WTC may be entitled because of any breach thereof. 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 Construction Manager or I WTC may be entitled because of such breach. Moreover, no waiver by the Construction Manager or I WTC of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

CHAPTER VII MISCELLANEOUS

53. 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 Proposal 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 Construction Manager, 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.

54. 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.

55. 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.

56. NON-LIABILITY OF THE CONSTRUCTION MANAGER OR 1 WTC REPRESENTATIVES

Neither the Construction Manager, 1 WTC, nor any Director, 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.

57. 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 Construction Manager the Contractor's office will be that stated in his Proposal.* 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.

58. 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 Extra Work or to alter the Contract Drawings 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 Construction Manager shall have the power so to do.

59. 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 any member of the Construction Manager, WTC or the Authority or the services performed in connection with this Contract, without first obtaining the written approval of the Construction Manager. Such approval may be withheld if for any reason the Construction Manager 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.

CONTRACT WTC-XXX.XXX

PERFORMANCE AND PAYMENT BOND

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned⁵ Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

Contractor

Surety

⁵ 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 _____".

are hereby held and firmly bound unto Tishman Construction Corporation, a Delaware corporation, and 1 WTC, LLC ("Obligees") in the penal sum of

_____ Dollars

and _____ Cents (\$ _____), 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 Obligees, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract WTC-XXX.XXX - "World Trade Center - Lump Sum Sample Contract", and

WHEREAS, the Construction Manager and 1 WTC have 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;*

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 the Obligees 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 Obligees) 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 1 WTC Indemnatee Group.

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 Construction Manager the following notices:

- A. Written notice of an intent to pay any claim of a Subcontractor, Materialman or workman hereunder;
- B. Written notice within five (5) 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 (30) days after receipt by said Construction Manager 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 ⁶

Principal

Surety

By ⁷ _____

APPROVED AS TO ACCEPTABILITY OF SURETIES:

Credit Manager

20

⁶ If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

⁷ 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

**SPECIFICATIONS
DIVISION 1
GENERAL PROVISIONS**

60. CONSTRUCTION REQUIRED BY THE SPECIFICATIONS

These Specifications relate generally to performing the construction at the World Trade Center site.

These Specifications require the doing of all things necessary or proper for or incidental to the matter referred to in the immediately preceding paragraph, as shown on the Contract Drawings in their present form. In addition, all things shown on the Contract Drawings even though not expressly mentioned in these Specifications, all things mentioned in these Specifications even though not shown on the Contract Drawings, and all things not specified either on the Contract Drawings, or in the Specifications but involved in carrying out their intent and in the complete and proper execution of the matter referred to in the immediately preceding paragraph are required by these Specifications; and the Contractor shall perform the same as though they were specifically delineated, described and mentioned.

In case of a conflict between a requirement of the Contract Drawings and a requirement in Division 1 of the Specifications, the requirement of Division 1 shall control. In case of a conflict between a requirement contained in other Divisions of the Specifications and a requirement of the Contract Drawings, the more stringent requirement shall apply.

Some Sections of the Specifications make cross references to construction specified in other Sections of the Specifications, including cross references intended to avoid duplication by the bidders in quoting prices and to point out some of the necessity for coordination. Such cross references are not intended to be complete or all inclusive, and the Contractor shall ascertain for himself both the nature and the extent of all construction which may be related to that under each Section of the Specifications whether or not expressly referred to.

Some Sections of the Specifications contain a general description of the construction under such Sections. Such description is merely a very general one and is not intended to outline the construction required by the Specifications and Contract Drawings. Accordingly, such description shall be construed as in aid of and supplemental to, but in no case limiting, impairing or decreasing, the requirements elsewhere set forth with respect to the construction to be performed.

The Contractor's compensation for all construction whatsoever referred to in the Specifications and Contract Drawings in their present form, even though the need for certain items of such construction may be contingent upon future occurrences or determinations or upon other circumstances, shall be deemed to be included in the price(s) quoted by the Contractor in the Form of Contract unless the Specifications or Contract Drawings expressly state that compensation in addition to such price shall be payable for such items of construction. The express statement in some cases to the effect that certain construction shall be without additional cost to the Construction Manager shall not impair the application of this paragraph in other cases.

The distribution of various parts of the construction among the Divisions and Sections of the Specifications or among the Contract Drawings is not intended as a representation of the most effective or logical method of organizing, scheduling, or subcontracting the construction, and the Contractor shall ascertain for himself how to do so unless otherwise expressly prescribed in this Contract.

In all cases the provisions of the second paragraph of this numbered Section shall control.

61. 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, together with an area shown cross-hatched on Contract Drawing No. G003 and designated "Area Available For Contractor's Use".

Any additional property which the Contractor desires for his operations shall be obtained by him at his own expense.

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 Construction Manager 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 Construction Manager, 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.

62. 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 the work of other Authority contracts 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 1 WTC, the Authority and the public and as may be directed by the Construction Manager.

63. 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 Construction Manager, 1 WTC, Authority or PATH contracts, or the operation of any 1 WTC, Authority or PATH facility, or any operations at the World Trade Center site occurs at the World Trade Center site or at any other 1 WTC, 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.

64. CONTRACTOR'S MEETINGS

The Contractor shall conduct job progress and coordination meetings with Subcontractors in his field office every week, or as frequently as job conditions require or the Construction Manager may request. The Construction Manager shall be notified and, at his option, may attend these meetings. The Contractor shall prepare and distribute minutes to the Construction Manager 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 Construction Manager every week, or at times otherwise requested by the Construction Manager.

65. CONTRACT DRAWINGS

The Contract Drawings, referenced in **Rider B** (List of Drawings and Specifications), do 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 Construction Manager or by the Contractor subject to the approval of the Construction Manager, to the extent necessary to further illustrate the Work.

An indication on the Contract Drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials does 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.

After the Contract has been executed, the Contractor will be furnished two (2) copies of the Specifications and Contract Drawings without charge.

66. INTENTIONALLY DELETED

67. SHOP DRAWINGS, CATALOG CUTS AND SAMPLES

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 Design Team or Construction Manager may issue in supplementing the Contract Drawings.

The specific requirements elsewhere set forth in the Specifications for furnishing Shop Drawings, Catalog Cuts and samples for any particular portion of the Contract shall not limit the obligation of the Contractor to furnish Shop Drawings, Catalog Cuts and samples for any other portion when so required by the Construction Manager.

The Contractor shall submit a general "Submittal Schedule" for the Construction Manager's review, and for approval by the appropriate member of the Design Team, listing the planned transmittal date and estimated number in each specification section category of Shop Drawings, Catalog Cuts, pages of calculations and samples within thirty (30) days after receipt by the Contractor of the acceptance of the Proposal. A more detailed schedule shall be submitted no less than thirty (30) calendar days prior to the actual date of any submittal.

After checking and verifying all field measurements and after complying with applicable procedures specified hereunder, the Contractor shall submit to the Construction Manager for review, and for approval by the appropriate member of the Design Team, in accordance with the approved schedule of Shop Drawing submissions, or for other action if so indicated by the Construction Manager, four (4) copies and two (2) reproducibles, unless otherwise requested, of all Shop Drawings which will bear a specific written indication that the Contractor has reviewed the submission for conformance to the requirements of the Contract Drawings.

All submissions shall be identified as the Construction Manager may require. 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 Construction Manager to review the submittal as required.

The Contractor shall also submit nine (9) copies to the Construction Manager for review, and for approval by the appropriate member of the Design Team, pursuant to the approved Submittal Schedule, of all Catalog Cuts and samples for conformance to the requirements of the Contract Drawings. 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 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 Construction Manager 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 Construction Manager, for review by Construction Manager and approval by the appropriate member of the Design Team of each such variation.

The Construction Manager's review and the Design Team's 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 Construction Manager's attention to each such variation at the time of submission as required hereunder and the Design Team 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 shall not be deemed to waive or change such requirements or to relieve the Contractor of its obligations to perform such requirements unless the Construction Manager shall expressly and specifically state that it 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 Construction Manager's review and Design Team's approval of the submission.

In preparing the Shop Drawings, the Contractor may adopt a sheet of any reasonable size which best suits its needs, but having adopted such size, all sheets thereafter of a similar nature shall be of the same size as that adopted. Each drawing shall have a margin on the top, bottom and right-hand side of one-half inch and on the left hand side a margin of one and one-half inches. Upon receipt of the submittal, the Construction Manager 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. Review by the Construction Manager and approval by the Design Team 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, its Subcontractors, their detailers, or their professional engineers is the complete responsibility of the Contractor.

Within the number of working days hereinafter specified after receipt of the Shop Drawing prints, the appropriate member of the Design Team shall approve or not approve the same or require corrections or additions to be made thereon. When a Shop Drawing is not approved or if additions or corrections are required, the Construction Manager shall return within this period one (1) of the four (4) copies submitted and the Contractor shall make the revisions, corrections or additions shown thereon to be made. Contractor shall resubmit four (4) prints and one (1) brownline (reproducible) showing the drawing corrected as required. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Design Team on the previous submittal. Each drawing shall be corrected as required until the approval of the Design Team is obtained. After each resubmission, the Construction Manager shall have the number of working days hereinafter specified in which to approve revisions or corrections. If the Design Team rejects any Shop Drawing, Catalog Cut, or sample three (3) times, then Contractor shall be backcharged for all costs incurred by I WTC and/or Construction Manager as a result of such rejections.

The number of working days within which the Construction Manager shall advise the Contractor as to whether the Shop Drawings are approved, not approved, or require corrections or additions to be made thereto shall be as follows, except that twenty (20) working days shall be required for the Construction Manager to review Shop Drawings submitted with design calculations.

| No. of Drawings Submitted Within 5 Consecutive Working Days for Each Discipline(*) | No. of Working Days for Construction Manager and Appropriate Member of Design Team to Review Shop Drawings |
|---|--|
| Up to 50 | 12 |
| 51 to 75 | 17 |
| More than 75 | 22 |
| * Disciplines shall be defined as follows: Structural, Architectural, Civil; Geotechnical, Mechanical, Electrical, Traffic and Environmental. | |

Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of working days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this section relieve the Contractor from its duty to meet all contractual Milestone Dates.

As soon as approval has been given to any Shop Drawing or Catalog Cut, the Contractor shall within five (5) days send to the Construction Manager six (6) prints, except that when the Construction Manager specifically so directs, nine (9) prints shall be sent. After approval thereof, no change will be permitted thereon unless approved in writing by the Construction Manager. Before Final Payment for the Work is made, the Contractor shall furnish to the Construction Manager one (1) set of Shop Drawings, which have previously been prepared by the Contractor in accordance with requirements elsewhere specified in these Specifications, all clearly revised, completed and brought up to date showing the permanent construction as actually made. These drawings shall be in the form of mylar reproducible, from which clear prints can be made.

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 and 1 WTC shall become the property of 1 WTC. 1 WTC 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.

68. SUBSTITUTION

Where a proprietary item or make is specified or mentioned herein or called for or mentioned on the Contract Drawings and the phrases "similar and equal to" or "approved equal" are used in connection therewith, the utilization of any other item or make will be deemed a substitution. Substitution for the proprietary item or make specifically named may be made only in accordance with the Section hereof entitled "Workmanship and Materials" and in accordance with the following.

Whenever materials or equipment are specified or described in the Contract Drawings or Specifications by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of another supplier or manufacturer may be accepted by the Construction Manager if sufficient information and proof is submitted by the Contractor to permit the Construction Manager to determine that the material or equipment proposed is equivalent or equal to that named and the Construction Manager approves the substitution. The procedure for review by the Construction Manager will include the following. Requests for review of substitute items of material and equipment will not be accepted by the Construction Manager from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make a timely written application to the Construction Manager for approval thereof, certifying that the proposed substitution will perform at least the identical functions and achieve at least the identical results called for by the specified product and otherwise be equal to the specified product with regard to, but not limited to, durability, maintenance, strength, energy costs and record of proven performance. The application shall state that the evaluation and approval of the proposed substitution shall not delay the Contractor's completion of the Work as required by the Contract, whether or not approval of the substitution will require a change in the construction and, in no event will the Contractor be granted an extension of time for completion of any portion of the Work for reasons related directly or indirectly to the evaluation of the proposed substitution or to the proposed substitution itself. Any variations of the proposed substitution from that specified shall be identified in the application, and maintenance, repair and replacement services for the substitution shall be indicated. The Construction Manager may require the Contractor to furnish at the Contractor's expense additional laboratory test data concerning the proposed substitution.

Such submission to the Construction Manager shall be made only by including the requested substitution in the list of materials required to be submitted to the Construction Manager in accordance with the Section hereof entitled "Inspections and Rejections" within forty-five (45) calendar days after the receipt of the acceptance of the Contractor's Proposal. After the approval of said list, no substitutions will be permitted, except that a brand or make named in the Specifications may be submitted for approval in lieu of a brand or make on said list. Any such submission shall not imply, or impose on the Construction Manager, any obligation whatsoever to discuss, disclose or justify the reasons for his opinion, approval, acceptance or rejection.

The Construction Manager shall be the sole judge of as to whether a proposed substitution will be approved, and no substitution shall be ordered or utilized without the Construction Manager's prior written approval. The Construction Manager may require Contractor to furnish at Contractor's expense a special performance guarantee or other assurance with respect to any approved substitution. Furthermore, the approval of any substitute proprietary item or make shall not in any way entitle the Contractor to additional compensation therefor.

Notwithstanding such approval, however, the Contractor assumes the risk that such approved substitute item or make is not equal to that shown or specified and if at any time the substitution shall appear not to be so equal he shall replace the substitution with that originally shown on the Contract Drawings or called for in the Specifications at his own cost and reimburse the Construction Manager for any loss occurring on account of the substitution failing to be equal, notwithstanding that it had been previously approved for use by the Construction Manager.

The construction called for by the Contract Drawings may be adapted for a particular proprietary item or make of material or equipment. Therefore, if any construction not required by the Contract Drawings or Specifications in their present form is necessary or desirable because of the use of substitute item or make of material or equipment (even though such other item or make is approved by the Construction Manager), such construction shall be furnished or performed by the Contractor at his expense and subject to the approval of the Construction Manager.

69. 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 Construction Manager 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".

All items provided in this Contract that use dates in the recording, storing or processing of information shall use such dates correctly at all times including using such dates correctly in the recording, storing or processing of information after January 1, 2000 (Year 2000 Compliant).

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 Construction Manager 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 Proposals upon the present Contract unless specifically stated otherwise.

If required by the Construction Manager, 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 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.

In various paragraphs of these Specifications, references may be made 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.

All inventions, ideas, designs and methods contained in the Specifications and Contract Drawings in which 1 WTC has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority and/or 1 WTC. 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 1 WTC and must not be produced or copied in whole or in part or used for furnishing information to others without the written consent of 1 WTC, 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, 1 WTC and/or 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 1 WTC and/or the Authority. Promptly upon request by the Construction Manager or 1 WTC, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to 1 WTC, but as between the Contractor and 1 WTC the license herein provided for shall nevertheless arise for the benefit of 1 WTC 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 1 WTC to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by 1 WTC, 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 defend, indemnify the 1 WTC Indemnitee Group against and save them harmless from all loss and expense, including, without limitation, attorneys' fees and costs, 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 1 WTC or 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 Construction Manager or 1 WTC 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 1 WTC or the Authority. If 1 WTC or 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 1 WTC Indemnitee Group against patent, copyright or other intellectual property right claims, 1 WTC 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 1 WTC or to take such steps as may be necessary to ensure compliance by 1 WTC with such injunction, all to the satisfaction of 1 WTC and all without cost or expense to any member of the 1 WTC Indemnitee Group.

70. 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 Construction Manager and/or Design Team, 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 Construction Manager and/or Design Team 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 Construction Manager and/or Design Team 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 the approval of the Construction Manager and Design Team, the Work, construction, processes of manufacture and methods of construction shall be forthwith reconstructed, made good, replaced or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall be removed immediately from the site. The fact that the Construction Manager and/or Design Team have approved the materials and workmanship shall not relieve the Contractor from its obligation to supply other material and workmanship when so ordered by the Construction Manager.

The Contractor, at its own expense, shall furnish such facilities and give such assistance for inspection as the Construction Manager and/or Design Team may direct. 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 Construction Manager may designate, the Contractor shall secure for the Construction Manager and/or Engineer, and their Inspectors, free access to all parts of such factories or plants and shall furnish to the Construction Manager and/or Design Team three (3) copies of purchase orders, two (2) copies of mill shipping statements and four (4) copies of shipping statements. Moreover, in the case of such materials to be factory or plant inspected, the Contractor shall give at least ten (10) days' notice to the Construction Manager 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 Construction Manager and/or Design Team 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.

In the case of materials to be inspected at the construction site, the Contractor shall submit a list of all such materials in triplicate to the Construction Manager for transmittal to the Design Team for its approval prior to ordering same. The list shall be submitted within forty-five (45) calendar days after receipt of the notice of acceptance and shall contain the following information:

- A. Classification of submittal in accordance with the following:
 - Class I - A submittal for record of an expressly specified item.
 - Class II - A submittal of an item which conforms to an express generic specification or a submittal which is deemed by the Contractor to be identical to an expressly specified item.
 - Class III - A submittal which is deemed by the Contractor to be functionally equivalent but not identical to a specified item.
- B. In the case of Class II and Class III, the Contractor shall supply adequate information to the Construction Manager to enable the Construction Manager to compare the specified item and the proposed substitution. Information shall include, but need not be limited to, technical specifications, Catalog Cuts, drawings, references to existing installations and test data, or any other data required by the Construction Manager.
- C. In the case of fabricated materials for which Shop Drawings are to be prepared, a brief description of the material and the statement "see Shop Drawings".
- D. In the case of materials or equipment listed in manufacturer's catalogs, the list shall contain the vendor's name, the manufacturer's name, brand name, style designation, catalog number and, where the Specifications require Catalog Cuts, the statement "see Catalog Cut".
- E. In the case of materials or equipment for which Shop Drawings are not to be prepared, and which are not listed in any catalog, the list shall contain a complete description of the material or equipment, which shall be in sufficient detail to describe completely the materials or equipment and quality therefor.

The Construction Manager shall advise the Contractor whether said list is approved or requires corrections or additions within the number of working days indicated in the chart below:

| Type of Submittal | No. of Working Days for Construction Manager to Approve/Disapprove Items |
|--|--|
| Class I Material submittals | 10 |
| Portland Cement mix designs that require confirmation of the 28-day properties | 35 |
| Changes in asphalt mix designs that need to be confirmed with a batch mix at the plant | 35 |
| Class II Material submittals | 20 |
| Class III Material submittals | 30 |

Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this Section relieve the Contractor from its duty to meet all contractual Milestone Dates.

Within ten (10) working days after receipt of said list, the Construction Manager shall notify the Contractor of which items are approved and which disapproved. Within two (2) working days thereafter, the Contractor shall resubmit a new list covering those items which were disapproved. After each such re-submission the Construction Manager shall have a similar period of ten (10) days in which to approve or disapprove.

Should materials or equipment be delivered to the construction site without having been placed on the aforementioned list and approved, it shall be immediately removed from the construction site by the Contractor at his own expense.

Contractor may appeal to I WTC Construction Manager's rejection of any portion of the Work within five (5) days of such rejection. I WTC's decision of such appeal shall be final.

I WTC reserves the right to reject Work regardless of Construction Manager's approval.

71. 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 Construction Manager 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 Construction Manager prior to installation of the materials to which it refers. Such certifications shall not be binding or conclusive on the Construction Manager and may be rejected at any time by the Construction Manager if incorrect, improper or otherwise unsatisfactory in his opinion.

72. 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 Construction Manager, not the Contractor. Any approval of such things shall be construed merely to mean that at that time the Construction Manager 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 or from any duty, obligation or liability imposed upon him by the Contract or from responsibility for injuries to persons or damage to property.

73. 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 Construction Manager in the construction undertaken and executed by him, he shall immediately notify the Construction Manager and the Construction Manager 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.

74. ACCIDENTS AND FIRST AID PROVISIONS

The Contractor shall promptly report in writing to the Construction Manager 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 the Construction Manager.

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 Construction Manager, giving full details of the claim.

75. SAFETY PROVISIONS

In the performance of the Contract, the Contractor shall exercise every precaution to prevent injury to workers and the public or damage to property, follow the health and safety requirements set forth herein. Contractor shall comply with The Port Authority of New York and New Jersey "World Trade Center Site Rules and Regulations" (Rider N) and Construction Manager's "Safety Guidelines" (Rider M) and complete all forms set forth therein.

He shall, at his own expense, provide temporary structures, place such watchmen, design and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precaution against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed.

The Contractor shall employ for Work of the Contract a competent person conforming to the requirements of the Code of Federal Regulations 29 CFR 1926.32(f) who shall be designated by the Contractor as authorized to perform the duties required by 29 CFR 1926 et seq. as applicable for Work of this Contract.

Obtain and submit to the Construction Manager one copy of material safety data sheet (MSDS) conforming to the requirements of 29 CFR 1910.1200(g) for each hazardous chemical utilized for permanent and consumable materials employed for Work of this Contract.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss, including but not limited to:

- A. All employees on the Work, the public, and other persons and entities who may be affected thereby;
- B. All the Work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

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, material and equipment from the construction site, or the issuance of the Certificate of Final Completion, whichever shall occur last.

Until fire protection needs are supplied by permanent facilities under this Contract, install and maintain temporary fire protection facilities. Comply with requirements of National Fire Protection Association NFPA 10 "Standard for Portable Fire Extinguishers" and NFPA 241 "Standard for Safeguarding Construction, Alteration and Demolition Operations".

The Contractor shall employ only such men as are physically fit and are free from contagious or communicable diseases.

He shall use only machinery and equipment adapted to operate with the least possible noise, and shall so conduct his operations that annoyance to occupants of nearby property and the general public will be reduced to a minimum.

The bringing of intoxicating substances onto the construction site and the use or consumption of intoxicating substances at the construction site are prohibited. It shall be the responsibility of the Contractor to insure that all employees of the Contractor and of all Subcontractors, Materialmen and any other persons under contract to or under the control of the Contractor shall comply with the provisions of this paragraph.

The Contractor shall daily clean up all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the construction site shall present a neat, orderly and workmanlike appearance. Before the Certificate of Final Completion of Work will be issued, the Contractor shall remove all surplus materials, falsework, temporary fences and other temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and shall put the construction site in a neat, orderly condition.

In the event 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 Construction Manager. 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 Construction Manager.

Within fifteen (15) days of the acceptance of his Proposal, the Contractor shall submit to the Construction Manager, for Construction Manager's 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.

76. DAILY PROGRESS, EQUIPMENT AND LABOR REPORTS

The Contractor shall furnish to the Construction Manager 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 Extra Work.

77. LAWS AND ORDINANCES

Contractor shall apply for and obtain all required permits to perform its Work. In order to effectuate the policy of the Authority, which the Construction Manager and 1 WTC adopt as set forth herein, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, permit requirements, 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 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 Construction Manager and 1 WTC, but shall do so in Contractor's own name, unless otherwise prohibited by law. Contractor shall not apply for any variance without first obtaining the approval of the Construction Manager and 1 WTC.

78. IDENTIFICATION

No person will be permitted on or about the construction site without a pass, permit or identification badge approved by the Construction Manager. The Contractor shall provide such passes, permits or identification badges for his employees, Subcontractors and Materialmen whenever necessary. Identification badges shall be worn in a conspicuous and clearly visible position by all employees of the Contractor whenever they are working at the construction site.

79. 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 Construction Manager. In any event, the advertisement shall not exceed six feet by eight feet (6' x 8') in overall dimensions.

80. CONTRACTOR'S FIELD OFFICE AND REPRESENTATIVE

At a readily accessible point on or near the construction site, the Contractor shall maintain a field office provided with a telephone.

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 Construction Manager. The Contractor's representative shall be provided, at all times, with a conformed copy of this Contract and a set of the Contract Drawings.

Orders and directions may be given orally by the Construction Manager 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 Construction Manager when so requested by the Contractor.

81. SURVEYS

The Construction Manager will establish a bench mark and a base line based on information provided by Engineer 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 Construction Manager.

The Contractor shall, in addition, furnish to the Construction Manager, 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 Construction Manager, at the Construction Manager's option. Computations of quantities for payment shall be made by the Contractor and shall be subject to the approval of the Construction Manager.

82. 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 are to be prepared by the Contractor, and when requested by the Construction Manager they shall be submitted for Construction Manager's review before being used. Neither such approval, however, nor any requirements of the Engineer, Construction Manager or 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.

83. PERMIT AND REQUIREMENTS FOR WELDING

Prior to the commencement of any cutting or welding operations at the construction site, the Contractor shall notify the Construction Manager and obtain a 1 WTC cutting and welding permit. 1 WTC will issue this permit without payment of a fee, and application forms may be obtained from Construction Manager. Unless otherwise approved by 1 WTC, 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 Construction Manager at least forty-eight (48) hours prior to commencing welding or cutting operations at the construction site.

84. FINAL INSPECTION

When, in the opinion of the Contractor, the construction is completed and ready for final inspection, he shall so notify the Construction Manager in writing, who 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.

85. WARRANTIES

The Specifications may provide for certain warranties of portions of the permanent construction. These warranties are intended for the greater assurance of 1 WTC and not as a substitute for rights which 1 WTC 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 1 WTC by any manufacturer shall be deemed to be a limitation upon any rights which 1 WTC would have, either expressed or implied, in the absence of such guarantees or warranties.

86. UTILITY RECORD DRAWINGS

Prepare, on mylar sheets 22" x 34" or other size approved by the Engineer, drawings showing the exact locations and elevations of underground utility construction including manholes, catch basins, inlets, pipe lines and structures for carrying gases (including air) and fluids including water, storm drainage, sewage, oil, chemicals, electrical duct runs, cables and conduits, for new construction or extension of existing utilities installed underground under this Contract.

Submit to the Construction Manager for transmittal to the Engineer, for verification and approval, tabulation of the data to be used in the preparation of the utility record drawings. Do not build-in, backfill or fill over or around or in any way cover underground structures, piping, conduit, cable or duct banks until such submitted data has been verified and approved by the Engineer.

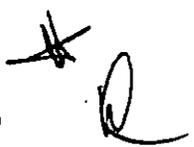
Indicate the exact locations, including changes of direction and curves, by the use of offset distances from nearby permanent structures and, in addition, by the use of coordinates which shall be based on the system of coordinates used at the construction site, the origin of which is shown on the Contract Drawings. Base elevations on the datum used at the construction site as is shown on the Contract Drawings.

Submit prints of these drawings to the Construction Manager for transmittal to the Engineer for verification, check of the accuracy, and for approval. Make indicated corrections and additions to the drawings, until the approval of the Engineer has been obtained. After these drawings have been approved by the Engineer, the original corrected mylar sheets shall be turned over to the Engineer before issuance of the Certificate of Final Completion, and such original drawings shall become the property of 1 WTC.

- 87. TEMPORARY UTILITY SERVICES [SEE ATTACHED RIDERS]**
- 88. TEMPORARY SANITARY FACILITIES [SEE ATTACHED RIDERS]**
- 89. PROGRESS SCHEDULE [SEE ATTACHED RIDERS]**
- 90. ANALYSIS OF BID**

Within fifteen (15) calendar days after acceptance of the Proposal, the Contractor shall prepare a detailed analysis of bid on forms furnished by the Construction Manager with all of the spaces filled in without exception, and containing such information as the Construction Manager may require for each of the items enumerated in such form.

- 91. CONDITIONS AND PRECAUTIONS [SEE ATTACHED RIDERS]**
- 92. HOURS OF WORK AND CONSTRUCTION STAGING [SEE ATTACHED RIDERS]**
- 93. MAINTENANCE OF TRAFFIC AND WORK AREA PROTECTION [SEE ATTACHED RIDERS]**



Ex. 4

RIDER "A"
GENERAL ADDENDUM
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

June 17, 2008 (Revised)

TRADE: GLAZED ENCLOSURE AT PODIUM WALL

RIDER "B"
WORLD TRADE CENTER, "THE FREEDOM TOWER"
LIST OF DRAWINGS AND SPECIFICATIONS
ISSUED THROUGH BULLETIN No. 12

RIDER 'B' DATE: JANUARY 16, 2008

Ex. 4

RIDER "C"
ALTERNATES AND UNIT PRICES
1 WORLD TRADE CENTER - "The Freedom Tower"
NEW YORK, NEW YORK

June 17, 2008
 (Revision #1)

TRADE: GLAZED ENCLOSURE AT PODIUM WALL

At the Owner's option in accordance with the article entitled "Changes and Extras" of the Contract, the following Alternates and Unit Prices shall be used for all additions and/or deletions to the Scope of Work and shall be inclusive of furnishing and installing all material, labor, trucking, overhead, profit, equipment, hoisting, engineering, scaffolding, power hookups, protection, shop drawings, permits, storages, delivery and supervision and shall remain in effect until completion of the project or until such time that work has transpired which impacts the price of the alternate scope of work, whichever occurs sooner. Items covered by these prices shall be furnished in accordance with the Specifications and in quantities and locations as directed by the Construction Manager. Unit prices are not limited to the floors included in the Base Contract. The Construction Manager may direct this Contractor to perform added work at other locations on the project utilizing the Unit Prices noted herein.

ALTERNATES

ALTERNATE NO. 1
DELETED

ALTERNATE NO. 2

In the event that this Contractor is not enrolled in the Owner Controlled Insurance Program and is required to furnish all insurances in accordance with Rider "D", Insurance Rider. Commercial General Liability shall be **TWENTY FIVE** Million Dollars (~~\$25,000,000.00~~)

ADD _____

ALTERNATE NO. 3

In the event that the sales tax status of the project changes from a Tax Exempt project to a Certificate of Capital Improvement project

ADD _____

ALTERNATE NO. 4

In the event this Contractor is directed to eliminate all requirements of the Podium Wall Visual Mock-up as described in Rider "A", section B.III, Scope of Work, paragraph 4b and the contract documents.

DEDUCT

ALTERNATE NO. 5
DELETED

ALTERNATE NO. 6

In the event this Contractor is directed to provide the following podium wall panels as attic stock:

1. Three (3) typical unitized Podium Wall Panels type (22mm low iron outer lite with one 12mm low iron back up lite; Linear Diamond depth: 13mm) with grille type GRL-01
2. Three (3) typical unitized Podium Wall Panels type (22mm low iron outer lite with one 12mm low iron back up lite; Linear Diamond depth: 10mm) with grille type GRL-01
3. Three (3) typical unitized Podium Wall Panels type (22mm low iron outer lite with one 12mm low iron back up lite; Linear Diamond depth: 7mm) with grille type GRL-01

ADD _____

ALTERNATE NO. 7

In the event this Contractor is directed to provide the following windscreen wall panels as attic stock:

1. One each (1) typical Windscreen Panel type GL-04 with and without point support system

ADD _____

2. One each (1) typical Windscreen Panel type GL-22 with and without point support system

ADD _____

ALTERNATE NO. 8

In the event this Contractor can prior to January 1, 2009, engineer and locate on shop drawings all the required steel brackets for the attachment of the podium wall enclosure system enabling the steel contractor to shop weld the brackets to the primary steel without additional handling of the structural steel.

DEDUCT



RIDER "C"
ALTERNATES AND UNIT PRICES
1 WORLD TRADE CENTER - "The Freedom Tower"
NEW YORK, NEW YORK

June 17, 2008
(Revision #1)

TRADE: GLAZED ENCLOSURE AT THE PODIUM WALL

ALTERNATE NO. 9
DELETED

ALTERNATE NO. 10
In the event this Contractor is to deposit 40% of the fabricated glass cost to Barber Glass Industries, Inc., the specified prismatic glass fabricator, within 60 days of the date the contract is executed

DEDUCT _____

ALTERNATE NO. 11
In the event this Contractor is to deposit 50% of the fabricated glass cost to Barber Glass Industries, Inc., the specified prismatic glass fabricator, within 60 days of the date the contract is executed

DEDUCT _____

ALTERNATE NO. 12
In the event this Contractor is directed to Delete Heat Soaking

DEDUCT _____

ALTERNATE NO. 13
In the event this Contractor is to provide an alternate proposal to the fastening system. Provide sketches and/or descriptions of the system proposed

DEDUCT _____

ALTERNATE NO. 14
In the event this Contractor is to delete hoisting the mock-up 63' above grade

DEDUCT _____

ALTERNATE NO. 15
DELETED

ALTERNATE NO. 16
DELETED

ALTERNATE NO. 17
DELETED

ALTERNATE NO. 18
DELETED

ALTERNATE NO. 19A
In the event that the initial terms regarding the retention of funds as outlined in Article 24 of the Lump Sum Contract document are reinstated stating that the Owner shall have sole discretion to approve or reject the Contractor's request to reduce the retainage percentage of Ten Percent (10%) after the Contractor has completed Fifty Percent (50%) of its Contract Work.

ADD _____

ALTERNATE NO. 19B
In the event that the contractual terms regarding the retention of funds as outlined in Article 24 of the Lump Sum Contract document are modified, reducing the retainage percentage of Ten Percent (10%) to Zero Percent (0%) after the Contractor has completed Twenty-Five Percent (25%) of its Contract Work, in lieu of Fifty Percent (50%) completion of Contract Work.

DEDUCT _____

ALTERNATE NO. 20
In the event that the Payment Application Period specified in Article 24 of the Lump Sum Contract is reinstated to "One Calendar Month" from "One Half of a Calendar Month" -

ADD _____

ALTERNATE NO. 21A
In the event that the Owner does not approve the Contractor's requisition of an initial payment of six percent (6%) of the Base Contract Amount, upon the execution of the Lump Sum Contract, as note in Rider "A," Item A-37.

ADD _____

RIDER "C"
ALTERNATES AND UNIT PRICES
1 WORLD TRADE CENTER - "The Freedom Tower"
NEW YORK, NEW YORK

June 17, 2008
(Revision #1)

TRADE: GLAZED ENCLOSURE AT THE PODIUM WALL

ALTERNATE NO. 21B

In the event that the Contractor receives an initial mobilization payment of ten percent (10%) of the Base Contract Amount, upon the execution of the Lump Sum Contract, in lieu of Six Percent (6%), as noted in Rider "A," Item A-37, so that the Contractor can better facilitate: (1) securing of pricing and deliveries, (2) agreements with and signing of contracts with its subcontractors, suppliers and vendors, (3) proper cash flow for a project of this size, etc. The initial payment shall be credited back to the Owner on a monthly pro-rata basis (in an amount equating to the completed percent of the Basic Contract amount) over the duration of the project.

DEDUCT

ALTERNATE NO. 22
DELETED**ALTERNATE NO. 23**

In the event that the Contractor is charged for use of the Material Hoists during normal jobsite working hours of Monday through Saturday - 6:00am to 6:00pm

ADD

ALTERNATE NO. 24

In the event that all aluminum and stainless steel grilles located behind the prismatic glass lites are deleted.

DEDUCT

ALTERNATE NO. 25

The Contractor has offered a cost savings pertaining to the execution of the means and methods of the Contract. The requirement is to adopt "normally accepted commercial building trade construction practices" resulting in no interruption or delay to the performance of the Contract. "Normally accepted commercial building trade construction practices" shall be defined as no additional consultants, peer reviews, new governmental regulations (Contractor shall comply with The World Trade Center Procedure For The Use Of Cranes or Derricks Approval, Delivery, and Operation, dated July 31, 2008; however, this Contractor shall have the right to be compensated an amount not to exceed the amount of this Alternate, for additional expenditures incurred beyond normally accepted commercial building trade construction practices, to the extent that these Procedures imposes such expenses), protocols, agencies, and authorities imposed upon the Lump Sum Contract Work, which would impact and/or delay the procurement of materials, and the execution of the means and methods and engineering of this Contractor's manufacturing and field installation operations.

DEDUCT

ALTERNATE NO. 26A

This Contractor shall procure a substituted low-iron glass product, from Shandong Glass, part of the JinJing Group (a glass fabricator in China), to match the specified PPG Starfire glass in appearance and performance (as required in the Specification), and a substituted manufacturer of the prismatic glass panels which shall be fabricated by Beijing North Glass Safety Glass Co., Ltd. This Contractor shall provide all samples, submittals, test reports, etc. as requested and as necessary to receive approval from the Architect. In the event that this Prismatic Glass Panel is approved as a substitution to the specified Barber Glass Industries pane.

DEDUCT

ALTERNATE NO. 26B

In the event that the Contractor is unable to receive the Architect's approval of the low-iron glass product and the prismatic glass panels, both fabricated in China, as referenced in Alternate No. 26A, it will endeavor to procure another supplier of the low-iron glass product as a substitution to the specified PPG Starfire low-iron glass and Barber Glass prismatic glass panel. This Contractor shall provide all samples, submittals, test reports, etc. as requested and as necessary to receive approval from the Architect. In the event that this substitution to the specified panel is approved:

DEDUCT

ALTERNATE NO. 27

In the event that this Contractor receives payments for low-iron glass panels fabricated in China, prior to the assembly operation of the prismatic glass panel, as well as payments for the fabrication of the prismatic glass panels in China. The payment amount for these materials fabricated in China is limited to Six Million U.S. Dollars (\$6,000,000).

DEDUCT

RIDER "C"
ALTERNATES AND UNIT PRICES
1 WORLD TRADE CENTER - "The Freedom Tower"
NEW YORK, NEW YORK

June 17, 2008
(Revision #1)

TRADE: **GLAZED ENCLOSURE AT THE PODIUM WALL**

UNIT PRICES (Excluding Delivery to Site)

1. Glass type: (22mm Low Iron Outer Lite with Linear Diamond Depth 13mm, with 12mm back up low iron tempered lite) _____
2. Glass type: (22mm Low Iron Outer Lite with Linear Diamond Depth 10mm, with 12mm back up low iron tempered lite) _____
3. Glass type: (22mm Low Iron Outer Lite with Linear Diamond Depth 7mm, with 12mm back up low iron tempered lite) _____
4. Glass type GL-04 with point support system
5. Glass type GL-04 without point support system
6. Glass type GL-05
7. Glass type GL-22 with point support system _____
8. Glass type GL-22 without point support system
9. DELETED
10. Glass type GL-05A
11. Glass type GL-05B
12. Glass type GL-05C
13. Delivery Charge to Jobsite

Note: Unit Prices are based on a minimum 10 unit order



RIDER "D"
INSURANCE RIDER

PROJECT: 1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

INSURANCE

The parties agree that the Project shall be insured as set forth in A - M below. Notwithstanding the insurance to be provided in accordance with this article, 1 WTC may elect to provide an Owner Controlled Insurance Program (OCIP). The parties agree that if and when an OCIP is put in place by 1 WTC, the requirement of Contractor to provide "A" and "B" below shall no longer be in effect for on-site Work, however "A" and "B" shall continue to be provided for off-site activities. The Contractor agrees to fully cooperate with 1 WTC and the Construction Manager in the development of the OCIP, and the terms of the OCIP, including, but not limited to:

- a) Cooperation with the OCIP Safety Program as developed in conjunction with the Construction Manager, 1 WTC, 1 WTC's Consultants and Insurance Carrier.
- b) Completing the required documentation, and causing all of Contractor's eligible Subcontractors to complete the required documentation including, but not limited to:
 - i) Enrollment Information
 - ii) Payroll Information
 - iii) Safety Program Information
- c) Cooperating with any potential accident or claim investigations and any specific reporting requirements superseding those identified in A - M below
- d) Provide 1 WTC and Construction Manager in Contractor's bid a deduct alternative for deduction coverages A and B below, and indicate the pro rata amount on a percent of completed work basis
- e) Provide 1 WTC, Construction Manager or designated OCIP administrator with appropriate credits for the cost of insurance that will not be required to be provided as a result of coverage afforded under the OCIP by completing a Bid Deduction Worksheet specifically identifying the costs associated with Workers' Compensation, Commercial General Liability, Excess Liability and other coverages to be identified.
- f) Allowing 1 WTC, Construction Manager and OCIP administrator to audit Contractor's records to determine appropriate charges and credits for all insurance costs.

Prior to commencement of any Work under this Contract and until all obligations under this Contract are fulfilled, the Contractor, and each and every Subcontractor of the Contractor, shall, each at its sole expense, maintain the following insurance on its own behalf, and furnish to 1 WTC and Construction Manager, Certificates of Insurance evidencing same and reflecting the effective date of such coverage as follows:

The term "Contractor" and/or "Subcontractor" as used in this insurance rider, shall mean and include Contractors and Subcontractors of every tier.

- A. Worker's Compensation and Occupational Disease Insurance in accordance with the applicable law or laws: Employer's Liability Insurance with Limit of Liability as required by New York State.

The Contractor shall provide a copy of the "Employer's First Report of Injury" or its equivalent to Tishman Construction Corporation, 666 Fifth Avenue, New York, New York 10103, Attn: Risk Management Department, within thirty (30) days of any injury or illness to any employee of the Contractor arising out of, or alleged to have arisen out of or during the course of Work performed on this Project. Contractor shall cooperate by providing all reports mandated by the State of New York upon request.

- B. Commercial General Liability (together with any excess liability or umbrella liability insurance coverage) with a combined Bodily Injury and Property Damage limit of not less than Twenty-Five Million Dollars (\$25,000,000) per occurrence and in the aggregate. The general aggregate must be applicable on a per project basis. Coverage must include the following:

1. Contractual Liability for liability assumed under this Contract and all other contracts relative to the Project.
 - a. Delete contractual exclusion, or any other policy exclusions, for Work done within 50 Feet of a Railroad, Lightrail, subway or similar tracked conveyance.
 - b. Should Contractor be unable to obtain endorsement deleting Contractual (or other)



exclusion pertaining to work within 50 Feet of a Railroad, then Contractor shall be required to provide Railroad Protective Liability Insurance (RPLI) as follows:

- 1) Named Insured: The Port Authority of New York & New Jersey and Port Authority Trans Hudson (PATH).
 - 2) Limits of Liability: At least Two Million (\$2,000,000) Dollars per occurrence, with an aggregate of at least Six Million (\$6,000,000) Dollars.
 - 3) Policy to include all Work performed by the Contractor and their subcontractors of any and all tiers.
2. Completed Operations/Products Liability with three (3) year extension beyond completion and acceptance of the Project.
 3. Broad Form Property Damage.
 4. "XC&U" Perils Covered, where applicable
 5. Personal Injury Liability (A, B & C) and Advertising Injury Coverage
 6. Independent Contractors.
 7. Additional Interest/Insured Endorsement (CG2010 November 1985 version, or its equivalent) must be furnished reflecting the inclusion of the interests of those parties listed on Schedule 1 hereto, together with their respective parent companies, corporations and/or partnerships and their owned, controlled, affiliated, associated and subsidiary companies, corporations, and/or partnerships and the respective agents, consultants, principals, partners, servants, officers, stockholders, directors and employees of each and all other indemnities named in the Contract as Additional Insureds. The endorsement must specifically include Completed Operations coverage for the Additional Insureds.
 8. Unless otherwise agreed by 1 WTC, the liability policy(ies) shall be specifically endorsed "The Insurer(s) shall not, without obtaining the express advance written 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 Authority, the immunity of the Authority, its Commissioners, officers, agents or employees, the governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority."
 9. Coverage is to be endorsed to reflect that the insurance provided is to be primary and non-contributory for the Contractor, WTC Redevelopment LLC, 1 WTC, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds named in Schedule 1.
 10. 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 1 WTC and Construction Manager, and shall have an A.M. Best Rating of A - X or better.
 11. A copy of the policy and/or endorsement(s) and any other documents required to verify such insurance are to be submitted with the appropriate certificate(s), or upon the request of Construction Manager.
- C. 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 Umbrella policy.
- a. Coverage is to be endorsed to reflect that the insurance provided is to be primary and non-contributory for the Contractor, WTC Redevelopment LLC, Tishman Construction Corporation and all other Additional Insureds and indemnities named in the Contract.

- D. Commercial Professional Liability Insurance (CPLI) covering the design and engineering services required by Contract of at least Five Million (\$5,000,000) Dollars.
- E. Where an Off Project Site property exposure exists, the Contractor at its sole expense shall furnish to 1 WTC and Construction Manager, 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.
- F. The above insurance shall each contain the following wording verbatim and provide an endorsement on the insurance certificate:
- "1 WTC and Construction Manager are interested in the maintenance of this insurance and it is agreed that this insurance will not be canceled, materially changed or not renewed without at least thirty (30) days' advance written notice to 1 World Trade Center, LLC, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 12th Floor, 10003, Attn: Winson Fung, and Tishman Construction Corporation, 666 Fifth Avenue, New York, New York 10103, Attn: Risk Management Department, by certified mail-returnd receipt requested."*
- 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 Contractor of any responsibility of liability under the Contract.
- H. The Contractors shall file certificates of insurance prior to the commencement of Work and with 1 WTC and Construction Manager which shall be subject to 1 WTC's and Construction Manager'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, 1 WTC and/or Construction Manager 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 1 WTC and/or Construction Manager immediately upon presentation of a bill.
- I. The Contractors 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. Subrogation.
- a. 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 WTC Redevelopment LLC, World Trade Center Properties, LLC, the Authority, 1 WTC, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds and indemnities named in the Contract.
 - b. Workers' Compensation policy and all liability policies except Commercial Professional Liability Insurance (D) shall contain a provision requiring the insurance carriers to waive their rights of subrogation against WTC Redevelopment LLC, World Trade Center Properties, LLC, the Authority, 1 WTC, Construction Manager,

Silverstein Freedom Tower Development LLC and all other Additional Insureds and indemnities named in the Contract.

- L. 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.
- M. 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 Authority, 1 WTC and the Construction Manager 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 Authority, 1 WTC or the Construction Manager the Contractor shall furnish to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

Schedule 1 - 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 Transit 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.

A handwritten signature and a circular stamp are located in the bottom right corner of the page. The stamp contains the text "INITIALS" and a handwritten mark.

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OWNER CONTROLLED INSURANCE PROGRAM
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
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1. Owner Controlled Insurance Program.

1.1 Overview. 1 WTC has arranged an Owner Controlled Insurance Program ("OCIP") with Aon Risk Services, Inc. of New York ("Aon"), effective as of March 31, 2007. The OCIP is more fully described in the Insurance Guide for Contractors ("Insurance Guide"). The Insurance Guide, which shall be furnished upon request to all Enrolled Parties (defined below), is not a Contract document. Contractors performing Work at the Project site are eligible to and shall apply for enrollment in the OCIP unless they are an Excluded Party (defined below). The OCIP will provide to Enrolled Parties (as defined below) the following insurance coverage: Workers' Compensation, Commercial General Liability Insurance, Builders' Risk, Contractors Pollution Liability, and Terrorism/Excess Liability Insurance as summarily described in the Insurance Guide, in connection with the performance of the Work ("OCIP Coverages").

1.2 Enrolled Parties and Their Insurance Obligations.

(a) OCIP Coverages shall cover Enrolled Parties (defined below).
Enrolled Parties are:

- (i) 1 WTC, the Authority, and other affiliated entities;
- (ii) Construction Manager;
- (iii) eligible Contractors, eligible Subcontractors of any tier, and eligible Subconsultants of any tier, who are approved by 1 WTC, Construction Manager, and Aon for purposes of inclusion in the OCIP; and
- (iv) such other persons or entities as 1 WTC, Construction Manager, and Aon may designate.

Each such party in items (i) through (iv) above who is actually enrolled in and insured under the OCIP is referred to individually as an "Enrolled Party" and collectively as "Enrolled Parties."



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(b) Enrolled Parties, excluding those entities listed in Section 1.2(a)(i) above, shall obtain and maintain, at their own expense, and shall require each of their Subcontractors of any tier to obtain and maintain at each such Subcontractor's own expense, the insurance coverages specified in (i) Rider D, items C, D, and E thereof, and (ii) Rider D, items A and B thereof, for off-site activities and for operations and risks not otherwise provided by the OCIP (collectively, items (i) and (ii) are referred to as "Supplemental Insurance Policies").

1.3 Excluded Parties and Their Insurance Obligations.

(a) The OCIP does not cover those parties who are not Enrolled Parties ("Excluded Parties").

(b) Excluded Parties shall obtain and maintain, and shall require each of their Subcontractors of any tier to obtain and maintain, insurance coverages as specified in Rider D, including Paragraphs A and B thereof, and as set forth in the Insurance Guide with respect to non-Enrolled Parties.

1.4 OCIP Insurance Policies Establish OCIP Coverages. The OCIP Coverages and exclusions summarized in the Insurance Guide and in the Contract documents are set forth in full in the respective insurance policy forms with respect to the OCIP Coverages. The summary descriptions of the OCIP Coverages in this Exhibit DX or the Insurance Guide are not intended to be complete or to alter or amend any provision of the actual OCIP Coverages. In the event any provision of this Exhibit DX, other Contract documents, or the Insurance Guide conflicts with the OCIP insurance policies, the provisions of the actual OCIP insurance policies shall govern. The OCIP insurance policies may be reviewed by Construction Manager or any Contractor at the office of 1 World Trade Center LLC, c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York.

1.5 Summary of OCIP Coverages. OCIP Coverages shall apply only to those operations of each Enrolled Party performed at the Project site in connection with the Work and only to Enrolled Parties that are eligible for the OCIP. OCIP Coverages shall not apply to ineligible parties, even if erroneously enrolled in the OCIP (such parties shall be deemed Excluded Parties). An Enrolled Party's operations away from or off of the Project site, including its regularly established main or branch office, factory, warehouse, or other property, or product manufacturing, assembling, or otherwise, shall not be covered. A summary of OCIP Coverages is attached hereto and incorporated herein as Attachment DX-1.

1.6 Evidence of Coverages.

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(a) Contractor shall furnish evidence satisfactory to 1 WTC of all insurance coverages required of Contractor pursuant to this Rider DX.

(b) The obligation to procure and maintain any insurance required by the Contract documents is a separate responsibility of Contractor and independent of the duty to furnish evidence of insurance. By furnishing evidence of insurance, Contractor represents and warrants to 1 WTC that the limits and scope of coverage of such insurance comply in all respects with the requirements of the Contract documents and that the required limits, as of the date that such evidence of insurance is delivered to the 1 WTC, are unimpaired: (i) by any payments made, or reasonably expected to be made, by the insurer, or (ii) by any amounts reserved for pending claims or anticipated expenses.

(c) Receipt or review by 1 WTC or Aon of any copies of insurance policies or insurance certificates, or failure to request such evidence of insurance or to object to any portion of such insurance that does not comply with the requirements of this Exhibit DX, other Contract documents, or the Insurance Guide, shall not be deemed a waiver by 1 WTC or Aon of any such requirements and shall not relieve Contractor of any obligation to comply with the insurance provisions of the Contract documents.

1.7 1 WTC's Insurance Obligations. 1 WTC shall pay the premiums for the OCIP Coverages. 1 WTC will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. Contractor, and each of their Subcontractors, hereby assign to 1 WTC the right to receive all such adjustments. 1 WTC assumes no obligation to provide insurance other than that provided in the OCIP. 1 WTC's furnishing of OCIP Coverages shall in no way relieve or limit, or be construed to relieve or limit, Construction Manager or Contractor, or any of their Subcontractors of any tier, from any responsibility, liability, or obligation imposed by Riders D and DX, other Contract documents, the Insurance Guide, the OCIP insurance policies, or by law, including, without limitation, any indemnification obligation that Construction Manager or Contractor, or any of their Subcontractors of any tier, has to 1 WTC thereunder. 1 WTC reserves the right at its option, without obligation to do so, to modify terms and conditions of insurance policies, change insurers, or make other changes in the OCIP, provided that the limits and scope of coverage provided is not materially and adversely affected.

1.8 Enrolled Parties Responsibilities – Insurance Costs.

(a) Each Enrolled Party shall identify to 1 WTC the amount of the credit that resulted from excluding coverage provided by the OCIP when calculating the Lump Sum or contract price for such Enrolled Party's Work.

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(b) Each Enrolled Party is responsible to enroll all of its eligible Subcontractors of any tier in the OCIP. If an Enrolled Party fails to enforce the enrollment of any of its eligible Subcontractors of any tier, then the Enrolled Party shall be financially responsible to 1 WTC for the amount of the credit that would have resulted had any such Subcontractor been enrolled in the OCIP and for any liability arising out of or resulting from the acts or omissions of any such Subcontractor not enrolled in the OCIP. Construction Manager will not permit any Contractor or Subcontractor of any tier to access, or perform Work on, the construction site unless such Contractor or Subcontractor provides Construction Manager with the proper Certificates of Insurance evidencing the required insurance and effective date of coverage in accordance with Exhibit D and, to the extent such Contractor or Subcontractor is to be enrolled into the OCIP, until such time as enrollment is effective.

(c) If the Enrolled Party carries a deductible, or self-insured retention, under any of its Supplemental Insurance Policies, then the following information may be required:

(1) Three (3) years of currently valued loss history for all entities that retain losses. Paid, outstanding, and total incurred losses must be evidenced by policy period;

(2) Three (3) years of payroll history for all entities; and

(3) Any other information required by 1 WTC or Aon.

(d) Costs for insurance coverage maintained by the Enrolled Parties that are redundant of the OCIP shall not be reimbursable. All change orders or Extra Work Orders will be submitted net of insurance, and labor rates will be reduced to reflect the insurance reduction.

(e) If any Enrolled Party does not provide Aon with information sufficient to allow verification of the applicable insurance cost, Aon may independently calculate enrollment insurance costs based on undiscounted, manual, or program rates at its sole discretion.

1.9 Contractor's OCIP Obligations.

(a) Contractor shall:

(1) Incorporate the terms of this Exhibit DX and Exhibit D in all contracts and subcontracts of any tier with respect to the Project.

(2) Enroll itself (unless 1 WTC or Aon directs otherwise), in the OCIP within five (5) days of execution of the Contract and maintain enrollment in the

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OCIP until a notice of final completion of Work has been issued by 1 WTC, and (i) ensure that all of its eligible Subcontractors of any tier enroll in the OCIP within five (5) days of subcontracting and prior to the commencement of any Work at the Project site by each such Subcontractor, and maintain enrollment in the OCIP until a notice of final completion of work has been issued by 1 WTC.

(3) Comply with all of the administrative, safety, insurance, and other requirements outlined in this Exhibit DX, elsewhere in the Contract documents, the *Insurance Guide*, or the *OCIP insurance policies*.

(4) Provide each of its Subcontractors of any tier with a copy of the *Insurance Guide* and ensure the compliance of each such Subcontractor with the provisions of Exhibits D and DX, the other Contract documents, the OCIP insurance policies, and the *Insurance Guide*. The failure of (a) 1 WTC to include the *Insurance Guide* in the Bid Proposal documents or (b) Construction Manager or Contractor to provide each of their eligible Subcontractors of any tier with a copy of same, shall not relieve Construction Manager or Contractor, or any of their Subcontractors of any tier, from any of the obligations contained therein.

(5) Acknowledge, and require all of its Subcontractors of any tier to acknowledge, in writing, that 1 WTC and Aon are not agents, partners, or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer") and that 1 WTC is not responsible for any claim or dispute between or among Contractor, its Subcontractors of any tier, and any OCIP Insurer. Any type of insurance coverage or limits of liability in addition to the OCIP Coverages that Contractor or any Subcontractor of any tier requires for its or their own protection, or that is required by applicable laws, statutes, ordinances, codes, rules or regulations, or by any public authority, shall be Contractor's or its Subcontractor's sole responsibility and expense and shall not be billed to 1 WTC.

(6) Cooperate fully with Aon and the OCIP Insurers, as applicable, in its or their administration of the OCIP.

(7) Provide all documents or information within five (5) business days of 1 WTC's or Aon's request. Such information may include, but not be limited to, written and/or electronic payroll records as required by the Workers' Compensation insurance carrier, certified copies of insurance coverages, declaration pages of coverages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, or such other data or information as 1 WTC, Aon, or OCIP Insurers may request in the administration of the OCIP, or as required by the *Insurance Guide*.

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(b) Contractor's failure to procure or maintain the insurance required by Rider D, or, if an Enrolled Party, the Supplemental Insurance Policies, and to assure that all of its Subcontractors of any tier procure and maintain such required insurance during the entire term of the Agreement, and as otherwise required, shall constitute a material breach of this Agreement for which 1 WTC immediately may suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect 1 WTC's interests and pay any and all premiums in connection therewith, and withhold or recover all monies so paid together with interest thereon from the date paid by 1 WTC until the date paid by Contractor or Subcontractors of every tier.

1.10 Contractor's and Construction Manager's Representations and Warranties to 1 WTC. Contractor represents and warrants to 1 WTC on behalf of itself and its Subcontractors of any tier with respect to items (a), (b), (c), and (e); and Construction Manager represents and warrants to 1 WTC on behalf of itself and its Subconsultants of any tier with respect to items (a), (b), and (e) below; and Construction Manager represents and warrants to 1 WTC with respect to item (d) below:

That all information it submits to 1 WTC, Aon, or (in the case of the Contractor) the Construction Manager shall be accurate and complete.

(a) That Contractor or Construction Manager, as the case may be, on behalf of itself and its Subcontractors or Subconsultants of any tier, has had the opportunity to read and analyze copies of the OCIP binders and specimen policies, which are available for review in accordance with Section 10.4 of this Exhibit DX. Any reference or summary in the Contract or Agreement, in this Exhibit DX, in any other Contract document or Contract Document, or in the Insurance Guide as to amount, nature, type, or extent of OCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Contractor and its Subcontractors of any tier or, in the case of Construction Manager, Construction Manager and its Subconsultants of any tier, have not relied upon said reference or summary but solely upon their own independent review and analysis of the OCIP Coverages in formulating any understanding and/or belief as to amount, nature, type, or extent of the OCIP Coverages and/or the potential applicability of the OCIP Coverages to any potential claim or loss.

(b) That Contractor identified in its Bid Proposal the amount of the credit that resulted from excluding insurance coverage provided by the OCIP when calculating the Lump Sum or contract price for such Contractor's Work; and that such amount was not included in its Bid Proposal for the Work, or the applicable Lump Sum or contract price, and will not be included in any change order, Extra Work Order, or any request for payment for the Work or Extra Work.

(c) That Construction Manager shall confirm with respect to each Contract awarded, that prior to the effective date of the respective Contract the alternate deduct amount for any credit resulting from excluding insurance coverage provided by

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the OCIP is provided to 1 WTC; provided, however, if a Contract was or is awarded without OCIP coverage, then no credit results and confirmation is not required.

(d) That 1 WTC shall not pay or compensate, and shall have no obligation to pay or compensate, Contractor or any Subcontractor of any tier, or Construction Manager or any Subconsultant of any tier, in any manner, for Costs of OCIP Coverages. The "Costs of OCIP Coverages" is defined as the amount of Contractor's and its Subcontractors' of any tier, or, in the case of Construction Manager, Construction Manager's and its Subconsultants' of any tier, reduction in insurance costs due to eligibility for OCIP Coverages as determined by information available to 1 WTC and/or Aon regarding the costs of similar coverages taking into account limits of liability, coverages, and rating of the insurer.

1.11 Audits. Contractor agrees that for a period of seven (7) years following Substantial Completion of the entire Work, 1 WTC, Aon, and/or any OCIP Insurer may audit Contractor's or any of its Subcontractor's (of any tier) payroll records, books, and records, insurance coverages, insurance cost information, or any other information that Contractor provides to 1 WTC, Aon, or the OCIP Insurers to confirm their accuracy and to assure that Costs of OCIP Coverages are not included in any payment for the Work.

1.12 1 WTC's Election to Modify or Discontinue OCIP. 1 WTC, for any reason, may modify the OCIP Coverages, discontinue the OCIP, or request that Contractor or any of its Subcontractors of any tier withdraw from the OCIP, upon thirty (30) days' written notice. Upon such notice, Contractor and/or one or more of its Subcontractors of any tier, as specified by 1 WTC in such notice, shall obtain and thereafter maintain at 1 WTC's expense, not to exceed the applicable Costs of OCIP Coverages as determined by 1 WTC (or a portion thereof as specified by 1 WTC), all (or a portion thereof as specified by 1 WTC) of the OCIP Coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to 1 WTC's approval to the extent such cost does not exceed the applicable Enrolled Party's credit for the OCIP coverage. If the cost does exceed such Enrolled Party's credit for the OCIP coverage, then 1 WTC and the Enrolled Party shall jointly approve the form, content, insurer, limits of liability, and such excess cost.

1.13 Withhold of Payments. To the fullest extent permitted by law, 1 WTC may withhold from any payment owing to Contractor the Costs of OCIP Coverages if included in a request for payment from Contractor. In the event a 1 WTC audit of Contractor's (or a Subcontractor's of any tier) records and information reveals a discrepancy in the insurance, payroll, safety, or any other information required by the Contract documents to be provided by Contractor to 1 WTC, Aon, or Construction Manager, or reveals the inclusion of Costs of OCIP Coverages in any payment for the Work, 1 WTC shall have the right to full deduction from the contract price of all such Costs of OCIP Coverages. In the event Contractor (or a Subcontractor of any tier)

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underreports, misclassifies, or misrepresents in any requisition for funds or in other reports, any labor cost incurred, then the Contractor and Subcontractor of any tier shall be liable for the costs of the audit, which shall include but not be limited to the fees of Aon, and of the attorneys and accountants conducting the audit and review. If the Contractor, or its Subcontractors of any tier, fail to timely comply with the provisions of this Exhibit DX or the requirements of the Insurance Guide, 1 WTC may withhold any payment due such party until such time as they have performed the requirements of this Exhibit DX. Such withholding by 1 WTC shall not be deemed to be a default hereunder.

1.14 Safety. Contractor shall be solely responsible for safety pertaining to its Work. Contractor shall comply with the written program referred to in the Insurance Guide as well as all local, state and federal safety standards.

2. Commencing Work. Contractor and its Subcontractors of any tier cannot commence performance of the Work until all of the insurance requirements have been met.

3. Compliance by Construction Manager. Unless directed or excepted otherwise by 1 WTC, Construction Manager shall comply, and shall cause its Subconsultants of any tier to comply, with all of the provisions set forth in this Rider DX in the same manner as Contractor, and its Subcontractors of any tier, are obligated to comply; and 1 WTC shall have the same rights with respect to Construction Manager and its Subconsultants of any tier as 1 WTC has with respect to Contractor and its Subcontractors of any tier.

4. Definitions. Each initial-capped term used but not defined in this Exhibit DX shall have the meaning set forth in the Contract. Such terms include, without limitation, 1 WTC, Authority, Bid Proposal, Construction Manager, Contractor, Contract, Extra Work, Extra Work Order, Project, Subconsultant, Subcontractor, and Work.

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Attachment DX-1

Summary of OCIP Coverages

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ATTACHMENT DX-1

SUMMARY OF OCIP COVERAGES

Below is a summary of the OCIP Coverages. The OCIP Coverages apply ONLY to the operations of each Enrolled Party at the Project construction site as provided for in the Contract. It does NOT apply to the off-site operations of any Contractor or Subcontractor of any tier, including but not limited to, operations at their regularly established main or branch office, factory, warehouse or other property.

The limits stated below constitute the combined limits for both the Project and a second project referred to as the "Memorial Complex"; the Memorial Complex generally consists of the construction of two reflecting pools, a museum referred to as the Memorial Museum, a facility referred to as the Visitors Orientation and Education Center (VOEC), and a plaza and the redevelopment of approximately eight acres of land, referred to as the Memorial Plaza and Redevelopment (collectively, the term "Combined Project" shall mean the Project and the Memorial Complex project).

Neither the Contractor nor a Subcontractor of any tier shall be responsible for the payment of any deductible under the OCIP.

A. Workers' Compensation

A separate standard NYS Workers' Compensation policy will be issued to each Contractor or Subcontractor of any tier performing work at the Project construction site. Coverage will include:

1. Workers' Compensation, 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 and Subcontractor of any tier to comply with NYS Workers' Compensation law by providing their own coverage for their workers. Please contact the Construction Manager for clarification.

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued

B. Commercial General Liability Insurance

The OCIP will provide Commercial General Liability Insurance to each Contractor and Subcontractor of any tier, as follows:

1. Primary \$2,000,000 Combined Single Limit (CGL) each one occurrence.
2. \$498,000,000 each occurrence in excess of the \$2,000,000 primary limit.
3. Losses insured under the Commercial General Liability and Excess Liability policies may be subject to certain annual, or period, aggregation of limits of liability as more fully described in the insurance policy documents.
4. 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
 - EXCLUSIONS include, but are not limited to:
 - Aircraft Liability
 - Asbestos/Environmental
 - Automobile Liability and Physical Damage
 - Intentional acts
 - Pollution
 - Professional Liability

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued

- Property in Insured's Care, Custody and Control
- Radioactive Contamination, Chemical, Biological, Bio-Chemical, Electro-magnetic Weapons
- Watercraft Liability
- War

C. Builder's Risk Insurance

Builder's Risk Insurance coverages are as follows for the period April 30, 2007 to December 31, 2011.

1. Limits - \$1,000,000,000 per occurrence for the Combined Project (subject to a \$50,000,000 annual aggregate for Flood and Earthquake damage and \$250,000,000 per occurrence as respects Windstorm). The following sublimits of coverage also apply:
 - a. \$10,000,000 per any one location as respects Offsite Storage
 - b. \$10,000,000 per any one conveyance as respects Property in Transit
 - c. \$10,000,000 per any one occurrence as respects Expediting Expense
 - d. \$5,000,000 per any one occurrence as respects Contractors Extra Expense
 - e. \$1,000,000 per any one occurrence as respects Trees, Shrubs, Plants and Landscaping
 - f. \$5,000,000 per any one occurrence and in the annual aggregate as respects Pollution Cleanup and Removal.
 - g. \$1,000,000 per any one occurrence as respects Plans, Blueprints, and Drawings.
 - h. \$5,000,000 per any one occurrence as respects Fire Brigade Charges/Extinguishing Expenses.
 - i. 25% of the amount of loss or damage as respects Debris Removal not more than \$50,000,000.
 - j. \$50,000,000 per any one occurrence as respects Law or Ordinance, Demolition and Increased Cost of Construction.
2. OCIP Coverages include, but are not limited to:

All property to be used in or incidental to the Project, including property in the Enrolled Party's custody, property in which the Enrolled Party has an insurable interest, property for which the Enrolled Party is liable, including but not limited to:

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued

- Builders Risk
- Debris removal
- Demolition and increased cost of construction
- EDP equipment and media and extra expense
- Expediting expense
- Extra expense
- Fire brigade charges and extinguishing expenses
- Materials
- Off-site
- Partial payment of loss
- Permission to occupy
- Plans, blueprints, drawing, renderings, etc.
- Pollutant clean-up (covered perils)
- Professional fees
- Removal charges
- Resulting damage from error in design, faulty workmanship, or faulty material recovered
- Temporary works
- Testing
- Transit including shipments on inland or coastal waters, excluding ocean
- Valuable papers and records
- Waiver of Subrogation, if in writing

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

3. The policies contain various EXCLUSIONS, including but not limited to:
- Aircraft
 - Automobiles
 - Contents/Personal Property
 - Contractor's (or Subcontractor's of any tier) Equipment
 - Cranes (not to become permanently fixed, but used as a part of contract)
 - Machinery, Contractor's (or Subcontractor's of any tier) machinery, tools, temporary structures, and equipment not destined to become a permanent part of a building or structure
 - Soft Costs
 - Watercraft

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued

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 loss for the Combined Project, with a \$100,000,000 policy aggregate.
2. Sub-limit - \$10,000,000 Microbial Matter.
3. 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.
4. 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.



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RIDER "F"
NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
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May 11, 2007

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT ("Confidentiality Agreement") is made as of this 13 day of AUGUST 2008, ~~2007~~, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY ("Authority") a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 225 Park Avenue South, New York, New York, 10003; 1 WORLD TRADE CENTER LLC, a Delaware Limited Liability Company, with offices c/o the Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 10003 ("1 WTC"), (collectively, the "Port Authority Parties"); and SOLERA CONSTRUCTION, INC. ~~DCM GROUP, INC.~~ ~~2007~~ having an office and place of business at 110 EAST 42ND STREET, SUITE 1710 ("Recipient").
NEW YORK, NEW YORK 10017

WHEREAS, the Recipient has advised the Port Authority Parties that it is interested in submitting a Bid Proposal or other request to perform work or services ("Proposal") for the Port Authority Parties' consideration under which the Recipient would be performing work or services in regard to the design or construction of Tower 1, commonly known as the Freedom Tower ("Freedom Tower Project"), being constructed at the World Trade Center site in New York, New York (such site, together with any improvements thereon and therein, the World Trade Center site or "WTC Site"); and

WHEREAS, each of the parties to this Confidentiality Agreement desires to pursue discussions and negotiations concerning such a Proposal; and

WHEREAS, the Recipient has also advised the Port Authority Parties that in order to formulate and pursue a Proposal it will require certain information in the possession of the Port Authority Parties with respect to the WTC Site and Freedom Tower Project; and

WHEREAS, the Recipient acknowledges that the Port Authority Parties have existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Freedom Tower Project and surrounding areas and related public welfare matters; and

WHEREAS, in furtherance of critical governmental interests regarding public welfare, safety and security at the WTC Site, the Port Authority Parties have collected information and undertaken the development of certain plans and recommendations regarding the security, safety and protection of the WTC Site and Freedom Tower Project, including the physical construction and current and future operations of the WTC Site and Freedom Tower Project; and

WHEREAS, to enable the Recipient's formulation of a Proposal, the Port Authority Parties are willing, subject to the terms and conditions set forth below, to provide limited access and disclose to the Recipient or certain of its Related Parties (as defined below) certain information in the possession of the Port Authority Parties with respect to the WTC Site and

A handwritten signature and a circular stamp with the word "CONFIDENTIAL" inside, partially obscured by the signature.

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Freedom Tower Project, which may contain or include confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the WTC Site, the Freedom Tower Project or its occupants or other matters, the disclosure of which could result in significant public safety, financial and other damages to the Port Authority Parties, the WTC Site, the Freedom Tower Project, its occupants, and the City of New York and surrounding communities; and

WHEREAS, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to certain of such information to a strict need to know basis, the Port Authority Parties have requested, as a condition of their sharing or providing access to such confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enter into this Confidentiality Agreement and that its Related Parties thereafter acknowledge and agree that that they will be required to treat as strictly confidential and privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto.

WHEREAS, as a condition to the provision of such information to Recipient and certain Related Parties, the Recipient has agreed to enter into this Confidentiality Agreement with respect to the handling and use of such information and to cause Related Parties to join in and be bound by the terms and conditions of this Confidentiality Agreement.

NOW, THEREFORE, in consideration of the provision by the Port Authority Parties of Information for Evaluation Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agrees, as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

(a) **"Authorized Disclosure"** means the disclosure of Confidential Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to Confidential Proprietary Information, strictly for Evaluation Purposes; and (ii) as to Confidential Privileged Information, only to the extent expressly approved in writing and in advance by the Port Authority Parties and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Proposal (iii) as to all Confidential Information, only to a Related Party that has a need to know such Confidential Information strictly for the purposes set forth in this Subsection 1(a) and that has agreed in writing to be bound by the terms of this Confidentiality Agreement and has executed a form of Acknowledgement as set forth in Exhibit A.

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(b) **"Confidential Information"** means, collectively, Confidential Proprietary Information, Confidential Privileged Information and Information which is labeled, marked or otherwise identified by or on behalf of the Port Authority Parties so as to reasonably connote that such Information is confidential, privileged, sensitive or proprietary in nature. The term 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 whether prepared by the Recipient, the Port Authority Parties or others, Sensitive Security Information and Critical Infrastructure Information. The following Information shall not constitute Confidential Information for the purpose of this Confidentiality Agreement:

- (i) Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than the Port Authority Parties, provided that such source is not subject to a confidentiality agreement or similar obligation or understanding with or for the benefit of the Port Authority Parties, with respect to such Information and that the identity of such source is not itself part of such Confidential Information.
- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party, or any other person to whom the Recipient or a Related Party provides such Confidential Information.

(c) **"Confidential Privileged Information"** means and includes collectively, (i) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under state or federal laws, (ii) Critical Infrastructure Information (iii) Sensitive Security Information and (iii) Safety and Security Information.

(d) **"Confidential Proprietary Information"** means and includes Information which contains financial, commercial or other proprietary, business Information concerning the Proposal, the Port Authority Parties, the Freedom Tower Project or the WTC Site, including, without limitation, the terms of or negotiation positions concerning the Proposal.

(e) **"Confidentiality Control Procedures"** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Confidential Information that are required under applicable federal or state law or by the terms of this Confidentiality Agreement, including, without limitation, the procedures, safeguards and requirements are contained in the Port Authority Handbook, the rules, requirements and procedures of the Port Authority Parties of which the Recipient has notice and such procedures, safeguards and requirements that the Recipient would customary impose in connection with corresponding categories of such Recipient's own confidential information, all of the foregoing to be implemented with the highest standard of care.

(f) **"Critical Infrastructure Information"** has the meaning set forth in the Homeland Security Act of 2002 (42 U.S.C. §5195c(e)) and any rules or regulations enacted

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pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 (6 U.S.C. §131-134).

(g) **"Evaluation Purposes"** means the use of Confidential Information strictly and only for the purposes of development, preparation, negotiation and evaluation of the financial, commercial and other terms of the Proposal and only for such period of time during which a Proposal by the Recipient is under consideration by the Port Authority Parties.

(h) **"Information"** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, photographs, and other media containing or otherwise incorporating information that may be provided or made accessible at any time, whether orally, visually, in writing, photographically, electronically or any other form, including, without limitation, any and all copies of the foregoing.

(i) **"Port Authority Handbook"** means, collectively, the "Port Authority of NY & NJ Handbook for Protecting Security Information" and the "Security Information Practices and Procedures Annex," copies of each of which are attached hereto as Exhibit B.

(j) **"Related Party"** and **"Related Parties"** mean the employees, officers, partners or members of the Recipient, as applicable, and the Recipient's outside consultants, advisors, accountants, architects, engineers or Subcontractors or Subconsultants, as those terms are defined in the Recipient's Agreement to perform work or services for the Freedom Tower Project, (and their respective employees, officers, partners or members) to whom any Confidential Information is disclosed or made available.

(k) **"Safety and Security Information"** means and includes Information: (a) the access to or disclosure of which to unauthorized third parties could (i) adversely affect in any way the security, safety or protection of the Freedom Tower Project or the WTC Site, (ii) reveal guidelines, techniques and procedures for protection against terrorist acts, for law enforcement, investigations and prosecutions, (iii) endanger the life and physical safety of individuals or (iv) result in other harm and injury to the protection security and safety of the WTC Site, the Freedom Tower Project, its occupants and others, or to the general public welfare; (b) which concerns in whole or in part the operations of the Freedom Tower Project or the WTC Site, the disclosure of any of which would not customarily be made public by the Port Authority Parties; or (c) which contains information concerning any of the following in connection with the Freedom Tower Project or the WTC Site: *plans and specifications, contingency plans, points of contact, safety, security and other operating procedures, vehicular criteria, operations, operational requirements and operational strategies, screening procedures, detention procedures, security protocols and assessments, defensibility information, perimeter security, building systems or construction activities.*

(l) **"Sensitive Security Information"** has the meaning set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).

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2. **Use of Confidential Information.** All Confidential Information shall be used by the Recipient in accordance with the following requirements:

(a) All Confidential Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient only for Evaluation Purposes and in accordance with the Port Authority's Confidentiality Control Procedures (including, without limitation the Port Authority Handbook, receipt of which is acknowledged by the Recipient and shall be acknowledged in writing by each of Recipient's Related Parties) and applicable legal requirements. Confidential Information may be disclosed only if, and to the extent that, such disclosure is an Authorized Disclosure.

(b) Recipient and its Related Parties acknowledge and agree that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Confidentiality Agreement relating to Confidential Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for federal employees.

(c) Recipient (and each Related Party) covenants to the Port Authority Parties that it (and each Related Party to which Confidential Information may be disclosed in accordance with this Confidentiality Agreement) has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Confidential Information to control and safeguard against any violation of the requirements of this Confidentiality Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Confidential Information. Recipient (and each Related Party) shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Confidential Information is compartmentalized, such that Confidential Privileged Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Confidentiality Agreement and applicable Confidentiality Control Procedures, and such that Confidential Proprietary Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Confidentiality Agreement and applicable Confidentiality Control Procedures.

(d) The Port Authority Parties may request in writing that the Recipient or any Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Confidential Information as a precondition for its disclosure. The Port Authority Parties may decline any request by the Recipient or any of its Related Parties

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to provide such item of Confidential Information, if the Recipient or any of the Related Parties do not agree in writing to apply such controls.

(e) Nothing in this Confidentiality Agreement shall require the Port Authority Parties to tender or provide access to or possession of any Confidential Information to the Recipient or its Related Parties, whether or not the requirements of this Confidentiality Agreement are otherwise satisfied. However, if such Confidential Information is provided and accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Confidentiality Agreement.

(f) The Recipient (and each Related Party) agrees to be responsible for enforcing the provisions of this Confidentiality Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with the Port Authority Parties' prior written consent, neither the Recipient, nor any of the Related Parties, shall disclose to any third party, person or entity: (i) any Confidential Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Confidentiality Agreement or any "Acknowledgement" of its terms or (ii) the fact that Confidential Information has been made available to the Recipient or such Related Parties, or (iii) the content or import of such Confidential Information. The Recipient may disclose Confidential Information only to its Related Parties who need to know the Confidential Information for Evaluation Purposes and who shall be advised by the Recipient of this Confidentiality Agreement, shall agree in writing to act in accordance herewith and shall have executed and delivered to the Port Authority Parties a fully and properly completed Acknowledgement in the appropriate form, attached hereto as Exhibit A, and only under circumstances where the Recipient shall be satisfied that such Related Parties in fact shall act in accordance herewith.

(g) As to all Confidential Information provided by or on behalf of the Port Authority Parties, nothing in this Confidentiality Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.

3. **Disclosures and Discovery Requests.** If a subpoena, discovery request, court order, Freedom of Information Request, or any other request or demand authorized by law, seeking disclosure of the Confidential Information is received by the Recipient or any Related Party, Recipient shall notify the Port Authority Parties thereof with sufficient promptness so as to enable the Port Authority Parties to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as the Port Authority Parties deem appropriate. In the absence of a protective order, disclosure shall be made, in consultation with the Port Authority Parties, of only that part of the Confidential Information as is legally required to be disclosed. If at any time Confidential Information is disclosed in violation of this Confidentiality Agreement, the

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Recipient shall immediately give the Port Authority Parties written notice of that fact and a detailed account of the circumstances regarding such disclosure, to the Port Authority Parties.

4. **Retention Limitations; Return of Confidential Information.** Upon the earlier occurrence of either the Port Authority Parties' written request or completion of Recipient's need for any or all Confidential Information, such Confidential Information, all writings and material describing, analyzing or containing any part of such Confidential Information, including any and all portions of Confidential Information that may be stored, depicted or contained in electronic or other media and all copies of the foregoing shall be promptly delivered to the Port Authority Parties at Recipient's expense. In addition, as to Confidential Information that may be stored in electronic or other form, such Confidential Information shall be completely removed so as to make such Confidential Information incapable of being recovered from all computer databases of the Recipient.

5. **Duration and Survival of Confidentiality Obligations.** The obligations under this Confidentiality Agreement shall be perpetual (unless otherwise provided in this Confidentiality Agreement) or until such time as the Confidential Information is no longer considered confidential and privileged by the Port Authority Parties.

6. **Severability.** Each provision of this Confidentiality Agreement is severable and if a court should find any provision of this Confidentiality Agreement to be unenforceable, all other provisions of this Confidentiality Agreement shall remain in full force and effect.

7. **Injunctive and Other Relief.** Recipient (and each Related Party) acknowledges that the unauthorized disclosure and handling of Confidential Information is likely to have a material, adverse and detrimental impact on public safety and security and significantly endanger the Port Authority Parties, their facilities (including, without limitation, the Freedom Tower Project and the WTC Site), their patrons and the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Confidentiality Agreement by Recipient or its Related Parties. The Port Authority Parties shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as the Port Authority Parties may deem appropriate for any breach of this Confidentiality Agreement, without being required to show any actual damage or to post any bond or other security.

8. **Governing Law.** This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The Port Authority Parties (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of New York and State of New York with respect to all matters concerning this Confidentiality Agreement and its enforcement. The Port Authority Parties (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient agree that the execution and performance of this Confidentiality Agreement shall have a New York situs and, accordingly, they each consent (and solely with respect to the Port Authority Parties, subject to the terms of the Port Authority Legislation (as defined below)) to personal jurisdiction in the State of New York for all purposes and proceedings arising from this

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Confidentiality Agreement. "Port Authority Legislation" shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney's Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).

9. **Notices.** Any notice, demand or other communication (each, a "notice") that is given or rendered pursuant to this Confidentiality Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (a) hand delivery, or (b) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Confidentiality Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by the other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it (provided, that such designation must be made by notice given in accordance with this Section 9.

If to the Authority: _____

The Port Authority of New York and New Jersey
225 Park Avenue South, 19th Floor
New York, NY 10003

with a copy to:

The Port Authority of New York and New Jersey
225 Park Avenue South - 15th Floor
New York, NY 10003
Attn: General Counsel

If to the Recipient: _____

with a copy to:

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10. **Entire Agreement.** This Confidentiality 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 Confidentiality Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

11. **Potential Proposal Negotiations.** Although this Confidentiality Agreement is made in the context of a Proposal, it not an offer or acceptance and shall not be construed as such. Either party may discontinue discussions or negotiation of a Proposal at any time for any reason or no reason each in their own sole discretion and without notice to the other and without any duty to negotiate in accordance with any standards. No express or implied representation or warranty is made by the Port Authority Parties as to the accuracy or completeness of any Information disclosed hereunder and the Port Authority Parties expressly disclaim any such representation or warranty. The Recipient hereby releases the Port Authority Parties from any and all liability that may be based on errors contained in any Information furnished to the Recipient or any of its Related Parties or omissions from such Information. The Recipient and its Related Parties acknowledge and agree that the Port Authority Parties shall have no obligation to deal exclusively with the Recipient or any of its Related Parties with respect to any Proposal or the subject matter thereof.

12. **Counterparts.** This Confidentiality 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.

13. **Parties Bound.** This Confidentiality Agreement shall be binding upon the parties and their respective successors. The foregoing shall not be affected by the failure of any Related Party to join in this Confidentiality Agreement or to execute and deliver an Acknowledgement hereof.

14. **Authority.** The undersigned individuals executing this Confidentiality Agreement on behalf of the respective parties below represent that they are authorized to execute this Confidentiality Agreement on behalf of the Port Authority Parties and the Recipient respectively and to legally bind such parties.

15. **Disclosure of Ownership Rights or License.** Nothing contained herein shall be construed as the granting or conferring by the Port Authority Parties of any rights by ownership, license or otherwise in any Information.

16. **No Liability.** Neither the Commissioners of the Port Authority Parties, 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 Confidentiality Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

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17. **Construction.** This Confidentiality Agreement is the joint product of the parties hereto and each provision of this Confidentiality Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various Sections in this Confidentiality Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

[No further text on this page; signatures appear on next page]

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IN WITNESS WHEREOF, the Recipient and the PORT AUTHORITY PARTIES have executed this Confidentiality Agreement as of the date first above written.

Dated: New York, New York
AUGUST 13, 2008

RECIPIENT:

By: 
Title: LARRY DAVIS
VICE PRESIDENT
Date: AUG 13/08

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____
Title: _____
Date: _____

1 WORLD TRADE CENTER LLC

By: _____
Title: _____
Date: _____

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EXHIBIT A

ACKNOWLEDGEMENT BY RELATED PARTY ENTITY

The undersigned _____, is the
_____ [TITLE] _____ of _____ [NAME OF ENTITY] _____,
a _____ [TYPE OF ENTITY AND JURISDICTION OF FORMATION] _____, located at
_____. I am duly authorized to
execute this Acknowledgment on behalf of the above Related Party that is involved with the
functions of _____ in connection with a Proposal
relating to the Freedom Tower Project located at the WTC Site. I acknowledge and confirm that
the above named Related Party has been provided with a copy of and shall be bound and abide
by the all of the terms, requirements and conditions set forth in the Confidentiality Agreement,
dated _____, 2007, between _____ and the Port Authority
Parties and by the Port Authority Handbook described in the Confidentiality Agreement.
Appropriate and responsible officers and employees of the Related Party have carefully read and
understand the terms and conditions of the Confidentiality Agreement. The Related Party has
notice and acknowledges that any breach or violation of such the terms, requirements and
conditions may result in the imposition of remedies or sanctions as set forth or otherwise
described therein against such Related Party.

Signed: _____
Print Name: _____
Title: _____
Date: _____

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EXHIBIT A

ACKNOWLEDGEMENT BY RELATED PARTY INDIVIDUAL

The undersigned _____, is/are employed by _____ [NAME OF ENTITY], a _____ [TYPE OF ENTITY AND JURISDICTION OF FORMATION] located at _____, In my capacity as _____, I/we am/are involved with the functions of _____

in connection with a Proposal relating to the Freedom Tower Project located at the WTC Site. I acknowledge that I have been provided a copy of, carefully read, understand and shall be bound and abide by the all of the terms, requirements and conditions set forth in the Confidentiality Agreement, dated _____, 2007, between _____ and the Port Authority Parties and by the Port Authority Handbook described in the Confidentiality Agreement. I have notice and acknowledge that any breach or violation of such the terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against me.

Signed: _____
Print Name: _____
Title: _____
Date: _____

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EXHIBIT B

PORT AUTHORITY HANDBOOK

(attached)

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NEW YORK, NEW YORK

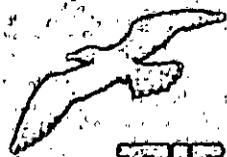
May 11, 2007

EXHIBIT C

SECURITY INFORMATION PRACTICES AND PROCEDURES (SIPP)

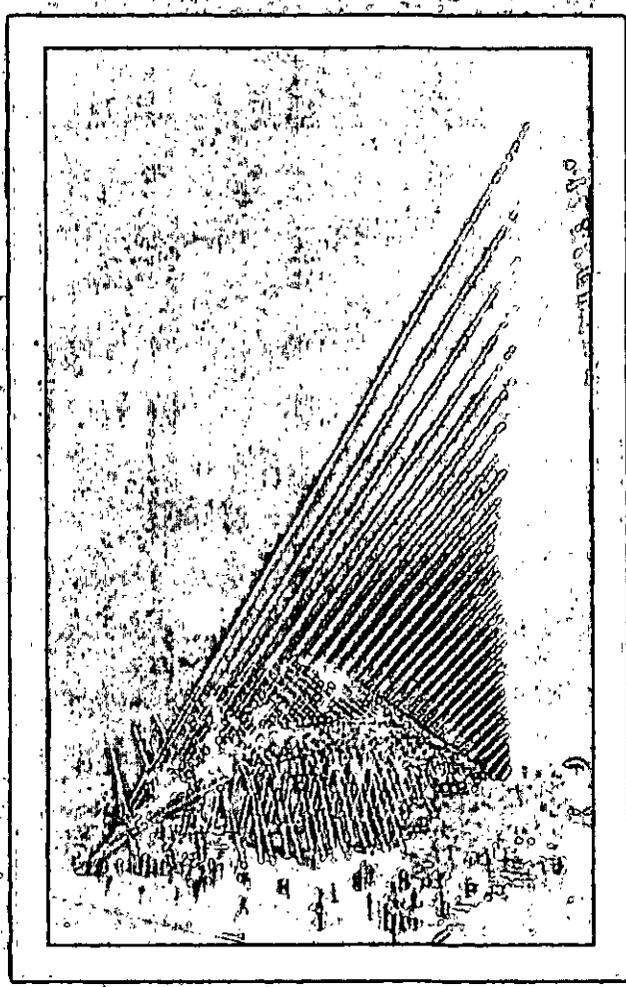
(attached)

Exhibit "B"



THE PORT AUTHORITY OF NY & NJ

Handbook for Protecting Security Information



NOVEMBER 1, 2004
REVISED-JULY 8, 2005

The Port Authority of New York and New Jersey Handbook for Protecting Security Information

Summary

This Security Program Handbook describes in detail The Port Authority of New York and New Jersey's (PANYNJ) requirement for the implementation and application of uniform security procedures regarding the identification, handling, care and storage of Confidential and Privileged Security Information belonging to the PANYNJ and Sensitive Security Information as identified in 49 CFR parts 15 and 1520. Confidential and Privileged Port Authority Security Information is information that, if subject to unauthorized access, modification, loss or misuse could adversely affect the PANYNJ, public safety and homeland security. Sensitive Security Information, in accordance with 49 U.S.C. 114(s), is information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would--

- Constitute an unwarranted invasion of privacy - including, but not limited to, information contained in any personnel, medical, or similar file)
- Reveal trade secrets or privileged or confidential information obtained from any person;
- Be detrimental to the security of transportation.

This handbook describes the requirements and other safeguards that are necessary to prevent unauthorized disclosure of both Confidential and Privileged Port Authority Security Information and Sensitive Security Information, and to control the authorized disclosure of this information for use internally within the Port Authority or when released by the Port Authority to outside entities.

The components of this Security Program Handbook are:

Security Manual - Establishes uniform procedures for identification, handling, receipt, care, and storage of Confidential and Privileged Security Information and Sensitive Security Information (SSI).

Access Control Guide - Establishes the basis for determining what type of information requires special handling and that which does not.

Non-Disclosure and Confidentiality Agreement -

Company Non-Disclosure and Confidentiality Agreement: As a condition of its providing confidential and privileged security information, the Port Authority is requiring those working on projects that require access to Port Authority Security Information / Sensitive Security Information, whether retained by it or by other contractors or consultants for its projects, to enter into this agreement, thereby acknowledging that they understand that it will be required to safeguard any such information provided, as well as its work product including conclusions of security assessments, evaluations and/or recommendations.

Individual Non-Disclosure and Confidentiality Agreement Acknowledgement: Acknowledges the agreement between the PANYNJ and those individuals provided access to Confidential and Privileged Port Authority Security Information / Sensitive Security Information, whereby the individual agrees to not disclose Confidential and Privileged Port Authority Security Information / Sensitive Security Information to any unauthorized person. . Additionally, this agreement informs the individual of (1) the trust that is placed in them by providing them access to this information; (2) their responsibility to protect this information from unauthorized disclosure. Port Authority employees with a "need to know" will be required to sign an agreement.

Security Information Practices and Procedures document (SIPP)

This supplemental document details the procedures outlined in the Security Handbook and applies them within a specific program. Users of the Security Handbook should contact the appropriate Security Information Manager to confirm that they are referencing the appropriate Security Information Practices and Procedures document.

**Procedures For Handling
Confidential And Privileged Security Information
and
Sensitive Security Information**

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SECTION 1. Introduction

This document establishes uniform procedures for the identification, handling, receipt, care, and storage of Confidential and Privileged Port Authority Security Information and Sensitive Security Information (SSI). This Manual prescribes requirements and other safeguards that are necessary to prevent unauthorized disclosure of this information and to control authorized disclosure of it when released by The Port Authority of New York and New Jersey (PANYNJ) to architects, engineers, consultants, contractors, subcontractors, suppliers, and others deemed necessary in order to design, bid on and subsequently complete the work or contract.

Each organization that requires access to Confidential and Privileged Port Authority Security Information / Sensitive Security Information shall appoint a senior management level employee to be the company's Security Information Manager. The role of the Security Information Manager is an important one. This person is responsible for implementing and maintaining the firm's PANYNJ Program For Protecting Confidential and Privileged Security Information / SSI. An alternate Security Information Manager shall also be appointed. The alternate will assume the responsibilities of the Security Information Manager in their absence.

SECTION 2. Access to Confidential and Privileged Security Information

To protect Confidential and Privileged Security Information / SSI, each organization that requires access to this information shall participate in the requisite confidentiality and non-disclosure agreements and provide PANYNJ approved training to any employees requiring access to this information.

The firm shall ensure that employees: (1) are citizens of the United States of America or an alien who has been lawfully admitted for permanent residence 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 Act¹; and (2) have the requisite need to know as defined in the Department of Transportation and the Department of Homeland Security's regulations on Protection of Sensitive Security Information²; and (3) have completed the PANYNJ Non-Disclosure and Confidentiality Agreement Acknowledgment. If an employee refuses to execute the acknowledgment, access to the protected information must be denied. The requirements set forth above regarding citizenship or permanent residency may be waived by the Port Authority and PATH as appropriate. This information will be reflected on the Authorized Personnel Project List, cribed below, that will be provided to the PANYNJ.

The dissemination must be included in any contract awarded that will require access to Confidential and Privileged Security Information / SSI.

The dissemination of Confidential and Privileged Security Information / SSI shall only be made upon the determination that the recipient is authorized to receive it. Authorization is based on a potential recipient's need-to-know as determined by the Security Information Manager and the proper execution of a PANYNJ Confidentiality Agreement Acknowledgement.

Confidential and Privileged Security Information / SSI includes proprietary data and/or other information that, if subject to unauthorized access, modification, loss or misuse could adversely affect the PANYNJ, public safety and homeland security.

SSI is, in accordance with 49 U.S.C. 114(s), information obtained or developed in the conduct of

¹ The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. 8 U.S.C. 1101(a)(22) (Dec 19, 2003)

² 49 CFR § 15.11; 49 CFR § 1520.11

security activities, including research and development, the disclosure of which TSA has determined would—

- Constitute an unwarranted invasion of privacy - including, but not limited to, information contained in any personnel, medical, or similar file
- Reveal trade secrets or privileged or confidential information obtained from any person;
- Be detrimental to the security of transportation.

The Security Information Manager from each organization that requires access to Confidential and Privileged Security Information is required to prepare an Authorized Personnel Contract Project List - a list of employees who are authorized to access Confidential and Privileged Security Information and the date they executed the Confidentiality/Non-Disclosure Agreement. A copy of this list will be provided to the PANYNJ. This list will be used as a method for authenticating that individuals have been briefed into the program and are certified for access to Confidential and Privileged Security Information.

Security requirements are a material condition of all PANYNJ contracts that will require access to Confidential and Privileged Security Information. Contracts shall be subject to termination for default, when it has been determined that a failure to comply with security requirements resulted from willful misconduct or a lack of good faith.

An individual's access to the Confidential and Privileged Security Information / SSI may be contingent upon satisfactory completion of a security background check and the imposition of satisfactory procedures and requirements for safeguarding.

Unauthorized disclosure of SSI may be grounds for a civil penalty and other enforcement or corrective action by DOT, and appropriate personnel actions for Federal employees. Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

When a person authorized access to safeguarded information becomes aware that the information has been released to unauthorized persons, the authorized person must promptly notify the Security Information Manager. In the case of SSI, the Security Information Manager

must immediately inform TSA or the applicable DOT or DHS component or agency of the breach.

SECTION 3. Security Training & Briefings

Each organization that provides an employee with access to Confidential and Privileged Security Information shall provide training and briefings appropriate to their involvement.

Training Materials

Sample briefings and training materials may be requested from the PANYNJ.

Security Information Manager Training

The role of the Security Information Manager is critical. The Security Information Manager is responsible for implementing and maintaining the facility's PANYNJ Security Program. The Security Information Manager is responsible for educating employees on the handling of Confidential and Privileged Security Information / SSI. Security Information Managers are required to complete a half-day training session. Training requirements shall be based on the company's involvement with Confidential and Privileged Security Information and may include an orientation course. Security Information Manager training will also include a detailed explanation of the process for qualifying an individual's credentials for access. The PANYNJ is responsible for providing an initial security briefing to the Security Information Manager.

Initial Security Briefings

Prior to being granted access to Confidential and Privileged Security Information / SSI, an employee will receive an initial security briefing that includes the following:

- a. An explanation of security procedures applicable to the employee's job.
- b. An overview of the security categorization.

After receiving this briefing and prior to being granted access to any Confidential and Privileged Security Information the employee must execute a PANYNJ Non-Disclosure and Confidentiality Agreement Acknowledgement. If an employee refuses to execute the agreement, access to Confidential and Privileged Security Information must be denied.

Refresher Training

Employees granted access to Confidential and Privileged Security Information shall be provided with some form of PANYNJ approved security education and training annually. Refresher training shall reinforce the information provided during the initial security briefing and shall keep employees informed of any changes in security regulations.

SECTION 4. Safeguarding Confidential and Privileged Security Information

All persons granted access to Confidential and Privileged Security Information / SSI are responsible for safeguarding all such information in their possession or control. Confidential and Privileged Security Information / SSI shall be protected at all times either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. *Each person who works with Confidential and Privileged Security Information is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.*

Use and storage

During actual working hours, steps shall be taken to preclude access to Confidential and Privileged Security Information / SSI by unauthorized personnel. Before or after actual working hours, Confidential and Privileged Security Information / SSI shall be stored in an environment with password protection or in a secure container such as a safe, locked desk or file cabinet.. Only authorized individuals are permitted access to the locks combination or to the locks key. A list should be maintained as to which individuals have access to which container. It is strongly suggested that more than one employee has access to each storage container. Authorized individuals must protect combinations and keys.

Reproduction

Confidential and Privileged Security Information / SSI may be reproduced to the minimum extent necessary - consistent with the need to carry out contract performance provided that the reproduced material is marked and protected in the same manner as the original material. Authorized individuals must accomplish all reproduction. Authorized service providers may be used for this task provided that the information remains safeguarded.

Disposal of information

When Confidential and Privileged Security Information is no longer needed it shall be disposed of by any method that prevents unauthorized retrieval. All paper products will be destroyed using a crosscut shredder at a minimum. Authorized individuals must perform the destruction. Authorized service providers may be used for this task provided that the information remains safeguarded until the destruction is completed.

Transmission and Shipment of Confidential and Privileged Security Information

Confidential and Privileged Security Information may be sent via the U.S. Postal Service or express mail services (e.g. FEDEX) provided it is packaged and sealed in a way that does not disclose its contents or the fact that it is Confidential and Privileged Security Information. All packages shall be sealed in a manner that easily identifies whether the package has been opened prior to delivery to the final consignee. The use of double wrapped package or a tamper resistant envelope may be used to fulfill this requirement.

In addition, the package must be addressed to an individual whose name appears on the Authorized Personnel Contract Project List or preferably to the Security Information Manager.

Security Information Access Control Guides

The PANYNJ is responsible for providing Security Program participants with the Security Information Access Control Guides needed during the performance of the contract.

The Security Information Access Control Guide identifies the types of Security Information that will require protection. It is each organization's responsibility to understand and apply all aspects of this guide. Security information Access Control Guidance is the exclusive responsibility of the PANYNJ, and the final determination of the appropriate categorization for the information rests with the PANYNJ.

If the PANYNJ does not advise to the contrary, a firm must return all Confidential and Privileged Information in its possession to the PANYNJ upon completion of a contract. If instead, the firm chooses to dispose of the information it must follow the destruction requirements identified in this manual. The contractor shall provide a written list/certification that all Confidential and Privileged Security Information has been properly destroyed. If the PANYNJ determines that a firm has a continuing need for the Confidential and Privileged Information a letter will be issued to show the authorized retention period and to provide final disposition instructions.

SECTION 5. Markings

Marking of Confidential and Privileged Security Information:

All documents, drawings, etc. that contain Confidential and Privileged Security Information / SSI must contain protective markings. In addition, the front page (or front and back cover if appropriate) shall be marked at the top and bottom of the page. In the case of Port Authority Confidential and Privileged Security Information, the protective marking is: **CONFIDENTIAL AND PRIVILEGED SECURITY INFORMATION**. A 16-point font size should be used for this marking. All copies of Confidential and Privileged Security Information / SSI documents shall also bear the required markings.

Interior pages of a document shall be conspicuously marked or stamped at the top and bottom with the category of the information appearing thereon. The document may be conspicuously marked or stamped Confidential and Privileged Security Information / SSI at the top and bottom of each interior page, when the particular information to which protection is assigned is adequately identified.

Interior pages of a document shall be conspicuously marked or stamped at the top and bottom with the category of the information appearing thereon. Alternatively, the document may be conspicuously marked or stamped Confidential and Privileged Security Information / SSI at the top and bottom of each interior page, when necessary to achieve production efficiency, and the particular information to which protection is assigned is adequately identified. Portions of this document shall be marked in a manner that eliminates doubt as to which of its parts contain or reveal Confidential and Privileged Security Information or SSI.

Sets of documents large enough to be folded or rolled shall be marked so that the marking is visible on the outside of the set when it is rolled or folded. In addition, all sensitive project information shall contain the following label on the front cover, title sheet or first page (for Confidential and Privileged Security Information plans and drawings the label shall be applied to each drawing):

"WARNING": This document is the property of the PANYNJ. Further reproduction and/or distribution outside the contract team is prohibited without the express written approval of:

The Port Authority of NY & NJ

In the case of paper records containing SSI, protective markings must be conspicuously placed on the top, and the distribution limitation statement on the bottom, of the outside of any front and back cover, including a binder cover or folder, if the document has a front and back cover; any title page; and each page of the document. The protective marking is: **SENSITIVE SECURITY INFORMATION**. A 16-point font size should be used for this marking.

The distribution limitation statement is:

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520. . An 8-point font size should be used for this marking.

In the case of non-paper records that contain SSI, including motion picture films, videotape recordings, audio recording, and electronic and magnetic records, a covered person must clearly and conspicuously mark the records with the protective marking and the distribution limitation statement such that the viewer or listener is reasonably likely to see or hear them when obtaining access to the contents of the record.

SECTION 6. Authorized Personnel Project Lists: Team Rosters

Each organization that participates on a contract that involves Confidential and Privileged Security Information will prepare an Authorized Personnel Project List. The list will include:

- Firm's name and address
- Name and contact information for the firm's Security Information Manager and Alternate
- A list of employees authorized to access Confidential and Privileged Security Information and the date they signed the Confidentiality/Non-Disclosure Agreement Acknowledgement

A copy of this list will be provided to the PANYNJ. Additional copies of this list will be provided to other companies authorized access, which the firm will interact with during the performance of the contract. This list will be used as a method for authenticating that individuals are authorized access to Confidential and Privileged Security Information. The PANYNJ needs to be notified immediately of any/all changes to key personnel on the roster. Each organization's Security Information Manager is responsible for the accuracy of this list. If an individual's name does not appear on the list they will be denied any access to Confidential and Privileged Security Information.

SECTION 7. Document Accountability

Each organization that has Confidential and Privileged Security Information / SSI in its possession will have in place a system that will account for the material in such a manner that retrieval is easily accomplished at the contract's conclusion. The accountability log must include:

- The date that a document was received or created
- The identity of the sender or creator
- A very brief description of the document
- Number of copies
- Transmission history (sent to whom, when)
- Certification that the document has been destroyed or returned to the
PANYNJ

SECTION 8. Information Technology Systems

Information systems that are used to electronically capture, create, store, process or distribute Confidential and Privileged Security Information must be managed to protect against unauthorized disclosure. Protection requires a balanced approach to include but not limited to operational (software security controls), physical and personnel controls.

The main objectives are to

- Restrict access to authorized users exclusively
- Compartmentalization of all Confidential and Privileged Security Information
- Complete removal of all Confidential and Privileged Security Information from the system when it is no longer needed

Each contractor and consultant will provide the PANYNJ with an Information Technology Systems Protection Plan for approval. The Protection Plan should describe the measures that the firm will apply to accomplish the objectives stated above.

The plan should include:

- A hardware baseline description and configuration diagram
- Software list
- Procedures for restricting access to authorized users exclusively
- Procedures used for compartmentalizing all Confidential and Privileged Security Information
- Procedures used to place system into and remove from "protected" mode
- Procedures used for removal of Confidential and Privileged Security Information

All electronic exchange of Confidential and Privileged Security Information / SSI must be accomplished using a project web site with centrally managed access control on a per individual basis with encrypted transfer.

SECTION 9. Bidding & Procurement

Confidential and Privileged Security Information that is provided under a solicitation is subject to the handling requirements for Confidential and Privileged Security Information identified in this manual.

Dissemination of Confidential and Privileged Security Information shall only be made upon the determination that the recipient is authorized to receive it. The measure for determining authorization is "need-to-know" and completion of a PANYNJ Confidentiality Agreement. This includes all persons or firms necessary to do work at the request of the PANYNJ such as architects and engineers, consultants, contractors, sub-contractors, suppliers, and others that the contractor deems necessary in order to submit an offer/bid or to complete the work or contract. It is the responsibility of the person or firm disseminating the information to assure that the recipient is an authorized user and to keep records of recipients.

The contractor shall provide a written list/certification that he and his subcontractors have properly disposed of all Confidential and Privileged Security Information after Contract award, after completion of any appeals process or completion of the work.

Section 10. Security Information Access Control Guide

The following are the basis for categorization of information and material involved in design, development, construction and/or maintenance contracts for PANYNJ projects.

Authority

The uniform procedures for categorization and/or control of Confidential and Privileged Port Authority Security Information related to architecture, engineering, construction, or rehabilitation of Port Authority facilities are issued under the authority of the Port Authority of NY&NJ.

Standards

Construction of security systems often requires that an exact standard be met or exceeded in order to insure that the security system will function properly. Drawings, details, and specification books are to indicate materials to be used, as well as any other information necessary to construct the system. They are not to indicate that the type of construction shown meets a security standard, or to contain any reference to the limits or capabilities of the type of construction/security system. This information will only be contained or referred to in the detailed Statement of Work.

Applicability

This guide applies to PANYNJ personnel, as well as to firms and individuals who are under contract, purchase order, letter contract, or who are in receipt of Confidential and Privileged Security Information through a request for quote, proposal, bid, or third party agreement.

All users of this guide are encouraged to assist in improving and maintaining its currency and accuracy.

Public Release

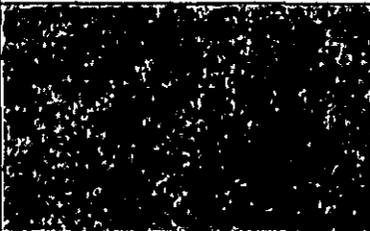
The fact that this section defines certain information as UNMARKED does not allow automatic public release of this information. Proposed public disclosures of UNMARKED Information regarding construction/renovation shall be processed through Port Authority's project manager or the duly designated representatives for the specific contract.

Contractual Release

Contractors are responsible to the PANYNJ for all Confidential and Privileged Security Information drawings, including shop drawings, or other documentation provided to subcontractors.

Security Information Access Control Guide

Information constituting Confidential and Privileged Security Information and UNMARKED.

| Topic | Categorization | Remarks |
|--|--------------------------------------|---|
| Any mention of information that reveals vulnerabilities, built-in or potential, relating to our critical infrastructure. | CONFIDENTIAL & PRIVILEGED |  |
| That a facility is designed with extensive security features. | UNMARKED |  |
| Identity of individual security systems installed at the facility. | CONFIDENTIAL & PRIVILEGED |  |
| Time frame or schedules showing project progress. | UNMARKED |  |
| The general areas of the project or where security systems will be installed. | UNMARKED |  |
| Announcement of security subcontract awards. | UNMARKED |  |
| Results of site survey documentation or review that address specific physical security vulnerabilities. | CONFIDENTIAL & PRIVILEGED | When referring to specific terrorist threats and/or the specific capabilities of the installation to counter the threat, or when referring to site-unique technical threat. |
| Design and construction information revealing details unique or essential to the | UNMARKED | UNMARKED when referring to commercially available security systems, accepted |

| | | |
|---|---|--|
| security system(s). | CONFIDENTIAL & PRIVILEGED | construction techniques, information which is in the public domain and/or when security systems will be installed in area accessible to public view. CONFIDENTIAL & PRIVILEGED when referring to methods of defeating the security system(s) and/or covert/unexposed security systems. |
| Design drawings with specific forced entry ratings | CONFIDENTIAL & PRIVILEGED | |
| Shop drawings that provide specific rating information | CONFIDENTIAL & PRIVILEGED | |
| What specific security system/hardware model number is installed at a specific location? | CONFIDENTIAL & PRIVILEGED | When referring to fire safety systems, access denial systems, intrusion detection systems, core area security systems, and in-place surreptitious entry verification systems. |
| Details concerning overall security system(s) or individual subsystem(s), including design, engineering, construction, and fabrication. Also includes capabilities, vulnerabilities diagrams, operational | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED when data is commercially available in the public domain. CONFIDENTIAL & PRIVILEGED when high technology data, which was |

| | | |
|--|---|---|
| characteristics, and support requirements. | | developed by or for the PANYNJ, is revealed; or when data is site specific or concerns core area systems. |
| Security system effectiveness, to include range, maneuverability, resolutions, accuracy, and readiness cycle. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED when the information is commercially available or in the public domain. CONFIDENTIAL & PRIVILEGED when the system was developed or modified for or by the PANYNJ; or when the information concerns a specific special application. |
| Information identifying critical elements of the system; such as master controls, overrides, backup power sources. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED If equipment is readily observable to the public. CONFIDENTIAL & PRIVILEGED when an element has been developed and/or modified by or for the PANYNJ for a special application; or when such elements are not readily observable by the public. |
| Security systems command and control operating instructions and supporting | CONFIDENTIAL & PRIVILEGED | |

| | | |
|--|---|--|
| countermeasures when referring to a specific site or project location. | | |
| Blast protection design requirements for new or existing PANYNJ facilities. | CONFIDENTIAL & PRIVILEGED | |
| Blast analysis that addresses specific vulnerabilities to new or existing PANYNJ facilities. | CONFIDENTIAL & PRIVILEGED | If specific weaknesses are reflected or maximum tolerances are provided. |
| Structural plans, details, and specifications. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED when generic criteria are used. Site-specific information generated from generic criteria is UNMARKED . CONFIDENTIAL & PRIVILEGED if site-specific information involves details of security system(s) or additional protection. |
| Design data revealing engineering, construction, or fabrication details of a <i>Communications Center</i> electrical system or facility support systems with signal cables (e.g., intercom, telephone). This includes grounding systems. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED if generic design criteria/terms are used. CONFIDENTIAL & PRIVILEGED if data reflects calculations resulting in selection of specific items to be used inside a specific <i>Communications Center</i> and/or listing of those items. |
| Drawings and specifications for | CONFIDENTIAL & | CONFIDENTIAL & |

| | | |
|---|--------------------------------------|---|
| emergency generator room or building. | PRIVILEGED | PRIVILEGED if site-specific or if any reference to control or security system. |
| What vulnerabilities will render the electrical and communications system(s) inoperative. | CONFIDENTIAL & PRIVILEGED | |
| Record documents identifying protective measures around Operations & Control Centers | CONFIDENTIAL & PRIVILEGED | |
| Record documents identifying the location of Police and Emergency Communication Lines | CONFIDENTIAL & PRIVILEGED | |

INFORMATION CONSTITUTING SSI

Except as otherwise provided in writing by TSA, in the interest of public safety or in furtherance of transportation security, the following information, and records containing such information, constitute SSI:

| | | |
|---|-------------------|--|
| <p>Security Programs and Contingency Plans</p> | <p>SSI</p> | <p>Any security program or security contingency plan issued, established, required, received, or approved by DOT or DHS, including--</p> <p>Any aircraft operator or airport operator security program or security contingency plan under this chapter;</p> <p>Any vessel, maritime facility, or port area security plan required or directed under Federal law;</p> <p>Any national or area security plan prepared under 46 U.S.C. 70103; and</p> <p>Any security incident response plan established under 46 U.S.C. 70104.</p> |
| <p>Security Directives</p> | <p>SSI</p> | <p>Any Security Directive or order--</p> <p>(i) Issued by TSA under 49 CFR 1542.303, 1544.305, or other authority;</p> <p>(ii) Issued by the Coast Guard under the Maritime Transportation Security Act, 33 CFR part 6, or 33 U.S.C. 1221 et seq. related to maritime security; or</p> <p>(iii) Any comments, instructions, and implementing guidance pertaining thereto.</p> |
| <p>Information Circulars</p> | <p>SSI</p> | <p>Any notice issued by DHS or DOT regarding a threat to aviation or maritime transportation, including any--</p> |

| | | |
|-----------------------------------|------------|---|
| | | <p>(i) Information Circular issued by TSA under 49 CFR 1542.303, 1544.305, or other authority; and</p> <p>(ii) Navigation or Vessel Inspection Circular issued by the Coast Guard related to maritime security.</p> |
| Performance Specifications | SSI | <p>Any performance specification and any description of a test object or test procedure, for--</p> <p>Any device used by the Federal government or any other person pursuant to any aviation or maritime transportation security requirements of Federal law for the detection of any weapon, explosive, incendiary, or destructive device or substance; and</p> <p>Any communications equipment used by the Federal government or any other person in carrying out or complying with any aviation or maritime transportation security requirements of Federal law.</p> |
| Vulnerability Assessments | SSI | Any vulnerability assessment directed, created, held, funded, or approved by the DOT, DHS, or that will be provided to DOT or DHS in support of a Federal security program. |

| | | |
|---|-------------------|--|
| <p>Security Inspection or Investigative Information.</p> | <p>SSI</p> | <p>Details of any security inspection or investigation of an alleged violation of aviation or maritime transportation security requirements of Federal law that could reveal a security vulnerability, including the identity of the Federal special agent or other Federal employee who conducted the inspection or audit.</p> |
| | <p>SSI</p> | <p>In the case of inspections or investigations performed by TSA, this includes the following information as to events that occurred within 12 months of the date of release of the information: the name of the airport where a violation occurred, the airport identifier in the case number, a description of the violation, the regulation allegedly violated, and the identity of any aircraft operator in connection with specific locations or specific security procedures. Such information will be released after the relevant 12-month period, except that TSA will not release the specific gate or other location on an airport where an event occurred, regardless of the amount of time that has passed since its occurrence. During the period within 12 months of the date of release of the information, TSA may release summaries of an aircraft operator's, but not an airport operator's, total security violations in a specified time range without identifying specific violations or locations. Summaries may include total enforcement actions, total proposed civil penalty amounts, number of cases opened, number of cases referred to TSA or FAA</p> |

| | | |
|---------------------------------------|------------|--|
| | | counsel for legal enforcement action, and number of cases closed. |
| Threat Information | SSI | Any information held by the Federal government concerning threats against transportation or transportation systems and sources and methods used to gather or develop threat information, including threats against cyber infrastructure. |
| Security Measures | SSI | <p>Specific details of aviation or maritime transportation security measures, both operational and technical, whether applied directly by the Federal government or another person, including—</p> <p>Security measures or protocols recommended by the Federal government;</p> <p>Information concerning the deployments, numbers, and operations of Coast Guard personnel engaged in maritime security duties and Federal Air Marshals, to the extent it is not classified national security information; and</p> <p>Information concerning the deployments and operations of Federal Flight Deck Officers, and numbers of Federal Flight Deck Officers aggregated by aircraft operator.</p> |
| Security Screening Information | SSI | The following information regarding security screening under aviation or maritime transportation security requirements of Federal law: |

| | | |
|---|-------------------|---|
| | | <p>Any procedures, including selection criteria and any comments, instructions, and implementing guidance pertaining thereto, for screening of persons, accessible property, checked baggage, U.S. mail, stores, and cargo, that is conducted by the Federal government or any other authorized person.</p> <p>Information and sources of information used by a passenger or property screening program or system, including an automated screening system.</p> <p>Detailed information about the locations at which particular screening methods or equipment are used, only if determined by TSA to be SSI.</p> <p>Any security screener test and scores of such tests.</p> <p>Performance or testing data from security equipment or screening systems.</p> <p>Any electronic image shown on any screening equipment monitor, including threat images and descriptions of threat images for threat image projection systems.</p> |
| <p>Security Training Materials</p> | <p>SSI</p> | <p>Records created or obtained for the purpose of training persons employed by, contracted with, or acting for the Federal government or another person to carry out any aviation or maritime transportation security measures required or recommended by DHS or DOT.</p> |

| | | |
|--|-------------------|---|
| <p>Identifying Information of Certain Transportation Security Personnel</p> | <p>SSI</p> | <p>Lists of the names or other identifying information that identify persons as—</p> <p>Having unescorted access to a secure area of an airport or a secure or restricted area of a maritime facility, port area, or vessel or;</p> <p>Holding a position as a security screener employed by or under contract with the Federal government pursuant to aviation or maritime transportation security requirements of Federal law, where such lists are aggregated by airport;</p> <p>Holding a position with the Coast Guard responsible for conducting vulnerability assessments, security boardings, or engaged in operations to enforce maritime security requirements or conduct force protection;</p> <p>Holding a position as a Federal Air Marshal; or the name or other identifying information that identifies a person as a current, former, or applicant for Federal Flight Deck Officer.</p> |
| <p>Critical Aviation or Maritime Infrastructure Asset Information</p> | <p>SSI</p> | <p>Any list identifying systems or assets, whether physical or virtual, so vital to the aviation or maritime transportation system that the incapacity or destruction of such assets would have a debilitating impact on transportation security, if the list is—</p> <p>Prepared by DHS or DOT; or Prepared by a State or local government agency and submitted by the agency to DHS or DOT.</p> |
| <p>Systems Security Information</p> | <p>SSI</p> | <p>Any information involving the security of</p> |

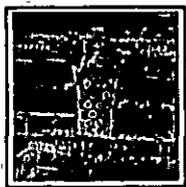
| | | |
|--|------------|--|
| | | operational or administrative data systems operated by the Federal government that have been identified by the DOT or DHS as critical to aviation or maritime transportation safety or security, including automated information <i>security procedures and systems</i> , security inspections, and vulnerability information concerning those systems. |
| Confidential Business Information | SSI | <p>Solicited or unsolicited proposals received by <i>DHS or DOT</i>, and negotiations arising there from, to perform work pursuant to a grant, contract, cooperative agreement, or other transaction, but only to the extent that the subject matter of the proposal relates to aviation or maritime transportation security measures;</p> <p>Trade secret information, including information required or requested by regulation or Security Directive, obtained by DHS or DOT in carrying out aviation or maritime transportation security responsibilities; and Commercial or financial information, including information required or requested by regulation or Security Directive, obtained by DHS or DOT in carrying out aviation or maritime transportation security responsibilities, but only if the source of the information does not customarily disclose it to the public.</p> |
| Research and Development | SSI | Information obtained or developed in the <i>conduct of research related to aviation or maritime transportation security activities</i> , where such research is approved, accepted, funded, recommended, or directed by the DHS |

| | | |
|--------------------------|------------|---|
| | | or DOT, including research results. |
| Other Information | SSI | Any information not otherwise described in this section that TSA determines is SSI under 49 U.S.C. 114(s) or that the Secretary of DOT determines is SSI under 49 U.S.C. 40119. Upon the request of another Federal agency, TSA or the Secretary of DOT may designate as SSI information not otherwise described in this section. |



Appendix I.

**The Protection of
Confidential and Privileged Security Information
and
Sensitive Security Information**

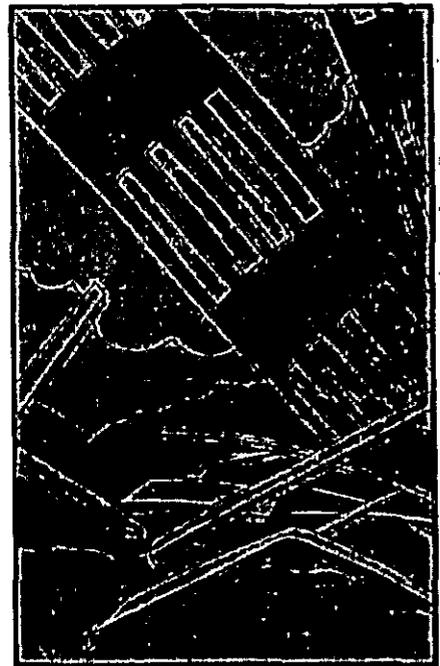


The Need

World events force changes in the way we live and conduct business.

U.S. Department of Homeland Security:

"The significance of protecting sensitive information cannot be ignored. The protection of critical infrastructure reduces the vulnerability of the United States to acts of terrorism."



Introduction



Port Authority Confidential and Privileged Security Information Sensitive Security Information

sensitive information that the disclosure of which, would be detrimental to the public interest and might compromise public safety and security as it relates to Port Authority property, facilities, systems, and / or operations

information that reveals vulnerabilities relating to infrastructure / operations / fire & life safety

What are we protecting?

The Goal of the Program

The goal of the program is to implement uniform procedures for handling the Port Authority's Confidential and Privileged Security Information.

Trying to get everyone
on the same page.

The Main Components of the Program

- Security Manual
- Access Control Guide
- Non-Disclosure Agreement

Integration

Security Manual: establishes procedures for ...

- Use and storage
- Reproduction
- Transmission/Shipment of Sensitive Information
- Disposal of information
- Marking of Sensitive Material
- Team Rosters
- Document Accountability Log
- Information Technology Systems

Handling Requirements

Practically Speaking ...

What information do we protect?

&

How do we protect it?

What do I need to do?

The Security Manual: establishes procedures for ...

- **Use and storage**

During working hours, steps shall be taken to prevent access to Confidential and Privileged Security Information by unauthorized personnel.

When not in use it will be stored in a secure container, such as a safe, locked desk or file cabinet.

- **Reproduction**

Information copied from a document must contain the same protective markings as the original.

The Security Manual: establishes procedures for ...

- **Team Roster**

Each company will prepare an Authorized Personnel Team Roster, a list of individuals who have executed a Confidentiality Agreement Acknowledgement and require access.

These lists will be exchanged among the project team.

- **Transmission & Shipment**

Security Information may be sent via the U.S. Postal Service provided it is packaged in a way that doesn't disclose its contents or the fact that it is Confidential and Privileged.

The package must be addressed to someone on the Team Roster.

The Security Manual: establishes procedures for ...

- **Disposal of Security Information**

Security Information must be disposed of using a method that prevents unauthorized retrieval.

All paper products will be destroyed using a cross cut shredder.

- **Marking of Security Information**

All documents and drawings that contain Confidential and Privileged Security Information or Sensitive Security Information must be marked or stamped.

Access Control Guide: Which Information Gets Protected?

Identifies the information within a contract that is designated Confidential and Privileged Security Information or Sensitive Security Information (SSI).

Only information within a contract is Confidential and Privileged Security Information or SSI and requires special handling.

Identification

Access Control Guide: Examples of the types of information to be protected?

- Design Requirements and Calculations for Blast Protection
- Design Drawings with Specific Forced Entry Ratings
- Specifications for Sensitive Contractor Design Items
- Shop Drawings that provide Specific Rating Information
- *Record Documents Identifying Protective Measures around Operations & Control Centers*
- Record Documents identifying the Location of Police and Emergency Communication Lines

Which information?

Confidentiality Agreement

Non-Disclosure and Confidentiality Agreement:

As a condition of its providing confidential and privileged security information, the Port Authority is requiring those working on projects that require access to Port Authority Security Information / Sensitive Security Information, whether retained by it or by other contractors or consultants for its projects, to enter into this agreement, thereby acknowledging that they understand that it will be required to safeguard any such information provided, as well as its work product including conclusions of security assessments, evaluations and/or recommendations.

Individual Acknowledgement:

Acknowledges the agreement between the PANYNJ and those individuals provided access to Confidential and Privileged Port Authority Security Information / Sensitive Security Information, whereby the individual agrees to not disclose Confidential and Privileged Port Authority Security Information / Sensitive Security Information to any unauthorized person.

The Security Information Manager

The Security Information Manager is responsible for implementing and maintaining the PANYNJ Program for protecting Security Information.

Each organization that requires access to this information will appoint a senior management level employee to be the their Security Information Manager and an alternate.

Key point of contact

Security Violations

Security requirements are a material condition of all PANYNJ contracts that deal with Confidential and Privileged Security Information. Contracts shall be subject to termination for default, when it has been determined that a failure to comply with security requirements resulted from willful misconduct or a lack of good faith.

Unauthorized disclosure of SSI may be grounds for a civil penalty and other enforcement or corrective action by DOT.

Failure to comply

Next Steps

- Non-Disclosure & Confidentiality Agreement / Acknowledgement
- The Security Manual / Access Control Guide
- Selection of a Security Information Manager
- Briefings & Training

Implementation

Exhibit "C"

**World Trade Center Construction Department
Downtown Restoration Program
Port Authority Projects* at the WTC Site**

Security Information Practices and Procedures (SIPP)

November 1, 2004, Rev 0
August 4, 2005, Revision 1
April 11, 2007, Revision 2

** Note: Does not apply to third party exclusive projects such as Memorial, Tower 2,
Tower 3, and Tower 4.*

The Port Authority of New York and New Jersey
Security Information Practices and Procedures (SIPP)
WTC Transportation Hub

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(Per the Handbook for Protecting Security Information, April, 2007)

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| 3. Security Training & Briefings | (not included) |
| 4. Safeguarding Security Information | 3 |
| 5. Marking Documents | 5 |
| 6. Authorized Personnel Project Lists | (not included) |
| 7. Document Accountability Log | (not included) |
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| 10. <i>Security Access Control Guide</i> | 8 |

SECTION 1. Introduction

The sections of this document augment the corresponding sections of the Handbook for *Protecting Security Information (April, 2007)* when applied to PA projects at the WTC site. All sections of the Handbook are listed below, if a particular section of the Handbook will be complied with as written, that section is noted here as 'not included'. Where a section is being augmented, the following text provides the additional procedures to be complied with.

SECTION 2. Access to Security Information

The requirements set forth regarding citizenship or permanent residency may be waived by the Port Authority and PATH as appropriate. The waiver shall be in writing and must have the approval of the Director of World Trade Center Construction. In such cases, access to and the handling of Confidential and Privileged Information (C&P) and / or Sensitive Security Information (SSI) will be in accordance with all requirements and conditions otherwise set forth in the handbook and applicable federal laws and regulations. In addition, depending on the circumstances of the requested waiver, additional information security safeguards may be imposed to ensure the full intent of this policy remains in force.

SECTION 3. Security Training & Briefings, not included

SECTION 4. Safeguarding Security Information

All persons granted access to C&P/ SSI are responsible for safeguarding all such information in their possession or control. C&P/ SSI information shall be protected at all times either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with C&P/ SSI information is personally responsible for taking proper precautions to prevent unauthorized persons from gaining access to such information.

This work instruction is intended to describe the processes used to control secure documents/ data in the form of either electronic or hard copy, and is to be implemented for the control/ processing/ handling/ storage of all secure data as generated, received, or distributed by the Project design staff.

Use and Storage

The person to whom it is assigned must maintain any hard copy C&P/ SSI data. Assignment of individual documents to appropriate staff members is made only by the Security Information Manager (SIM), or the Deputy Security Information Manager (DSIM), and marked using access control methods (see Section 5). Individuals to whom such information is assigned may only review/ share the contents of such documents with appropriate staff, i.e., those who have signed the project's Non-Disclosure Acknowledgement (NDA) form.

Access to any secure data storage / workrooms will be controlled by the SIM. Such secure data storage/ workrooms will be locked at all times. Secure data file cabinets will be locked at the end of each workday.

Reproduction

C&P/ SSI documents may be reproduced to the minimum extent necessary – consistent with the need to carry out contract performance provided that the reproduced material is marked and protected in the same manner as the original material.

Hard copy secure data may not be reproduced without the permission of the SIM. Reproduction of secure documents may be performed / witnessed only by appropriate staff who have signed the project's NDA.

Transmission and Shipment of Confidential and Privileged Security Information

Hard copy secure data may be sent through the U.S. Postal Service, express mail service (e.g. DHL) or inter-office courier, provided that it is double wrapped/ boxed. Preparation of such packages must be performed by, or witnessed by appropriate staff who have signed the project's NDA. Packaging labeling shall not indicate the security level of the contents.

All packages must have a specific individual "recipient" named on the shipping label. The individual "recipient" named on the shipping label must appear on the Authorized Personnel Contract Project List, or preferably be the SIM for that respective entity.

Document Control

For a description of the Document Control Tracking System for C&P/ SSI Information, please refer to Section 5.

Secure Data Disposal

Any C&P/ SSI data that is no longer needed is to be destroyed by either depositing into a locked shredding bin awaiting pick-up by an authorized service provider or by use of a cross cut shredder, by appropriate staff. A record of hard copy CP/ SSI information that has been destroyed must be maintained in the Accountability Log by the SIM, DSIM or other appropriate staff.

Note: A consultant/ contracting firm must return all C&P/ SSI information in its possession to the Port Authority (the Authority) upon completion of a contract. If instead, the firm is permitted by the SIM to dispose of the information, it must follow the destruction requirements identified in this manual. The firm must provide a written list to the SIM certifying that all C&P/ SSI information has been properly destroyed.

SECTION 5. Marking Documents

The Document Control tracking System for C&P/ SSI Documents is as follows:

Identification

Documents that have been identified by the SIM as C&P, will be given sequential numbers with the prefix 'CP' (Confidential & Privileged), followed by an acronym for the transmitting department, in this example, PCP (Priority Capital Programs). Next, the current year will be represented by its last two digits, and the last number is sequential. Together, these fields form the Document Control ID number. E.g. CP-PCP-05-1

Transmitting Documents

The SIM must have a completed and signed NDA for all recipients of C&P/ SSI information.

A Transmittal Acceptance Form must accompany all outgoing documents. This Form must be signed by the recipient upon receipt, and returned to the SIM.

When a request to transmit a set of C&P/ SSI documents to an individual (the "Recipient") is made by appropriate staff, the document, if not previously assigned a Document Control ID number, is given one by the SIM. An identifying number is assigned once a transmittal request is made.

For example, CP-PCP-05-1 would be assigned to a document, followed by the identifying sequential number '1', which would indicate the copy assigned to the addressee. The Document Control ID number (CP-PCP-05-1), in addition to the Identifier (1), becomes the Document Tracking Number. e.g. CP-PCP-05-1-1

| | |
|---|--|
| Confidential and Privileged | |
| Document Control #: | |
| Identifier: | |
| Agency: | |
| Recipient: | |
| Transmittal Approved by: | |
| Date: | |
|  THE FIRST AUTHORITY OF N.Y. & N.J. | |

The image above will be placed on the document as to not obstruct information on the document.

If more than one copy of document CP-PCP-05-1 is to be transmitted, each addressee will receive a copy with the next sequential identifying number, making it a unique set. A

second addressee would receive document CP-PCP-05-1-2, a third party's copy would be CP-PCP-05-1-3, etc. This information, including the name of the agency, recipient, signature of the responsible approver, and date, are shown on the face of each confidential document.

Multiple Copies

If a single recipient is receiving multiple copies of a C&P/ SSI document, each copy would have a unique sequential identifying number. The Document Control ID number refers to a specific document and remains the same. In this example, the next document to be transmitted would be CP-PCP-05-2, followed by CP-PCP-05-3.

SECTION 6. Authorized Personnel Project Lists, not included

SECTION 7. Document Accountability Log, not included

SECTION 8. Information Technology Systems

Purpose

Information systems that are used to electronically capture, create, store, process or distribute C&P/ SSI information must be managed to protect against unauthorized disclosure. The main objectives are to:

- Provide access exclusively to appropriate staff.
- Compartmentalization of all C&P/ SSI security information
- Complete removal of all C&P /SSI information from the system when it is no longer needed.

This work instruction is intended to describe the processes used to control secure electronic data, and is to be implemented for the control / processing / handling / storage of all secure electronic data as generated, received, or distributed by the WTC Transportation Hub project staff.

Transmission/ Exchange of Electronic Information

The Authority uses Livelink as its project and program website solution to collaborate with team members both inside and outside of the firewall. The use of a web-based collaboration tool has numerous benefits that result in time- savings, cost savings, accountability, security, and disaster recovery. Within the Authority, the Downtown Restoration Program (DRP), the Security Capital Program, and the Goethals Bridge Program utilize Livelink, as do numerous smaller projects.

Access to these password-protected websites is controlled by permissions that apply to each individual user account. In this manner, users are allowed access folders and files in Livelink only when approved by the Project or Program Manager. Once users are logged in to the Livelink website they are working in a secure environment.

With these measures in place, as described in the Security Handbook, the PA has deemed that "all electronic exchange of C&P/ SSI must be accomplished using a project website with centrally managed access control on a per individual basis with encrypted transfer". For the DRP, the Livelink website is the only project website to be used for the storage and/or electronic exchange of C&P/SSI information. Under no circumstances shall e-mail or other websites be used for this purpose.

Although the entire DRP Website is secure, in order to provide for better organization and auditing of files that contain C&P/ SSI, special containers have been created. Information that has been designated as C&P and/ or SSI may only reside in these areas. Initially these containers have been created in the Stage II Drawing Exchange individual *discipline folders*, with one C&P/SSI container in each discipline's consultant exchange folder. Drawing files containing C&P/SSI content must be kept only in these folders. Access to these containers is limited to SIMs and/ or their designees.

Additional C&P/ SSI containers will allow other files such as reports, presentations, etc. to be stored.

In addition to the Livelink website, electronic C&P/ SSI information may also be shared via secure Local Area Networks (LAN). Information should be removed from the LAN as soon as the recipient has acknowledged receipt of the information. As is the website, these LANs are password protected, and access to them is only for those individuals who have signed the NDA and are provided with permission by the SIM.

If a situation arises whereby electronic files must be exchanged by electronic media such as CD, DVD, or Floppy Disk, all provisions within this Manual for handling physical documents must be satisfied. The use of USB drives or other volatile memory or storage devices is prohibited.

Secure Data Disposal

Electronic secure CAD files stored on the Authority's M; drive or secure hard drives may only be destroyed / erased by both the SIM and the CADD Manager. Mil Standard compliant software will be used for the destruction of secure software files. Electronic destruction / erasure of secure data files may only be performed after the review and approval of the SIM. Electronic secure files residing in Livelink may only be deleted by those with delete rights, and only with permission from the SIM.

SECTION 9. Bidding & Procurement

Introduction

The following is the procedure to be followed when processing Confidential and Privileged (C&P) shop drawings.

As a critical player in the shop drawing process, it must be emphasized with the General Contractor (GC) that the burden for coordinating/ enforcing the PA procedure, with their subcontractors, is their responsibility.

Process

A pre-construction meeting is to be held before the start of each project. The PA's project SIM, the GC's SIM, their respective document control personnel and the subcontractors are to be in attendance, as well as the reviewer/engineer of record. At the pre-construction meeting, the Construction Manager (CM)/ GC and subcontractors will be reminded of their obligation to submit a shop drawing listing with a submission schedule within 30 days of award. This listing will be required to identify each submittal and whether the submittal is to be issued as a C&P document or as an un-restricted document. In addition, the PA's SIM and Document Control Manager will give a presentation to explain the PA document security policies, the C & P submittal process and the respective responsibilities of all parties.

The subcontractors are responsible for giving a C & P number to each C & P drawing that is produced. The GC shall coordinate the numbers with the subcontractors and log the numbering sequence for their record before it is forwarded to PA.

The numbering system should comply with the following:

- Contract Number and/or Work Order Number, Spec Section, Sequence Submittal, and Sequence of CP submittal for that submittal. For example, for Contract Number 100-506, Work Order Number 05, if the first structural steel submittal were C & P, it would be numbered: 100.506-WO-05-05120-001-001

Other items of note/ concern include:

- As with all C & P information, electronic versions may not be emailed.
- Shop drawings that have been identified as C & P may not be submitted electronically, but only by hard copy, or be transmitted via Livelink with appropriate permissions.
- It is preferable to not forward C & P information on Requests for Information (RFI's). But if it is necessary a similar routing as that of a submittal shall apply.

Procedure

The exact procedure for processing of C & P shop drawings is as follows:

The subcontractor produces shop drawings in accordance with the list of drawings agreed

to at the pre-construction meeting. The subcontractor maintains one copy of the shop drawings for its records and forwards the quantity required to the GC. A Transmittal Acceptance Form (TAF) is required to be signed by the GC and returned to the subcontractor.

The GC logs the receipt of the shop drawings submittal into the master log, maintains one copy for its records, and forwards the remainder to the PA's project Document Control. A TAF is required to be signed by the PA Document Control and returned to the GC.

The PA's Document Control logs the receipt of the shop drawings submittal into the Master Log, maintains one copy for its records, and forwards the remainder to the engineer/architect reviewer. A TAF is required to be signed by the reviewer and returned to PA Document Control.

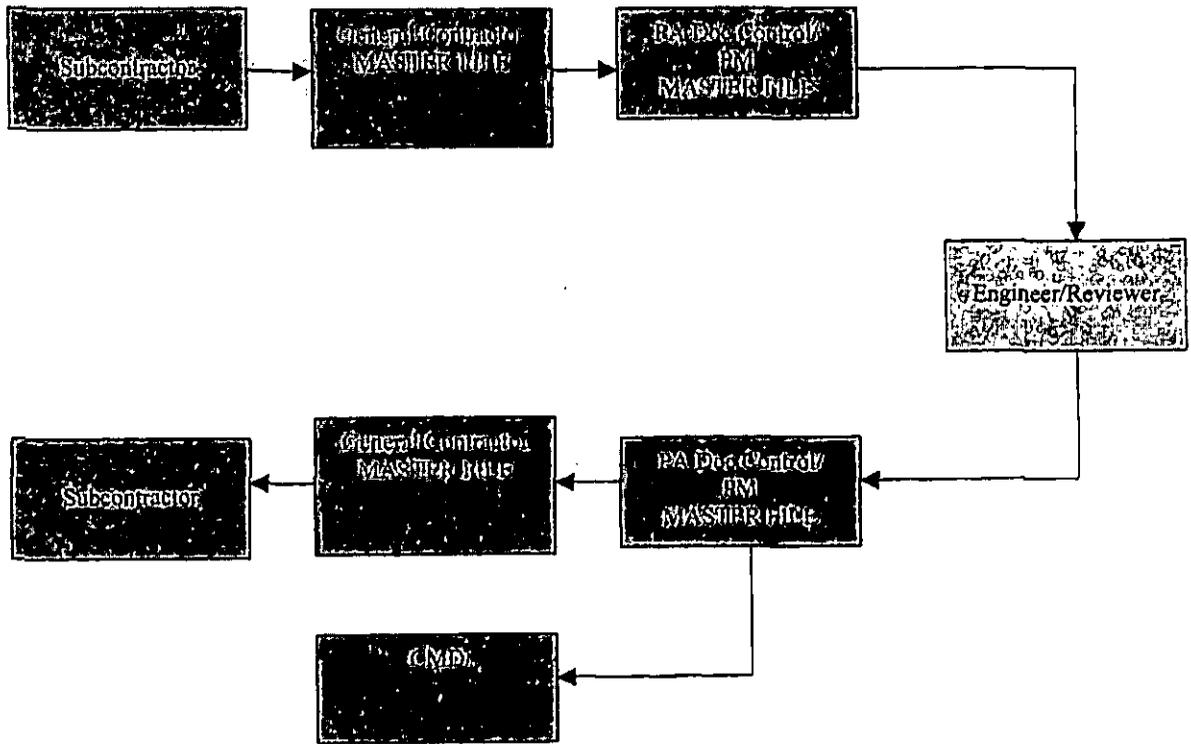
The engineer/ architect reviewer completes the review within the required time frame, maintains one copy for its records, and returns the marked-up remainder to PA Document Control. A TAF is required to be signed by PA Document Control and returned to the engineer/ architect reviewer.

PA Document Control maintains one copy for its records, provides one marked- up copy to CMD (define), and the remainder to the GC. A TAF is required to be signed by CMD and the GC and returned to PA Document Control.

The GC maintains one copy for its records, and returns the remainder to the subcontractor. A TAF is required to be signed by the subcontractor and returned to the GC.

(See Flow Chart attached).

C&P Shop Drawing Procedure Flow Chart



SECTION 10. Security Access Control Guide

Purpose

The Security Information Access Guide (SIAG) is the basis for categorization of information and material involved in the Project. Security information access control guidance is the exclusive responsibility of the Authority, and the final determination of the appropriate classification for the information rests with the Authority.

Standards

Construction of security systems often requires that an exact standard be met or exceeded in order to ensure that the security system will function properly. Drawing details and specification books are to indicate materials to be used, as well as any other information necessary to construct the system. They are not to indicate that the type of construction shown meets a security standard, or to contain any reference to the limits or capabilities of the type of construction/security system. This information will only be contained or referred to in the detailed statement of work.

Applicability

The SIAG applies to Authority personnel, as well as to firms and individuals who are under contract, purchase order, letter contract, or who are in receipt of C&P/ SSI Information.



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Sustainable construction requirements will be implemented for all Work that is performed on this Project to enhance the protection of the public, construction workers, and the environment. The Contractor shall include all cost associated with developing, implementing, filing of compliance documentation with the appropriate government agency, and monitoring as it relates to the Work included in this Contract.

Contractor shall cause each of its Subcontractors to comply with and be subject to all of the terms and conditions in this Rider G with which Contractor is obligated to comply or to which Contractor is subject. Any reference to Rider G includes all plans generated by Rider G. Contractor shall provide a copy of this Rider G and each plan described in this Rider G to Subcontractor. In the event Contractor fails to provide such copies, Subcontractor shall remain obligated to comply with and shall be subject to all terms and conditions in this Rider G.

The Contractor shall comply with the requirements for the guidelines developed by the Lower Manhattan Development Corporation entitled:

Sustainable Design Guidelines Introduction
World Trade Center Redevelopment Projects

The guidelines are available at the following link:
http://renewnyc.com/content/pdfs/rod/04_Appendix_D.pdf

The Contractor shall comply with the requirements for LEED CS 2.0 as developed by the United States Green Building Council (USGBC).

The guidelines are available at the following:
<http://www.usgbc.org>

The Contractor shall comply with the following SDG Plans, and LEED Credit Requirements, as pertains to this Contractor's Work. This Contractor will be required to submit all documents required in the following plans, also as pertains to this Contractor's Work.

A. Non-compliance

The Contractor will be issued a written Notice of non-compliance by the Construction Manager in the event that the Work of this Contractor creates conditions which fail to comply with the requirements of this Rider G. All non-compliances shall be remedied by the Contractor within twenty-four (24) hours of Construction Manager's issuance of such Notice of non-compliance. The failure of the Contractor to perform all corrective actions within this period may constitute a reason for the Construction Manager or 1 WTC to withhold payments to the Contractor in accordance with the terms of the Contract.

B. Payment, Liability, and Claims

The Contractor's compliance with this Rider G and any applicable regulations shall not be grounds for claims. The Construction Manager and 1 WTC shall be fully indemnified by Contractor of any liability or claims attributable to actions taken by this Contractor to comply with the requirements of this Rider G which result in equipment malfunction or failures, work stoppages, fouling, or any other result whatsoever. All costs and fees incurred for compliance with the requirements of this Rider G shall be paid by the Contractor at no additional cost to the Construction Manager or 1 WTC.

C. Testing and Inspection

All specified testing and inspection services will be performed by the Construction Manager. Any additional testing and inspection which is required as a result of this Contractor's Work creating a non-compliant condition will be charged to that Contractor.

Scope of Work shall include, but not be limited to, all the Work in the following Sustainable Design Guideline (SDG) Plans and LEED Credits, except such Work as may be specifically excluded in Rider "A," Paragraph "C," "WORK NOT IN CONTRACT".

- A. SDG SEQ-5 Construction Environment Plan TCC



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- B. SDG SEQ-6 Construction Storm Water Runoff and Pollution Prevention Plan
LEED SS-P1 – Erosion and Sedimentation Control Plan
- C. LEED EA-P1 – Fundamental Building Systems Commissioning
- D. LEED EA-C1 – *Optimize Energy Performance*
- E. LEED EA-C3 / C6 – Renewable Energy / Green Power
- F. SDG MEQ-1 Comprehensive Material Management Plan
LEED MR-C4.1 & 4.2 – Recycled Content
- G. SDG MEQ-2 Construction Waste Management Plan
LEED MR-C2.1 & 2.2 – Construction Waste Management
- H. LEED MR-C3 – Material Reuse
- I. LEED MR-C5.1 & 5.2 – Regional Materials
- J. LEED MR-C6 – Certified Wood
- K. SDG IEQ-1 IAQ (Indoor Air Quality) Performance Management Plan
- L. SDG IEQ-5 Construction IAQ (Indoor Air Quality) Management Plan
LEED EQ-C3 – Construction IAQ Management Plan
- M. LEED EQ-CR 4.1 – Low Emitting Materials – Adhesives and Sealants
LEED EQ-CR 4.2 – Low Emitting Materials – Paints and Coatings
LEED EQ-CR 4.3 – Low Emitting Materials – Carpet Systems
LEED EQ-CR 4.4 – Low Emitting Materials – Composite Wood and Agrifiber
- N. SDG IEQ-9 Integrated Pest Management Plan

A. SDG SEQ-5: Construction Environment Plan

Contractor shall provide all methods and means to reduce pollution and noise from its construction activities and vehicles to the adjoining neighborhood in compliance with SEQ-5, Construction Environment Plan. The Contractor will submit documentation for all fuel and engines it uses on the Project.

Purpose: To reduce pollution, dust, diesel emissions, noise, and vibration from construction activities and vehicles.

Action:

- Context: This Construction Environment Plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractor and his respective Subcontractors, acting under the supervision of the Construction Manager.
- Introduction: The intent of this plan is to reduce pollution, noise and vibration from construction activities and vehicles.
- Project Measures

1. Air Quality: Diesel Emission Mitigation

a. Ultra Low Sulfur Diesel Fuel

All diesel-powered non-road equipment to be used in the performance of Work under this Contract shall use Ultra Low Sulfur Diesel (ULSD) fuel that is certified to contain an average sulfur content of no more than 15 parts-per million (ppm) as determined over a six month period. In the event that the Contractor can clearly demonstrate that ULSD fuel with an average sulfur content of not more than 15 ppm is not available, a written waiver may be granted by the Construction Manager until such time that the ULSD fuel has become available, or an approved equal is determined by the Construction Manager to satisfy the intent of this Rider. The Construction Manager shall collect monthly samples of the ULSD fuel used during the period directly from the fuel tanks of the non-

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road diesel-powered equipment used on the construction site. The Testing Standards shall include but are not limited to:

- ASTM D6920 - 03 "Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection," or
- ASTM D6428 - 99 "Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection."

The ULSD fuel shall be obtained from any distributor capable of meeting the requirements of this specification. All ULSD fuel shall be dispensed directly on the construction site from either a dedicated on-site fuel storage facility or segregated truck delivery. In the case of on-site storage, all such facilities shall comply with all applicable jurisdictional codes pertaining to the storage and dispensing of fuel. The details of which shall be submitted to and approved by the Construction Manager prior to implementation.

A listing of ULSD fuel suppliers is included on the following web page under ULSD fuel Suppliers:

http://www.epa.gov/otaq/retrofit/cont_fuels.htm

Additionally, all diesel-powered on-road vehicles traveling to the jobsite, as well as stationary equipment used in the performance of Work at the jobsite, must use ULSD fuel, and will be required to provide fuel receipts demonstrating compliance. All Subcontractors and vendors are required to conform to the requirements noted herein.

b. Diesel Emissions Control Technologies

All non-road diesel-powered equipment with a rated horsepower of 50 HP or greater shall be retrofitted with Emissions Control Devices (devices) utilizing the best available technology. The retrofit devices shall consist of Diesel Particulate Filters (DPFs), or other measures of equivalent particulate matter (PM) removal efficiency wherever the implementation of such a device is feasible. In cases where DPF(s) 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 Construction Manager for review and approval prior to the use of the equipment. If the Construction Manager grants the waiver, Diesel Oxidation Catalysts (DOCs), shall be used. Only in the following cases will the use of diesel engines with a rated horsepower of 50HP or greater without tailpipe reduction measures be permitted by the Construction Manager:

- Where for technical reasons neither DPFs or DOCs can be used effectively, and the operation cannot be performed by another engine or other means;
- To immediately remedy safety and health hazards;
- In response to emergencies.

Such reductions are to be targeted primarily toward the reduction of PM and secondarily on the reduction of nitrogen oxides (NOx), and shall in no event result in an increase in the emissions of either pollutant. The devices shall be 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 Construction Manager to provide the maximum level of pollutant reductions intended under this Rider. For more information, refer to the following websites:

U.S. Environmental Protection Agency Verified Technology List:
<http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm>

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California Air Resources Board Verified Technology List:
<http://www.arb.ca.gov/diesel/verdev/level3/level3.htm>

Europe' Verified Technology List:
<http://www.akpf.org/pub/vertfilterliste.pdf>

Vendors of such technologies include: Cleaire, Huss, DCL International, Engelhard, Johnson-Matthey, Fleetguard Emission Solutions, E-Global Solutions, Donaldson, Engine Control Systems, or other approved equal.

c. Diesel Construction Equipment Age Requirements

In order to facilitate the application of verified emission control devices as well as provide lower baseline emissions, all equipment used for the performance of Work under this Contract must use post-1995 fuel injection engines which meet Tier II engine emissions standards, as defined in 40 CFR Section 89.112. Exceptions will be made only for specific engines that are not yet commercially available as Tier II, and where the task cannot be reasonably accomplished using alternative engines or means which do comply with these demands. In such cases, the Contractor shall submit a request for a waiver to the Construction Manager for review and approval prior to the use of such equipment.

d. Contractor Diesel Emissions Mitigation Plan for Non-Road and On-Road Engines/Equipment

A Diesel Emission Mitigation Plan (the "DEM Plan") shall be prepared by the Contractor and submitted to the Construction Manager for review and approval prior to the use of any diesel-powered engines, including non-road and on-road vehicles. The DEM Plan shall identify all engines and vehicles to be utilized in the performance of Work under this Contract. No Work involving the use of non-road diesel-powered engines shall proceed under this Contract until a DEM Plan is submitted and approved by the Construction Manager. Once approved, no changes in or deviations from the DEM Plan will be permitted unless approved by the Construction Manager. The DEM Plan shall address the control of emissions from all diesel-powered equipment and vehicles including on-road vehicles (i.e., diesel-powered trucks) and non-road equipment not retrofitted with devices. The contents of the DEM Plan shall specifically address the following:

1. **Work Zone Creation:** The Construction Manager shall establish and Contractor shall utilize on-road vehicle (i.e., diesel trucks) staging zones for the off-loading and loading of materials to and from the construction site. Such zones shall be located to minimize the impact of pollutants from diesel engines and vehicles on sensitive receptors and the general public. In addition, the Contractor shall ensure that its diesel-powered engines and vehicles are located away from the fresh air intakes as determined by the Construction Manager.
2. Contractor shall comply with the material staging and access requirements as set forth in Chapter 21 of the Final Environmental Impact Statement and in the Record of Decision.
3. Designated truck routes have been established to minimize impact on adjacent community. Contractor shall utilize these truck routes provided by the Construction Manager.
4. **Diesel Engine Idling Time:** The idling time of non-road and on-road vehicles shall be limited to three (3) consecutive minutes as determined by the Construction Manager except as follows:

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- o When an on-road vehicle is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control:
 - o When it is necessary to operate heating, cooling or auxiliary equipment installed on the vehicle when such equipment is necessary to accomplish the intended use of the vehicle.
 - o To bring the vehicle to the manufacturer's recommended operating temperature. *In this event, the temperature requirements must be indicated in the Diesel Emission Mitigation Plan as an exception.*
 - o When the outdoor ambient temperature is below twenty (20) degrees Fahrenheit.
 - o When the vehicle is being actively worked on for repairs or maintenance.
5. Electrification: The Construction Manager shall develop and implement a plan to distribute temporary electrical power throughout the construction site. The Contractor shall comply with the requirements of such plan. The plan shall identify all diesel-powered equipment intended to be used for the performance of construction, and indicate the availability of alternate electrically powered versions; in order that Construction Manager can prepare such a plan, Contractor shall identify to Construction Manager all such diesel-powered equipment and the availability of such alternate versions. In cases where electrically powered versions are available, only the electrically powered version shall be used. At a minimum, all stationary equipment (e.g., air compressors, grout plants, mixers, pumps, welding machines, etc.) required for the performance of Work that can be practicably replaced with an electrically powered version shall be powered electrically in lieu of diesel engines.
- e. Limited Work Zone**
Adjacent to the Route 9A walkway/bikeway in the vicinity of the east-west pedestrian concourse, the modeled concentration of particulate matter (PM 2.5) over a 24-hour period could exceed the National Ambient Air Quality Standards. Therefore, to ensure that such potential exceedances are mitigated, the Contractor shall not operate non-road diesel-powered equipment in this "Limited Work Zone" during periods of extreme meteorological conditions without the approval of the Construction Manager.
- f. Submittals:**
- 1. Inventories: On-Road and Non-Road Diesel Equipment and Engines, and Verified Emission Control Devices.**

No Work shall commence utilizing diesel-powered non-road engines and vehicles or motor vehicles ("engines or vehicles") with a rated horsepower equal to or greater than 50HP until the Contractor submits a comprehensive and complete inventory list inclusive of all such engines and vehicles including the specifics of each as detailed in the following subparagraph, and same is approved by the Construction Manager.

In the event that the Contractor clearly demonstrates to the Construction Manager that no emission control device is available for a particular engine or vehicle, or the retrofit of such a device may endanger the operator or those working nearby, the Construction Manager may grant a waiver to permit the use of such an engine or vehicle. Nonetheless, the engine or vehicle must be included on the inventory list, and the Contractor must continue to demonstrate a reasonable effort to determine the availability of a substitute engine or vehicle of equivalent performance.

The inventory list shall be provided in an electronic format, and shall include the following:

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- a. The owner, whether the Contractor, Subcontractor, or rental firm. The firm name, address, telephone number and contact person familiar with the operation and maintenance of the equipment and the emission control technologies;
 - b. The number, type, make, year of manufacture, manufacturer and serial number;
 - c. The engine type, make, horsepower rating, year of manufacture, and serial number;
 - d. The approximate fuel consumption rate per shift;
 - e. The anticipated duration of use, and days and hours of operation;
 - f. Retrofit type, make, model, manufacturer, installation date, EPA or CARB verification number or supporting documentation related to emission control devices.
2. **On-Going Equipment Updates and ULSD Fuel Deliveries:**
The Contractor shall submit a weekly update to the Construction Manager of the inventory list of all diesel-powered non-road equipment. This update shall include the baseline inventory list; and a compilation of all ULSD fuel deliveries during the week, including delivery tickets.
3. **Ultra Low Sulfur Diesel Fueling Plan**
The Contractor shall submit his fueling plan, identifying the proposed ULSD fuel supplier, independent test results of sulfur content of the proposed supplier's fuel as determined by the Testing Standards referenced in the preceding Section entitled "Ultra Low Sulfur Diesel (ULSD) Fuel", and a description of segregated truck delivery or on-site fuel distribution plans.

2. Air Quality: Dust Control

The Contractor shall control fugitive dust at all times – 24 hours a day, 7 days per week, including non-working days, weekends and holidays. The requirements for controlling fugitive dust dispersions within the construction site during the performance of Work under this Contract, such as earth moving and demolition activities, shall include the following:

- The spraying of a (non-hazardous, biodegradable) dust suppressing agent;
 - The physical containment of fugitive dust particles through the use of tarps or other wind protection devices;
 - The adjustment for meteorological conditions, as appropriate;
 - Wheel washing of all non-road and on-road vehicles leaving the site including the containment and treatment of wash water;
 - The wetting and covering of all trucks loads containing materials delivered to or removed from the site that may generate fugitive dust;
 - The routine wetting and cleaning of streets and access roads within the construction site.
- a. **Submittals:**

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The Contractor shall comply with all federal, state and local laws and regulations applicable to the control and mitigation of fugitive dust dispersion. The Contractor shall submit a Dust Control Plan ("DC Plan") to the Construction Manager for review and approval to address the specific measures contained in this Section. The DC Plan shall include contact information for responsible individual(s) from the Contractor with 24 hour, 7 days per week availability, and who have been vested with the authority to implement all controls and mitigation measures identified in the DC Plan. The DC Plan must detail all dust control procedures for all such controls and measures as approved by the Construction Manager, and be job specific to address all anticipated Work activities that may generate fugitive dust dispersions (e.g., demolition, saw-cutting, pavement milling, haul roads, etc.).

3. Noise Abatement

The Construction Manager and Contractor shall control and mitigate noise in the performance of the Work during all hours of construction. All construction activities shall be controlled to comply with the following noise levels.

Table 1: Noise Limitation Thresholds For Sensitive Receptor Sites – Resultant noise at sensitive receptor sites shall not exceed the following levels:

| <u>TIME</u> 8-hour Leq (dBA) Limit |
|---------------------------------------|
| <u>Weekdays, 7AM to 6 PM</u> 80 |
| <u>All Other Times</u> 70 |

The Contractor shall use equipment that ensures that the noise generated during all construction activities, including the performance of its Work, does not exceed the threshold levels indicated in Table 1. In addition, the following specific noise mitigation measures indicated in Table 2 shall be implemented during the use of impact wrenches, pavement breakers and pneumatic grout drills, to ensure that the noise threshold limits of Table 1 are not exceeded:

Table 2: Noise Criteria For Specific Equipment

| <u>Equipment</u> <u>Noise Mitigation Measure</u> |
|--|
| <u>Impact wrenches</u> Use impact wrenches with a noise emission level of 82 dBA at 50 feet |
| <u>Pavement breakers</u> Install mufflers on pavement breaker cylinders |
| <u>Pneumatic grout drills</u> Place drills inside acoustic enclosures |

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Other than the specific equipment and mitigation measures listed in Table 2, and in the event that *Construction Manager determines that the Contractor has exceeded the noise thresholds specified in Table 1*, the Construction Manager may direct the Contractor to implement, at Contractor's own cost, abatement measures deemed appropriate by the Construction Manager and/or as specified and approved in the Contractor's Noise Control And Abatement Plan (the "NCA" Plan):

Where practicable, the Construction Manager and Contractor shall schedule all construction activities to avoid and minimize any adverse acoustic noise that could impact sensitive receptors as determined by the Construction Manager. Acoustical sensitive receptors presently include the Millennium Hotel on Church Street, Embassy Suites on Vesey Street, Multi Family Residential Structure on the corner of Park Place and West Broadway, 114 Liberty Street and the World Financial Center. Sensitive receptors may be added as deemed appropriate by Construction Manager.

a. Contractor Noise Control And Abatement Plan

The Construction Manager and each Contractor shall comply with all appropriate federal, state and local laws and regulations applicable to noise control and mitigation. The Construction manager shall develop and submit to 1 WTC for review and approval an NCA Plan that describes the Construction Manager's Intended mitigation procedures and methods to control and mitigate noise generated during the performance of Work under this Contract. The NCA Plan shall specifically address the following:

1. Means and methods for the implementation of all control and mitigation measures including all calculations and supporting documentation;
2. Design drawings of noise abatement enclosures and barriers, signed and sealed by a licensed professional engineer in the State of New York;
3. Description of physical noise mitigation materials, including the name of manufacturer and its specifications. All such materials shall be fire resistant;
4. Catalog Cuts and technical data sheets of construction equipment to be employed during Work of this Contract;
5. Baseline background noise measurements taken prior to the start of construction;
6. Construction noise assessment. The method for predicting the construction noise impact shall be the Federal Highway Administration (FHWA) prediction method, or similar.

b. Construction Noise Monitoring

To ensure compliance with this Section 3, the Construction Manager shall identify and submit to 1 WTC for review and approval the qualifications of an acoustical firm to provide assistance in the development and implementation of the NCA Plan. The acoustical firm shall also provide noise monitoring services on the site. Both the Construction Manager and the Contractor shall comply with the terms and conditions of the NCA Plan.

The qualifications of the acoustical firm shall be as follows:

1. The firm shall have within the preceding five years provided noise measurement, monitoring and analysis consulting services on at least three projects of similar size and complexity that included specific noise control and abatement initiatives, preferably in the City of New York;
2. The entity designing the noise mitigation measures and performing the noise assessment shall be a member in good standing with the National Council of Acoustical Consultants;

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3. The firm shall have a Noise Control Engineer (NCE) on staff or under contract who is either certified by the Institute of Noise Control Engineers (INCE), or has earned a baccalaureate or higher degree from an accredited college or university in engineering, physics, acoustics or architecture which devoted courses to the principles of acoustics. The NCE shall be fully familiar with the means, methods, materials, equipment and designs associated to noise control and abatement;
4. Each employee of the firm who will actually perform measurements or monitoring in the field shall be a Noise Control Officer (NCO). The NCO shall have been trained in the review and mitigation of community noise issues, and the standard methods for noise measurement and monitoring, including the use of all associated equipment and data collection. Training shall have been by a NCE certified by INCE, by the NCE on staff at the firm, or by other NCO(s) with a minimum of three (3) years experience. The NCO shall possess a working knowledge of all applicable standards.

Upon the approval by 1 WTC, the Construction Manager shall immediately procure the services of the firm to perform baseline background noise measurements at the construction site and near the sensitive receptors identified above. The background noise monitoring shall be performed to determine the "noise signature" or "noise level trend" for the construction site and the immediate vicinity.

A complete construction noise assessment for the Project shall be conducted. The method for predicting the construction noise impact shall be the FHWA prediction method, or similar, approved by the Construction Manager. The NCA Plan shall be submitted to 1 WTC by the Construction Manager for review a minimum of one month prior to the commencement of Work unless otherwise directed by the Construction Manager.

The Construction Manager shall measure the noise levels and submit a written report to verify compliance with the allowable noise thresholds on a weekly basis, or as otherwise deemed necessary by 1 WTC, throughout the duration of construction activities to ensure compliance. Readings shall be taken on a continuous basis during any construction activity, including, but not limited to, the delivery of materials and movement of construction equipment. The Construction Manager may monitor noise levels at known sensitive receptors or other locations as deemed appropriate to verify compliance. When noise level measurements with respect to the Contractor's Work exceed the allowable thresholds, the Contractor, with approval by the Construction Manager, shall cease performance of the Contractor's Work and immediately implement the mitigation procedures indicated in the approved NCA Plan as directed by the Construction Manager. If applicable procedures are not included in the NCA Plan, revised procedures are to be developed and implemented. Such revised procedures are to be incorporated in the NCA Plan as a revision, and submitted to the Construction Manager for review and approval. In the event of a conflict between the Contractor's noise level measurements and those taken by 1 WTC, 1 WTC's noise level measurements shall prevail.

c. Submittals:

1. Construction Manager shall submit an NCA Plan for review and approval by 1 WTC prior to commencement of any Work. The submittal shall include all revisions, and a copy of the approved NCA Plan revisions shall be provided to each Contractor and Subcontractor prior to the commencement of such Work. The Subcontractor shall be specifically obliged to comply with the requirements of the approved NCA Plan in the provisions of his subcontract.
2. Construction Manager shall submit the name and qualifications of the acoustical firm, the name and qualifications of the firm's NCE's and NCO's.

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3. Construction Manager shall submit a weekly report to 1 WTC summarizing the noise measurement readings taken at the construction site. All events that exceed the limits indicated in Tables 1 or 2 shall be clearly indicated and the corrective action taken to address the cause.

4. Vibration Abatement

The Construction Manager and Contractor shall control and mitigate vibration during all hours of construction. The Construction Manager shall develop and implement specific construction vibration mitigation measures to protect historic properties from increased vibration levels associated with construction activities at the site (see Section 5 Historic Resource Protection). In conjunction with the protection of historic properties, overall construction vibration abatement and monitoring shall be addressed as follows:

a. Contractor Vibration Control And Abatement Plan

The Construction Manager and Contractor shall comply with all appropriate federal, state and local laws and regulations applicable to vibration control and mitigation. The Construction Manager shall develop and submit to 1 WTC for review and approval a Vibration Control And Abatement Plan (the "VCA Plan") that describes Construction Manager's intended mitigation procedures and methods to control and mitigate vibration during the performance of Work under this Contract. The VCA Plan shall specifically address the following:

1. Means and methods for the implementation of all control and mitigation measures including all calculations and supporting documentation;
2. Baseline background vibration measurements taken prior to the start of construction;
3. Construction vibration assessment. The method for predicting the construction vibration levels to be approved by the Construction Manager.

b. Construction Vibration Monitoring:

To ensure compliance with this Section 4, the Construction Manager shall identify and submit to 1 WTC for approval the qualifications of a firm to provide assistance in the development and implementation of a VCA Plan, and to provide vibration monitoring on the construction site. The qualifications of the firm shall be as follows:

1. The firm shall have within the preceding five years provided vibration measurement and analysis consulting services on at least three projects of similar size and complexity that included specific noise control and abatement initiatives, preferably in the City of New York.
2. Each employee of the firm who will actually perform measurements or monitoring in the field shall possess appropriate training, and have demonstrated experience in the measurement and implementation of mitigation techniques for similar types of construction projects.

Upon the approval by 1 WTC of a vibration control firm, the Construction Manager shall immediately procure the services of the firm to perform baseline vibration measurements at the construction site and near the historic properties identified above, and submit a report to 1 WTC, including a review and assessment of the existing vibration levels relative to the allowable threshold.

On a weekly basis, or at other intervals deemed appropriate by 1 WTC, the Construction Manager shall submit a written report to verify compliance with the allowable vibration threshold based on vibration measurements taken continuously at the construction site and near the historic properties for the duration of the Work. The Construction Manager may also monitor vibration levels at locations deemed appropriate to verify compliance.

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When vibration level measurements exceed the allowable thresholds for any Work being performed by a Contractor, then the Contractor, if instructed by the Construction Manager, immediately shall cease performance of Contractor's Work and/or implement the mitigation procedures described in the approved VCA Plan as directed by Construction Manager. If applicable procedures are not included in the VCA Plan, *revised procedures are to be developed and implemented by Construction Manager only* with the approval of 1 WTC. Such revised procedures are to be incorporated in the VCA Plan as a revision, and resubmitted to 1 WTC for review and approval. In the event of a conflict between the Construction Manager's vibration level measurements and those taken by 1 WTC, 1 WTC's measurements shall prevail.

5. Cultural and Historic Resource Protection

Consistent with the stipulations of the executed Memorandum of Agreement (MOA) pursuant to Section 106 of the National Historic Preservation Act, a Resource Protection Plan (RPP) was developed by the Port Authority in consultation with its Project Historical Architect (PHA). The purpose of which is to protect historically significant elements of the World Trade Center site ("WTC site") that are to remain in situ during construction from inadvertent damage. The element designated to be protected is presently as follows:

- West Slurry Wall

The Contractor shall be responsible for compliance with all the requirements specified in the RPP for protection of the above historic WTC site element to remain undamaged and in situ during construction.

The Construction Manager shall notify the Contractor when Contractor's non-compliance with any WTC site historic element protection requirement is discovered. Conversely, if the Contractor discovers any non-compliance by any other Contractor or entity with site element protection requirements, Contractor shall notify the Construction Manager or 1 WTC immediately. In all cases, the Construction Manager shall implement appropriate corrective actions immediately to restore the required protection, and Contractor shall cooperate in the implementation of such corrective actions.

a. Inspection of Existing Conditions of Historic Element

The Construction Manager shall inspect and record the existing conditions of the above historic element on the WTC site.

b. Protection Considerations in All Contractor Submittals

The Contractor shall consider the protection of any historic WTC site element in all submittals, especially those regarding means and methods, made to the Construction Manager for review and approval. The Contractor shall design, furnish and install all protective measures specified in the Contract documents, and is responsible for the preservation of all existing protection measures in place that may be damaged or affected by his construction activities or the performance of Contractor's Work. The Contractor shall not locate any equipment, deliver any materials or commence any Work whatsoever that may impact any historic element on the WTC site unless approved by the Construction Manager.

Each Contractor submittal shall include the following information:

1. A general location map of the WTC site showing where the Contractor's Work shall be performed, including a notation on the map of location of the historic elements relative to the Work;
2. A listing of materials or construction equipment to be used in the performance of Contractor's Work that shall or may come in contact with any of the WTC site's historic elements, and the proposed methods to be employed to prevent any damage to said historic elements.

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c. Protection Requirements

If during the review of a Contractor submittal, the Construction Manager determines that the potential exists for damage, the Construction Manager may direct the Contractor to preserve or implement or restore the following protective measures in accordance with the Port Authority's Resource Protection Plan (RPP). In the event that the Contractor identifies a more effective and/or efficient methods of protection as construction proceeds, the Contractor shall propose said measures for further consideration. Under no conditions, however, shall the Contractor proceed with such an alternate method without the approval of the Construction Manager.

1. **Requirements for the Protection of West Slurry Wall:** If Work is required by the Contract on or adjacent to the existing west slurry wall bounding the construction site in the West Bathtub (as such location is commonly referred to), and the Construction Manager determines that a potential exists for the existing slurry wall to be damaged, the Contractor shall furnish and install appropriate protective measures approved by the Construction Manager that provide a clear, unobstructed, recognizable and respectful view of the wall.
2. **Protection of Historic Resources from Construction Vibration:** The Contractor shall develop and implement specific mitigation measures with respect to Contractor's Work (as discussed in Section 4 Vibration Abatement) to protect other surrounding properties from increased vibration levels associated with construction activities at the site. Such measures shall reduce vibration to a level below the threshold criterion of 0.12 in/sec (approximately 95 VdB):

d. Monitoring Program

1. Periodic Monitoring:

Prior to construction, the Contractor shall meet with the Construction Manager to establish a program to periodically inspect and examine all protection measures in place to verify compliance with the applicable provisions of the RPP. The Contractor shall develop and submit a written monitoring program for the review and approval of the Construction Manager. The program shall include an Emergency Remediation Plan (the "ERP") identifying the emergency contacts and outlining the procedures to be followed should an unforeseen condition or unanticipated damage arise that compromises or places at risk any historic element on the WTC site. Once approved by the Construction Manager, the Contractor shall set aside the materials, products and equipment in a safe and accessible location on the WTC site to ensure an immediate response to any such occurrence.

2. Routine Monitoring:

During the progress of the Work, the Construction Manager will routinely review (inspect) all protection measures in place to verify compliance with the applicable provisions of the RPP. Upon the completion of the Construction Manager's review, a meeting will be conducted with the Contractor to discuss and document the following:

- a. The progress achieved since the previous inspection;
- b. An assessment of the performance of the protection measures in place, and a determination of the adjustments or modifications required to correct non-compliances with the requirements of the RPP;
- c. A review of the upcoming scheduled Work activities, a determination of the required protection measures, and a verification that the existing protective measures are adequate for such activities. If necessary, there will be a determination of supplemental measures to be implemented for compliance with the requirements of the RPP.

3. Emergency Remediation

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Should any condition arise or damage occur during performance of Contractor's Work or other construction that compromises the integrity of the in-place protection measures, or adversely affects any historic element on the WTC site, the Contractor shall stop its Work in the affected area, immediately notify the Construction Manager, and implement the relevant measures outlined in the approved ERP as directed by the Construction Manager. At a minimum, the notification to the Construction Manager shall include a description of the following:

- a. The situation that arose;
- b. Its cause, if known;
- c. Response measures implemented;
- d. Recommendations for further intervention, if any.

The Construction Manager will determine whether or not the Contractor may resume Work in the affected area. If not, the Contractor shall repair and/or furnish and install all supplemental remediation and mitigation measures deemed appropriate by the Construction Manager. All repair Work shall be done in such a manner as to minimize the adverse impact to the affected historic element.

6. [Intentionally Left Blank]

7. Discoveries of Archeological Resources and Effects on Historical Resources

In the event that archaeological deposits or features are encountered during the performance of construction activities, the Contractor shall stop all Work immediately, flag or fence off the archaeological discovery location, and immediately notify the Construction Manager. The Contractor shall not recommence its Work until so directed by the Construction Manager.

8. Construction Protection Plan

The Contractor shall develop and submit to the Construction Manager for review and approval a comprehensive Construction Protection Plan (CPP) to address the implementation, enforcement and monitoring of the Environmental Performance Commitments (EPCs) as outlined in the previous Sections 1 through 6 of this Specification for Air Quality: Diesel Emission Mitigation and Dust Control, Noise and Vibration Abatement, Cultural and Historic Resource Protection, and Archaeological Discoveries. The CPP shall be submitted to the Construction Manager for review and approval within thirty (30) calendar days of acceptance by the Construction Manager of the Contractor's proposal. No Work by the Contractor shall commence until the CPP is approved by the Construction Manager. The CPP will be organized to address each EPC Section, and shall include the following plans:

- Diesel Emission Mitigation (DEM) Plan (as per Section 1);
- Dust Control (DC) Plan (as per Section 2);
- Noise Control and Abatement (NCA) Plan (as per Section 3);
- Vibration Control And Abatement (VCA) Plan (as per Section 4);
- Emergency Remediation (ERP) Plan (as per Section 5);

B. SDG SEQ-8: Construction Storm Water Runoff and Pollution Prevention
LEED SS-P1 – Erosion and Sedimentation Control Plan

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Unless otherwise directed by the Construction Manager, the Contractor shall provide all methods and means to control site erosion and reduce negative impacts on hydrological and atmospheric systems produced by construction activities in compliance with SEQ-6, Construction Storm Water pollution Prevention Plan and LEED SSp1 Erosion and Sedimentation Control Plan. The Contractor shall coordinate specific measures with the overall Project plan prepared by the Construction Manager that shall be in accordance with US EPA document 832/R-92-005. Each Contractor shall comply with the measures established by the Construction Manager in the overall Project plan as follows:

See following links:

http://cfpub.epa.gov/npdes/docs.cfm?document_type_id=1&view=Policy+and+Guidance+Documents&program_id=6&sort=name

<http://www.epa.gov/npdes/pubs/owm0307.pdf>

<http://www.epa.gov/owm/sectstm.htm>

Purpose: Control site erosion and reduce negative impacts on hydrological and atmospheric systems produced by construction activities

Action:

A. Context

This Erosion and Sedimentation Control Plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

B. Introduction

The intent of this Erosion and Sedimentation Control Plan is to coordinate the implementation, oversight, and enforcement of the erosion and sedimentation control measures that will be implemented during excavation and construction. Through the use of various control measures, scheduled inspections, and camera evidence, the Erosion and Sedimentation Control Plan encourages regular maintenance of construction site erosion control mechanisms, thereby maximizing plan effectiveness.

C. Project Measures

1. Skeletal sheeting will be used to stabilize the face of an excavated slope.
2. Recycled water from the construction site will be used to control dust, regularly sprinkling soil surfaces as a preventative measure to inhibit dust swirling on-site and beyond the site boundary.
3. Construction site fencing will be utilized along with concrete berms to channel and control water flow before it may dissipate beyond the site boundary and enter the sewage system untreated.
4. Relief drains will be implemented to allow dewatering of the site when the water table is unusually high. Permits shall be required from the New York State Department of Environmental Conservation (NYCDEP) prior to implementation.
5. Storm drains will be fitted with filter fabric and gravel or mesh filters to prevent sedimentation from entering drains prematurely. Tanks will be provided to capture storm water and properly filter it before it is recycled on-site, for tire washing or dust control.
6. Gravel grading may be implemented in areas where excessive runoff occurs, to slow the travel of water, and properly channel water at the base of the slope.
7. Materials stored on-site will be protected from dust and particulates by tarps or sheds.

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8. Vehicle rinsing will be enforced to prevent soils, etc., from leaving the site.
9. Contractor will assemble and submit to Construction Manager all drawing, permits, and other documentation, and will regularly photograph control measures at scheduled intervals.
10. The Contractor will submit to the Construction Manager a log of all ongoing maintenance activities associated with the Erosion and Sedimentation Control Plan.
11. The prime responsibility for implementing the provisions of this plan rests with the Construction Manager acting under the supervision of 1 WTC. In addition, each Contractor will be responsible for the requirements listed below as applicable to such Contractor's Work.

The Intent of this plan is to control the storm water removed from the vicinity of the Project site and to control the erosion and sediment generated by the Project during the demolition and construction activities associated with construction of the Freedom Tower. Currently, storm water within the Project site is collected in two separate below grade sump pits located at the northern and southern ends of the site. These sumps collect storm water flow at the below grade site and pump storm water up to an adjacent NYCDEP combined sewer system. It is intended to maintain this existing storm water management system during performance of all of the Work at the site. Best Management Practices (BMP) are to be used during the construction of the Project in order to prevent adverse water quality impacts and control pollution of New York State waters and/or waters of the United States. The storm water discharge generated during construction shall neither cause nor contribute to a violation of water quality standards contained in New York Code Rules and Regulations Title 6 Parts 700 through 705, including but not limited to: there shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions; there shall be no suspended, colloidal or settleable solids that will cause deposition or impair the waters for their best usages; and there shall be no residue from oil and floating substances, visible oil film, globules, or grease.

a. Erosion and Sediment Control

The disturbance caused by demolition and clearing of the construction site and the Work and other construction activities occurring at the site shall be appropriately managed and designed to minimize the effect of sediment being carried away from the construction site with runoff into the drainage systems on and off the construction site. As noted above, within the WTC site are two existing sump pits for collecting storm water at the site. Best Management Practices (BMPs) for storm water management at construction sites will be incorporated into the site design to prevent sediment from entering these sump pits. These measures will comply with the New York State Guide for Urban Erosion and Sediment Control. Before excavation and foundation work begins, the sediment control measures shall be in place. The Excavation and Foundation Contractor is to maintain the measures installed, to inspect them after rainfalls, and to replace any non-functioning elements.

- **Sediment Filter** – A sediment filter is to be located around the existing sump pit area to prevent sediment from disturbed areas from flowing into the sump pumps. The sediment filter is to be installed in a manner to allow particles to be removed from storm water flow before pumping off site. The filter is to consist of a combination of straw hay bales and a silt fence as per the New York State Guide for Urban Erosion and Sediment Control details. These items are to be installed in a manner to create an enclosed boundary around the sump pump area. This filter system is to be installed at both of the sump pit areas located within the WTC site.

- **Stabilized Construction Entrance** - A stabilized construction entrance shall be provided at all construction vehicle entrances. This shall consist of a bed of 1-inch to 2-inch stone approximately 8-inches deep underlain by filter cloth across the access

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road. This is provided to reduce the off-site transport of soil from the construction site. When construction vehicles have traveled over dirt or mud on the site, their wheels shall be swept or washed prior to entrance on public rights-of-way. Dry power sweeping is prohibited; however dry broom sweeping shall be performed to keep areas neat wherever effective. In addition, any bare areas shall be stabilized as Work takes place. These areas shall be topped with gravel.

b. Litter, Debris and Waste Materials Control - Contractor is responsible for routinely removing, collecting in suitable containers, transporting off-site and disposing of in an acceptable and lawful manner the trash, garbage, rubbish and other refuse. The Contractor shall be responsible for keeping the Work site clean on a daily basis. Measures shall be used to control litter and waste materials. Some of these measures include:

- The Contractor shall be required to implement dust control and rodent control plans.
- The Contractor shall be required to properly remove all debris and waste from the site on the day it is generated in accordance with the Construction Waste Management Plan in Section G of this document.
- Filter fabric shall be installed on all drains and inlets within and around the Project site.

c. Waste Materials Stored on Site

Leaks or spills of hydraulic oils, lubricating oils, fuel oils, gasoline or other engine fluids shall be contained upon detection using oil-absorbent materials and other methods, as appropriate. An Emergency Response Plan shall be prepared and approved by Construction Manager prior to the start of construction, including a Pollution Prevention and Spill Contingency Plan. A supply of absorbent materials shall be readily accessible at the site 24 hours a day to help contain any spills.

d. Delineation of Responsibilities

The Construction Manager shall be responsible for implementing, monitoring, documenting and maintaining the storm water pollution prevention plan (SWPPP) measures. Water quality and water quantity measures shall be provided as part of this Project. These measures shall be designed to meet the New York State Storm water Management Design Manual's required sizing criteria and pollutant removal goals.

e. Site Assessment and Inspections

The Construction Manager shall conduct a site assessment prior to the start of construction and certify in an inspection report that the specified soil erosion and sediment control measures have been adequately installed. Construction Manager shall maintain a record of all inspection reports in a site log book, maintained on site. Any changes to the SWPPP shall be documented on the SWPPP.

The Construction Manager shall perform regular inspections on all of the storm water management systems to ensure they are functioning properly. In any instance of non-compliance, corrective measures shall be implemented. The Construction Manager shall inspect the construction site at least once every seven (7) calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater.

f. Maintenance

The sediment filter system installed around the two existing sump pumps are to be maintained as needed to ensure that storm water is filtered before entering the sump pump. Material shall be removed from the silt fence when 'bulges' develop on the fence. Hay bales shall be removed and replaced when they have served their usefulness so as not to block or impede storm flow or drainage. The filter fabric shall

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be replaced as necessary, but not beyond when its capacity has been reduced by fifty (50) percent from the design capacity.

Erosion and Sedimentation Control Plan

- A. The Construction Manager shall be responsible for the development, coordination and oversight of the Erosion and Sedimentation Control Plan as well as coordination and communication with all Contractors to ensure compliance with the Erosion and Sedimentation Plan requirements. The Construction Manager shall designate one individual on-site to coordinate and address issues relating to the plan.
- B. The Construction Manager shall oversee, coordinate, document, and enforce the installation of all control measures and maintenance activities on site. The Construction Manager shall develop a "Sequence of Major Construction Activities" document which identifies and coordinates the control measures to be used throughout each major construction activity. The document will be reviewed with each Contractor prior to the start-up of their Work.
- C. The Construction Manager shall assemble from the Contractors all drawings, permits, or other documentation related to the control measures implemented, and shall photograph applicable control measures at regular intervals throughout the construction process for documentation purposes. The Construction Manager shall also keep a log of all ongoing maintenance activities.
- D. Each Contractor shall coordinate with the Construction Manager regarding the responsibilities of each under the plan, including installation, maintenance, and documentation of control measures and submission of any applicable permits. Each Contractor shall be responsible for compliance by each of its staff members, personnel, suppliers, and vendors. Each Contractor also shall be responsible for the compliance of all vehicles entering and leaving the site relating to the Contractor's scope of Work.
- E. Contractors shall have the opportunity to review a draft plan prepared by the Construction Manager, to comment on proposed control measures and suggest *alternative measures* to those of the Construction Manager which meet the goals of the plan.
- F. Erosion and Sedimentation Control Plan: The plan shall contain at a minimum the following:
 1. An analysis of the construction activities during each phase of the Project, relative to the objectives of the Soil Erosion and Sedimentation Control Plan. The Construction Manager shall identify possible causes of erosion, sedimentation, site pollution, and dirt and dust migration from the site. Likely causes include, but are not limited to, the following:
 - a) Excavation and transportation of soil from construction site
 - b) Dewatering
 - c) Concrete mixing, placement, and rinsing.
 - d) Transportation of materials onto and out of the site
 - e) Improper disposal of waste generated by construction activities, including packaging from products and materials
 2. An analysis of New York City and State requirements related to dewatering, erosion and sedimentation to which the Construction Manager and all Contractors must comply.
 3. The list of control measures which will be installed on the construction site by designated Contractors to address each cause of erosion, sedimentation, site pollution, and dirt and dust migration identified, and all applicable State of New York and City of New York requirements. Likely control measures include, but are not limited to, the following:
 - a) Installation of a construction fence with wind screen around construction site.
 - b) During demolition, breaking up of existing ground floor slabs to allow drainage into soil below, and wetting of demolition debris to minimize dust generation.
 - c) During excavation, soil retaining measures and continuous sheeting to stabilize areas of earth excavation around the perimeter of the site.

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- d) Removal of demolition materials and excavated soil from site on a timely basis and in covered trucks.
 - e) Controlled sprinkling of the site on an as-needed basis throughout construction to suppress dust.
 - f) Collection of sediment from pumped ground water by sediment trap or filtration tank.
 - g) Control and containment of all runoff resulting from rainwater on the site, by curbs and other barriers, such that no runoff leaves the site without having passed through the sediment trap or filtration tank.
 - h) Protection of storm drains and catch basins from sedimentation with filter fabric, gravel and mesh filters, and hay bale stops firmly anchored in the path of any runoff streams within the street.
 - i) Cleaning of concrete from transit mix trucks and finishing tools with minimal water in delineated washout area(s). Excess concrete shall be collected in a box and removed from the site by the Contractor as necessary. Excess water from concrete washout shall not leave the construction site.
 - j) Rinsing of trucks, as needed, in delineated truck rinsing area(s) before the trucks leave the site. Sediment shall be prevented from entering the storm sewer by protection of the storm sewer or capturing rinse water in filtration tank(s). The establishment of a truck rinsing area for use by multiple trades shall be coordinated by the Construction Manager.
 - k) General housekeeping measures including protection of materials stored on site from moisture, construction dust, wind, and damage. The Construction Manager shall designate storage locations on site to protect materials and prevent contamination of surrounding sites.
 - l) Proper disposal of all product and material packaging, in accordance with Section 01505 "Construction Waste Management".
4. A list of procedures and when they will be employed relative to the sequence of the Project's construction activities, for installing, inspecting, and maintaining controls.
- G. Contractors who do not comply with the requirements of the plan will be held responsible for necessary corrective actions at the direction of the Construction Manager.
- H. Final Submittals: The Construction Manager shall submit to 1 WTC the following documentation, as verification of Erosion and Sedimentation Control Plan Implementation:
- 1. Soil Erosion and Sedimentation Control Plan.
 - 2. Construction site drawing, indicating the location where control measures will be installed or established.
 - 3. Drawings, permits or other documentation related to the control measures implemented, including construction details for individual control measures.
 - 4. Photographs of implemented control measures taken at regular intervals throughout the demolition and construction process.
 - 5. Log of ongoing maintenance activities

C. LEED EA-P1 – Fundamental Building Commissioning

Contractor is aware of the building commissioning described below. This plan is provided for information only. There are no additional requirements for the Contractor, unless otherwise shown on the Contract documents.

Purpose: To implement a Building Commissioning Plan.

Action: Engage an independent commissioning authority to prepare and execute a building commissioning plan in accordance to specification section 01810. Implement fundamental, best practices building commissioning procedures. Include design phase reviews, Contractor submittal reviews, pre-functional testing (including seasonal testing), training, operations and maintenance manuals and post

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occupancy review. Provide Building Commissioning Plan consistent with the requirements of the NY State Green Building Tax Credit (NYSGBTC) 638.8.

D. LEED EAc1 – Optimize Energy Performance
Reduce Whole Building Energy Consumption 20% (ASHRAE 90.1-1999)

Contractor is aware of the Optimize Energy Performance strategies, described below. This plan is provided for information only. There are no additional requirements for the Contractor, unless otherwise shown on the Contract documents.

Purpose: To optimize the performance of building energy systems.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

B. Introduction

The intent of this plan is to coordinate the integration of energy conserving measures into the Project in order to result in an overall energy consumption from non-renewable energy source of the building that is 20% lower than that allowed by the Energy Cost Budget Method of ASHRAE 90.1-1999, thereby reducing emissions of greenhouse and other environmentally harmful pollutants as well as reducing reliance on fossil fuel energy. The DOE-2 energy modeling tool has been utilized to demonstrate the required energy performance. The contribution of the tenant fit-out portion of the Project, including readily available energy conserving measures that are applicable to the tenant provided systems, is accounted in the overall building performance assessment.

C. Project Measures

Specific measures that will be implemented for the Project are as follows:

1. Options for curtain wall glazing have been identified that offer the greatest reduction in solar heat gain transmission while allowing the highest possible transmission of beneficial visible daylight.
2. Lighting systems for all core and shell spaces (including mechanical equipment rooms) will utilize high efficiency luminaires and ballasts and will result in overall energy densities (watts/sq.ft.) that are approximately 20 percent lower than the levels allowed by ASHRAE Standard 90.1.
3. Automatic lighting controls (i.e. occupancy sensors) and continuous daylight dimming controls will be utilized for all base building lighting systems, as appropriate.
4. Displacement ventilation systems with radiant flooring are being implemented in the lobby and observation deck spaces.
5. Hot and cold water pumps will utilize variable frequency drives in order to allow significant reductions in pumping energy during periods of part load operation.
6. Deleted.
7. The air conditioning systems that serve the typical office spaces of the building will utilize low temperature supply air (48 deg. F) which will result in a reduction in fan energy consumption of the Project.
8. CO₂ sensors will be provided to allow for an automatic reduction in the quantity of outside air that will be delivered to each occupied floor of the building.
9. Exterior shading devices that would be integrated into the exterior façade of the building lobby, observation deck and restaurant levels are being evaluated.
10. Integrated day lighting strategies with sensor-based light and window blind controls are being evaluated in conjunction with the Lawrence Berkeley National Laboratory to determine optimal day lighting solutions for tenant fit-out and exemplar spaces.
11. A quantitative summary of the overall performance of the Project, based upon the DOE-2 simulation results, that demonstrates conformance with the 20% energy cost reduction criteria.

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E. LEED EAC6 – Green Power
LEED EAC2 – Onsite Renewable Energy
Achieve net zero CO2 for all base building electricity

Contractor is aware of the renewable energy requirements, described below. This plan is provided for information only. There are no additional requirements for the Contractor, unless otherwise shown on the Contract documents.

Purpose: To achieve net zero CO2 for all base building electricity consumption with on site and/or purchased renewable energy sources and institute a plan for transition as renewables become more cost-effective.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

B. Introduction

The intent of this plan is to coordinate the measures and strategies that are available to the Project to allow a portion of the building's energy to be produced by renewable sources, with the ultimate goal to meet 20% of the building's annual energy consumption with renewable energy by 2010.

C. Project Measures

The specific renewable energy measures that will be implemented or have been evaluated for the Project are as follows:

1. 1 WTC has begun discussions with the local electricity utility (New York Power Authority [NYPA]), including the primary customer for the site (the Port Authority) in order to develop a plan whereby NYPA will deliver 20% of the site electricity from renewable sources, in accordance with the requirements of New York State Executive Order 111.
2. Deleted
3. 1 WTC is exploring the use of advanced technology photovoltaic panel on various locations of the building in order to generate additional electricity from renewable sources.
4. Market research is being conducted to identify forthcoming photovoltaic products that may significantly reduce the cost barrier currently associated with photovoltaic technology. Fuel cell technology is also under active consideration.

F. SDG MEQ-1: Comprehensive Material Management Plan
LEED MR C-4.1 & 4.2 – Recycled Content

1 WTC is committed to utilizing materials that contain recycled content. 1 WTC is also committed to utilizing materials that are manufactured and/or within 500 miles of the Project construction site. Contractors shall provide corresponding statistics concerning materials furnished, as specified herein and in accordance with SDG measure MEQ-1. The following items shall be incorporated into the Work of the Contract at no additional cost.

Purpose: To optimize utilization of construction site material resources and to facilitate the reduction of waste generated by Contractors that would otherwise be hauled to and disposed of in landfills and/or incinerators.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractors and Subcontractors, acting under the supervision of Construction Manager.

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B. Introduction

The intent of this plan is to optimize utilization of construction site material resources and to facilitate the reduction of waste that would otherwise be hauled to and disposed of in landfills and/or incinerators; to incorporate previously used building materials and products into new construction; to incorporate materials with recycled content and increase market demand for building materials and products that incorporate recycled content; to reduce environmental degradation resulting from transportation impacts by increasing the demand for building materials and products that are extracted and/or manufactured in close proximity to the construction site; to specify wood which has been harvested according to sustainable forest management principles; and to encourage the specification of materials which are renewable and that grow in such a way as to support biological diversity and the health of the ecosystem.

C. Project Measures

- 1.0 The Contractor shall provide calculations and documentation of all pre and post consumer recycled content in accordance with Specification Section 01115, in the form of product cut sheet or manufacturers data with each application for payment as well as a final report and summary upon completion of Contractor's Work.
- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor or Subcontractor's scope of Work. Cost reporting shall include the total cost for the Contractor's Work plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

G. SDG MEQ-2: Construction Waste Management Plan
LEED MR C2.1 & 2.2 – Construction Waste Management

Contractor shall develop and implement a program to reduce the amount of construction and demolition waste delivered to landfills and/or incinerators and to conserve resources through reuse and recycling in compliance with MEQ-2, the Construction Waste Management Plan, as prepared by the Construction Manager.

Purpose: To reduce the amount of construction and demolition (C&D) waste going to landfills and/or incinerators and to conserve resources through reuse and recycling.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractors and Subcontractors, acting under the supervision of Construction Manager.

B. Introduction

The intent of this plan is to reduce the amount of construction and demolition (C&D) waste going to landfills and/or incinerators and to conserve resources through reuse and recycling.

C. Project Measures

1. 1 WTC has established that this Project shall generate the least amount of waste possible and that processes that ensure the generation of as little waste as possible due to error, inaccurate planning, breakage, mishandling, contamination, or other factors shall be employed.

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2. Of the inevitable waste that is generated, as many of the waste materials as economically feasible, and as stated here, shall be reused, salvaged, or recycled. Waste disposal in landfills shall be minimized.
3. Construction Manager will recycle and/or salvage a minimum of 75% of construction and demolition debris, calculated by weight. The following waste categories are likely candidates to be included in the diversion plan for this Project:
 1. Concrete
 2. Unit masonry (CMU, brick, etc.)
 3. Asphalt
 4. Metals (e.g. banding, stud trim, ductwork, piping, rebar, roofing, other trim, steel, iron, galvanized, stainless steel, aluminum, copper, zinc, brass, bronze);
 5. Cardboard, packaging
 6. Reuse items indicated on the Contract drawings and/or elsewhere in the Specifications;
 7. Clean dimensional wood;
 8. Drywall
 9. Carpet and pad;
 10. Ceiling tiles
 11. Glass
 12. Paper
 13. Plastics
 14. Beverage containers, aluminum, glass, and plastic

Fluorescent lamps, HID lamps and mercury-containing thermostats removed from the construction site shall be recycled to the maximum extent feasible, and in accordance with applicable codes and regulations

4. Due to the nature and location of the construction site, sorting and recycling of waste on the construction site will not be allowed, unless otherwise directed by Construction Manager. Construction Manager, Contractors, and vendors are to include off-site opportunities to recycle and reuse removed material in the Construction Waste Management Plan.
5. The Construction Manager and each Contractor shall provide calculations and documentation of salvage and recycling for all materials monthly and/or in each application for payment, whichever is more frequent, as well as a final report and summary upon completion of Contractor's Work.
6. The Construction Manager and each Contractor shall ensure that all waste removed for disposal is hauled away by an entity licensed to haul that type of waste, and is disposed at a landfill, incinerator or other facility licensed to dispose of that type of waste.
7. The Construction Manager and each Contractor shall ensure that all recyclable materials and waste materials to be removed from the site are taken away in trucks that have all necessary coverings to minimize dust impacts.
8. Each Contractor shall submit a Construction Waste Management Plan to the Construction Manager for approval. The plan shall contain at a minimum the following:
 1. An analysis of the materials to be used to crate, protect, transport equipment and materials to the site. The analysis to include methods to avoid, reuse, recycle, return and in general minimize the amount of waste that will be generated by this Contractor's Work.
 2. Contractor to meet with its vendors and suppliers to explore opportunities to minimize transportation, excess handling, excess packaging and use of non-environmentally responsible practices. Contractor shall submit documentation of this process.

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3. Estimate of the total proposed construction site waste to be generated, including types and quantities.
4. *Landfill options: The name of the landfill(s) where trash will be disposed.*
5. Proposed alternatives to land-filling: A list of each material proposed to be salvaged, reused, or recycled during the course of the Contractor's Work, the proposed destination for each material, and the projected amount by weight.
6. Materials handling procedures. A description of the means by which waste materials identified above for salvage reuse, or recycling will be protected from contamination, and a description *of the means to be employed in recycling the above materials* consistent with the requirements for acceptance by recycling processors to be utilized.
7. Transportation: A description of the means of transportation for the recyclable materials (whether materials will be site-separated and self-hauled to designated centers, or whether mixed materials will be collected by a waste hauler and removed from the site) and destination of materials.
8. Manager: Name and phone number of the Contractor's *designated on-site party (or responsible parties) responsible for* construction workers and overseeing and documenting results of the Construction Waste Management Plan.
9. List of documentation to be provided in each progress report.
10. Identification of how his Plan will be documented on a monthly basis.

H. LEED MR C3 Material Reuse

Purpose: *To incorporate previously used building materials and products into new construction.*

Action: In coordination with the Materials Management Plan consider the use of salvaged, refurbished or reused materials and products in the building. Materials for reuse typically include reclaimed lumber and wood such as salvaged wood flooring and wood doors and cabinets, structural metal work such as beams, and miscellaneous metal such as doors, door hardware, etc. Decorative and specialized items such as salvaged wood and glass panels, banquettes, front and back bars and decorative or period lighting fixtures may be used in special public locations such as cafeterias or restaurants.

The Contractor is aware of the above resource reuse requirement, and will utilize such materials as applicable to the Contractor's trade.

A. Project Measures

- 1.0 The Contractor shall provide quantity calculations and documentation of all reused resources with each application for payment as well as a final report and summary upon completion of Contractor's Work.
- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor's or its Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

I. LEED MR C5.1 & 5.2 – Regional Materials

Purpose: *To reduce environmental degradation resulting from transportation impacts by increasing the demand for building materials and products that are extracted and/or manufactured in close proximity to the site.*

Action: Utilize materials that are locally manufactured and/or locally extracted/harvested.

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"Manufactured" in this context means the location where final assembly takes place. If only a fraction of the material is locally manufactured and/or locally extracted/harvested then only that percentage (by weight) shall contribute to the regional value.

LEED CR5.1: Use a minimum of 10% of all building materials (based on cost) that are manufactured and extracted/harvested within a 500 mile radius of the site.

LEED CR5.2: Use a minimum of 20% of all building materials (based on cost) that are manufactured and extracted/harvested within a 500 mile radius of the site.

The Contractor is aware of the above local / regional materials requirements, and will utilize such materials as applicable to the Contractor's trade.

a. **Project Measures**

1. The Contractor shall provide quantity calculations and documentation of location of manufacture, extraction, and harvest in accordance with Specification Section 01115 in the form of product cut sheets or manufacturers data of all materials with each application for payment as well as a final report and summary upon completion of Contractor's Work.
2. The Contractor shall provide cost breakdowns for the materials included in the Contractor's or Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor equipment, overhead and profit).

J. **LEED MR C6: Certified Wood**

Purpose: To specify wood which has been harvested to sustainable forest management principles.

Action: Utilize wood materials certified under the Forest Stewardship Council's Principles and Criteria (FSC) (fsc.org) in conjunction with the Materials Management Plan. These materials include dimensional framing components, flooring, doors, paneling, millwork and furnishings, handrails and trim, etc. as well as temporary lumber and wood construction materials.

The Contractor is aware of the above materials requirements, and will utilize such materials as applicable to the Contractor's trade.

A. **Project Measures**

- 1.0 The Contractor shall provide quantity calculations and documentation and chain-of-custody certification numbers in accordance with Specification Section 01115 for all wood products with each application for payment as well as a final report and summary upon completion of Contractor's Work.
- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor's or Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

K. **SDG IEQ-1: IAQ Performance Management Plan**

Contractor is aware of the Indoor Air Quality (IAQ) Performance Management Plan (IEQ-1), described below. This plan is provided for information only. There are no additional requirements for the Contractor per IEQ-1, except as shown on the Contract documents.

Purpose: Establish high indoor air quality (IAQ) for comfort and well-being by minimizing the potential for poor air quality, and by establishing minimum IAQ performance and standards.

Action:

A. **Context**

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This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

B. Introduction

The intent of this plan is to create and maintain a healthy indoor environment. Various measures and technologies will be utilized in order maintain adequate ventilation to occupied spaces, reduce quantities of pollutants that may be introduced into the building, and verify proper indoor air quality through ongoing measurement and testing.

C. Project Measures

1. Indoor air quality testing will be conducted in accordance with New York State Green Building Tax Credit, section 838.7d (1). A detailed plan will be prepared prior to completion of construction in accordance with the EPA "Building Air Quality: A Guide for Building Owners and Facilities Managers".
2. MERV 15 high efficiency particulate filters and gas phase filtration will be provided to serve each outside air intake system and each local floor air handling unit.
3. Low volatile organic compound materials (VOC) will be utilized to the greatest extent possible, including: insulation, adhesives, sealants, paint, etc.
4. A mandatory 5-year air quality management plan shall be incorporated, which outlines detailed plans and testing procedures, training and education material, survey forms, and reporting methodologies, for building occupants and maintenance staff.
5. Carbon Dioxide sensors will be installed in outdoor air intakes and in return air plenums of core and shell building spaces.
6. Ventilation will be provided at a rate of a minimum of 20 cfm per person for all occupied spaces of the building, and will satisfy ASHRAE Std 62-2001 utilizing ASHRAE's Ventilation Rate Procedure.

L. SDG IEQ-5: Construction IAQ Management Plan
LEED EQ-C3 - Construction IAQ Management Plan

Contractor shall maintain minimum indoor air quality standards during construction operations. This Contractor shall develop and implement the following indoor air quality management programs as it related to its operations in compliance with IEQ-5, Construction Indoor Air Quality Management Plan.

Purpose: To provide minimum standards for the air quality of building areas upon occupancy.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractors and Subcontractors, acting under the supervision of 1 WTC.

B. Introduction

The intent of this plan is to provide minimum standards for the air quality of building areas upon occupancy.

C. Project Measures

1. The Construction Manager and Contractors shall prohibit smoking in any area of the Project, including, without limitation, their staff, workers, vendors, and guests.

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2. Contractors performing any Work with respect to HVAC (HVAC Contractors) shall meet or exceed the recommended Design Approach of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) indoor air quality guidelines for occupied buildings under construction, Chapter 3.
3. HVAC Contractors shall furnish, install, maintain, repair, replace, and remove high efficiency filtration media at all HVAC return air grilles during construction and replace all base building mechanical system filtration media with Minimum Efficiency Reporting Value of 13 (MERV 13) filters in accordance with ASHRAE 52.2 - 1999 immediately prior to occupancy. On completion of construction and prior to occupancy, such HVAC Contractor shall conduct a two (2) week flush out with new filter media using 100% outside air, in accordance with NYSGBTC 638.7(d)(2).
4. HVAC Contractors shall test indoor air quality at random sampling points for every 20,000sf, or by each floor if smaller, in accordance with recognized national standards, to achieve an air quality profile at the time of occupancy which satisfies the specific minimums for carbon dioxide, carbon monoxide, formaldehyde, volatile organic compounds, particulates, and radon as per NY State EO-111 reference to NYSGBTC 638.7(d)(2) and include one (1) additional testing procedure for 4-PCh to satisfy all of the alternative procedure requirements for LEEDS. Where concentration levels of contaminants exceed the established parameters in any specific area, flush out area with 100% outside air for a minimum of two (2) weeks and retest until a satisfactory result is achieved.
5. Only low-emitting VOC material is to be used for this Project. Adhesives and paints must meet or exceed VOC limits and chemical content restrictions as stated in the Contract documents. Carpets must meet Carpet and Rug Institute limits. Composite wood must contain no added Urea-formaldehyde resins.
6. Contractor shall construction, properly ventilate, and physically isolate activities associated with chemical contaminants.
7. Indoor Air Quality Management Goals: 1 WTC has established that this Project shall minimize the detrimental impacts on Indoor Air Quality (IAQ) resulting from construction activities. Factors that contaminate indoor air, such as dust entering HVAC systems and ductwork, improper storage of materials on-site, poor housekeeping, and improper sequencing of finishes, shall be minimized.
8. Contractor Responsibilities: The Contractor shall be responsible for developing and implementing an overall "Construction IAQ Management Plan" for the Project, including the following coordination activities:
 1. Outline the scope of the Construction IAQ Management process during construction, including submittal review, inspection and enforcement
 2. Outline the expected written work products, including checklists and worksheets
 3. Provide an activities schedule.
 4. Provide a schedule of Construction IAQ Management Plan meetings for every phase of the Project.
 5. Outline the IAQ-related training programs that will be provided for the trades.
 6. Designate an IAQ representative with daily responsibility for IAQ issues.
 7. Include procedures related to Construction IAQ Management Plan on the agenda during performance of the Work during every pre-construction meeting and during every regularly scheduled meeting. Minutes shall be recorded at all such meetings.
9. Construction IAQ Management Plan

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- A. The Construction Manager shall prepare and submit a Construction IAQ Management Plan to 1 WTC for approval. The Construction IAQ Management Plan shall meet the following criteria.
1. Construction activities shall be planned to meet or exceed the minimum requirements of the Sheet Metal and Air Conditioning National Contractors' Association (SMACNA) "IAQ Guidelines for Occupied Buildings under Construction", First Edition, 1995.
 2. Absorptive materials shall be protected from moisture damage when stored on-site and after installation.
 3. If air handlers are to be used during construction, filtration with a Minimum Efficiency Reporting Value (MERV) of 8 must be at each return air grill, as determined by ASHRAE 52.2-1999.
 4. Filtration media shall be replaced immediately prior to occupancy. Filtration media shall have a Minimum Efficiency Reporting Value (MERV) of 13 as determined by ASHRAE 52.2-1999.
 5. A "Sequence of Finish Installation Plan" shall be developed, highlighting measures to reduce the absorption of VOCs by materials that act as "sinks".
 6. Each floor of the building shall be subject to a flush-out / air purge immediately prior to occupancy, as per the requirements described elsewhere in this Section L.
 7. All air filters, casings, coils, fans, and ducts shall be clean before proceeding with testing, adjusting and balancing (TAB) and air quality testing.
 8. Permanent return air ducts must be inspected and/or cleaned to comply with the minimum requirements of the Contract documents. Duct testing and cleaning shall be witnessed and documented by the commissioning authority established by the Building Commissioning Plan.
- B. Upon approval by 1 WTC, the plan shall be implemented through the duration of the construction process, and documented in accordance with the submittal requirements of this Section.
- Further description of the Construction IAQ Management Plan requirements is as follows:
1. SMACNA Guidelines: Chapter 3 of the referenced "IAQ Guidelines for Occupied Buildings Under Construction", outline IAQ measures in five categories as listed below. The Construction IAQ Management Plan shall be organized in accordance with the SMACNA format, and shall address measures to be implemented in each of the five categories (including subsections). All subsections shall be listed in the Plan; items that are not applicable for this Project should be listed as such.
 - a. HVAC Protection
 - Return Side
 - Central Filtration
 - Supply Side
 - Duct Cleaning
 - b. Source Control
 - Product Substitution
 - Modifying Equipment Operation
 - Changing Work Practices
 - Local Exhaust
 - Air Cleaning
 - Cover or Seal
 - c. Pathway Interruption
 - Depressurize Work Area
 - Pressurize Occupied Space
 - Erect Barriers to Contain Construction Areas
 - Relocate Pollutant Sources
 - Temporarily Seal the Building
 - d. Housekeeping

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- Identify storage, disposal and housekeeping practices to be applied to building supplies and waste materials to protect building systems from contamination
- e. Scheduling
 - Airing out of new materials
 - Sequencing installation of finish materials
 - Proper curing of concrete before covering
 - Installation during unoccupied periods
 - Avoidance of building occupancy while construction-related pollutants are still present

C. Additional IAQ Plan Requirements

1. Protection of Materials from Moisture Damage: As part of the "Housekeeping" section of the Construction IAQ Management Plan, measures to prevent installed materials or material stored on-site from moisture damage shall be described. This section should also describe measures to be taken if moisture damage does occur to absorptive materials during the course of construction.
2. Replacement of Filtration Media: Under the "HVAC Protection" section of the Construction IAQ Management Plan, a description of the filtration media in all ventilation equipment shall be provided. The description shall include replacement criteria for filtration media during construction, and confirmation of filtration media replacement for all equipment immediately prior to occupancy.
3. Sequence of Finish Installation for Materials: Absorptive materials (referred to herein as "Type 2" materials) shall be installed after the installation of materials or finishes which have high short-term emissions of VOC's, formaldehyde, particulates, or other air-borne compounds (referred to herein as "Type 1" materials).
 - a. Absorptive materials include, but are not limited to: carpets; acoustical ceiling panels; fabric wall coverings; insulations (exposed to the airstream); upholstered furnishings; and other woven, fibrous or porous materials.
 - b. Materials with high short-term emissions include, but are not limited to: adhesives, sealants and glazing compounds (specifically those with petrochemical vehicles or carriers); paints, wood preservatives and finishes; control and/or expansion joint filters; hard finishes requiring adhesive installation; gypsum board (with associated finish processes and products); and composite or engineered wood products with formaldehyde binders.
4. Ventilation during installation of materials and finishes: 100% outside air shall be provided continuously during the installation of materials and finishes, beginning after the building is substantially enclosed. If building HVAC systems are used to supply the ventilation air, filtration media shall be installed per the requirements of this Section.

D. Flush-out / Air Purging: Flush out must be conducted on every floor immediately prior to initial occupancy, based on the following parameters:

1. Flush-out shall be conducted with new filtration media having a Minimum Efficiency Reporting Value (MERV) of 13, as determined by ASHRAE 52.2-1999. After the flush-out, between 30 and 60 percent, 100 percent outside air is provided at a minimum of 50 percent of the full airflow rate of the fan during typical operating conditions.
2. When outside air temperatures and relative humidity are outside the ranges specified in the paragraph directly above, 100 percent outside air

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is provided at a minimum of 25 percent of the full airflow rate of the fan during typical operating conditions.

3. Duration: The minimum duration of the flush-out period shall be the greater of the following:
 - a. Time required for delivery of a total air volume of 14,000 cu. ft. per sq. ft. of floor area
 - b. Seven consecutive days
4. The ventilation system must be capable of replacing 100 percent of the air on any floor, on a minimum of two floors at a time.
5. Scheduling: The Contractor is responsible for coordinating the scheduling and sequencing of the building flush-out with 1 WTC (or 1 WTC's designated representative). Scheduling and sequencing shall be addressed and incorporated into the Contractor's Construction IAQ Management Plan, and shall meet the following criteria:
 - a. Building flush-out must be conducted immediately prior to occupancy.
 - b. Regardless of the duration as determined above, the flush-out must be scheduled so that it concludes a minimum of two weeks after substantial completion of construction.

E. *Indoor Air Quality Testing: IAQ Testing shall be performed in accordance with the requirements of the New York State Green Building Tax Credit (GBTC), section 638.7(d) "Indoor Air Quality", sub-section (1) "Indoor Air Quality Testing". A copy of the pertinent GBTC section is appended to the end of this Specification Section.*

1. Testing shall be conducted no later than 30 days after occupancy, and subsequently on an annual basis for five years. The testing entity shall be hired directly by 1 WTC.
2. The Construction Manager shall be responsible for coordination of all IAQ testing and flush-outs required by the GBTC during the duration of Construction Manager's contract with 1 WTC, up to the date of substantial completion of the Project or beneficial occupancy as determined by 1 WTC, whichever is later.
3. In addition to the contaminants required under GBTC, testing shall also be performed for 4-Phenylcyclohexene (4-PCH), as per the State of Washington IAQ standard applicable to carpet only. The maximum concentration for 4-PCH shall be 6.5 micrograms per cubic meter.

- M. LEED EQ C4.1 Low Emitting Materials - Adhesives and Sealants
LEED EQ C4.2 Low Emitting Materials - Paints and Coatings
LEED EQ C4.3 Low Emitting Materials - Carpet Systems
LEED EQ C4.4 Low Emitting Materials - Composite Wood and Agrfiber

Purpose: To reduce the density of contaminants that are emitted by common building materials and which affect the comfort and well-being of building occupants.

Action: Develop and implement a Materials Management Plan to minimize utilization of materials with high levels of volatile organic compounds (VOC's) and other toxic characteristics which adversely affect Indoor Air Quality (IAQ). VOC's must meet or be lower than those indicated in the Contract documents. Comply with chemical component restrictions as indicated in the Contract documents. the following standards:

- Adhesives and sealants: South Coast Air Quality Management District Rule #1168
- Paints and coatings: Green Seal Standard GS-11 (1993); Green Seal Standard GC-03 (1997), South Coast Air Quality Management District Rule 1113

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- Carpet and carpet adhesives: Carpet and Rug Institute Green Label Plus Indoor Air Quality Test Program

Use only non-urea-formaldehyde-based bonding agents in composite wood and typical millwork applications such as veneer and plastic laminate applications, etc. Use no unprotected insulation in ducts, supply plenums and return plenums per NYSGBTC 638.7(j).

The Contractor is aware of the above plan to reduce contaminants from materials. Contractors using VOC's shall submit a Material Management plan to minimize VOC's.

Project Measures

- 1.0 The Contractor shall provide documentation of the VOC contents for all products containing VOCs (unless indicated otherwise in the Contract documents) with each application for payment as well as a final report and summary upon completion of Contractor's Work. The Contractor shall also submit product cut sheet or manufacturers data indicating that all applicable wood products contain no-urea formaldehyde bonding agents.
- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor's or Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

N. SDG IEQ-9: Integrated Pest Management Plan

The Contractor is aware that the Project will have an Integrated Pest Management Plan IEQ-9, as described below. This Contractor will mitigate unwanted pests by not allowing debris from this Contractor's operations to accumulate, and dispose of any food debris from this Contractor in sealed containers. This Contractor will further comply with the requirements of the Integrated Pest Management Plan, as developed, at no additional cost. The Integrated Pest Management Plan, including Subcontracting with a licensed Pest Control Subcontractor, shall be performed by the following Contractor's while construction progresses as follows:

Excavation and Foundation Contractor: during Excavation and Foundation Phase
Superstructure Concrete Contractor: during Concrete Superstructure phase
Rough Carpentry Contractor: from completion of Concrete Superstructure until job completion.

During Construction it shall be the responsibilities of all Contractors on-site to comply with the methods established in the Pest Management Plan. These include:

- 1.0 Separation of leftover food and biodegradable materials (sandwiches, paper wrappers, cartons, etc. from construction workers on-site meals, etc.) in provided bins to prevent commingling this waste with construction debris. The Construction Manager shall provide special steel waste receptacles with lids for these materials.
- 2.0 Proper sealing of all areas where service pipes, etc. enter the building and waste pipes exit to prevent pests entering the building. These locations will be regularly inspected by the Construction Manager to confirm tightness of seals at points of entry and exit.
- 3.0 Pipe-fittings and all holes, voids, cracks or similar are to be properly stopped in all wet locations (rest rooms, janitors' closets, kitchens, pantries, maintenance and service areas, etc). Regular inspections shall be made by the Construction Manager to confirm tightness of seals..
- 4.0 Spills and standing water or puddles must be cleaned or mopped-up promptly.
- 5.0 When applicable the Contractor shall cover drains and open pipes with grilles.

RIDER "G"
SUSTAINABLE DESIGN / CONSTRUCTION GUIDELINES AND LEED CERTIFICATION
GENERAL REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

May 11, 2007
(Revision #6)

- 6.0 The Construction Manager will allocate space for stock-piling materials. Stacking materials against the building where they can act to conceal the presence of rodents and vermin, potentially allowing them access to the building from concealed locations, will not be permitted.

The intent of this plan is to provide long term, environmentally sound pest prevention and suppression for the job site and surrounding areas through the use of a wide variety of technological and management practices.

The Construction Manager shall furnish all supervision, labor, materials and equipment necessary to accomplish the monitoring, trapping, pesticide application, and pest removal of this program. Contractor shall cooperate with Construction Manager to the extent necessary to satisfy these requirements. The measures to be employed by the Construction Manager include but are not limited to the following:

1. A complete and thorough inspection of the construction site and improvements at least ten (10) working days prior to the starting date of the Contract. Construction Manager will submit an inspection report evaluating the pest control needs of all locations and identifying problem areas and any equipment, structural features, or management practices that are contributing to pest infestations. The report should contain recommendations for actions to mitigate the presence of pests.
2. Prior to starting Work, this Contractor is required to submit a comprehensive Pest Control Plan addressing the following items:
 - Proposed Materials and Equipment for Service: Furnish for review and approval current labels and MSDS for all pesticides to be used, brand names of application equipment, rodent bait boxes and trapping devices, pest monitoring devices and detection equipment, and any other equipment or devices used to satisfy the requirements.
 - Proposed Methods and Means for Monitoring and Detection
 - Service Schedule for Site and Inspection Reports
 - Recommendations for Structural or Operational changes that would facilitate pest control.
 - Commercial Pesticide Applicator Certificates or Licenses for every Contractor employee who will be performing on-site service.
3. All pesticides used by the Contractor must be registered with the U.S. Environmental Protection Agency (EPA), state and/or local jurisdictions. Transport, handling and application of all pesticides shall be in strict accordance with manufacturer's label instructions and all federal, state, and local laws and regulations.
4. Pesticide application shall be by need and not by schedule. As a general rule, application of pesticides shall not occur unless visual inspection or monitoring devices indicate the presence of pests in that specific area. Requests for preventive measures will be evaluate by the CM on a case by case basis.
5. When pesticide use is necessary, the Contractor will employ the least hazardous material and method, most precise application technique, and minimum quantity of pesticide needed to achieve control. No exposed surface spraying or fogging will be allowed unless alternative measures are not practical. Application of insecticides shall be considered as crack and crevice treatment only.
6. Contractor shall use non-pesticide methods of control wherever possible. (e.g. portable vacuums for cleanout of cockroach infestations, etc.). At the Construction Manager's discretion, Contractor will provide minor applications of caulk or sealant to eliminate pest harborage or access.
7. Trapping devices and bait boxes shall be concealed in protected areas so as not to be affected by job site operations. All bait boxes shall be securely locked and tamper resistant. Rodent carcasses shall be disposed of immediately in an appropriate manner.
8. This Contractor shall comply with manufacturer's instructions for cleanup and disposal of spilled pesticides.
9. During the course of construction, this Contractor shall maintain and submit a log recording types, location and amounts of chemical pesticides used on site, date of application and reapplication, spillages, etc. In addition, the Contractor should conduct

RIDER "G"
SUSTAINABLE DESIGN / CONSTRUCTION GUIDELINES AND LEED CERTIFICATION
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May 11, 2007
(Revision #6)

Inspections no less than bi-weekly to observe and report on the effectiveness of measures taken and the condition of the site as it relates to pest control.

10. It is the responsibility of Construction Manager to post warning signs around the construction site.



RIDER "H"
[INTENTIONALLY DELETED]
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

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RIDER "I"
SALES AND USE TAX REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

October 23, 2007

1. Port Authority of New York & New Jersey Sales Tax Letter, dated June 21, 2007.
2. Form ST-120.1: New York State and Local Sales and Use Tax, Contractor Exempt Purchase Certificate.
3. Form ST-124: New York State and Local Sales and Use Tax, Certificate of Capital Improvement
4. DTF-122: Certification of Agency Appointment by a New York Governmental Entity
5. ST-122: Exempt Purchase Certificate for an agent of a New York Governmental Entity
6. FT-122: Fuel Tax Exempt Purchase Certificate for an Agent of a New York Governmental Entity



THE PORT AUTHORITY OF NY & NJ

*Michael B. Francois
Director, Development Department*

June 21, 2007

Re: CONSTRUCTION OF 1 WORLD TRADE CENTER ("FREEDOM TOWER")
NEW YORK CITY, NEW YORK

Dear _____:

In connection with the construction work that you are to perform with respect to the building known or to be known as 1 World Trade Center ("1 WTC") also known as the Freedom Tower, located at the World Trade Center site, in New York, New York, this letter confirms that the land upon which 1 WTC will be located, and all improvements constructed or to be constructed thereon (including 1 WTC) are owned by The Port Authority of New York and New Jersey ("Port Authority"), a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey. This letter also confirms that 1 World Trade Center, LLC, a wholly owned entity of the Port Authority, is the net lessee of 1 WTC and the improvements being constructed in connection therewith, pursuant to a lease dated July 16, 2001 which was Amended and Restated on November 16, 2006, which lease is for a term of ninety-nine years (the "Lease"). The Lease is in full force and effect.

It is my understanding that contractors duly registered with the New York Department of Taxation and Finance as vendors may purchase certain tangible personal property in New York exempt from sales taxes if the personal property will be used to improve the real property of an exempt entity under Section 1116(a) of New York's Tax Law, such as the Port Authority, and if the contractors present each of their own suppliers with a properly completed Contractor Exempt Purchase Certificate, Form ST-120.1 (4/06).

You may use this letter in communications with your subcontractors and with the New York State Department of Taxation and Finance relating to sales tax issues that may arise in connection with the construction of the 1 WTC.

Sincerely,

Michael B. Francois
Director
Development Department

225 Park Avenue South - 19th Fl.
New York, NY 10003
T: 212 435 6482 F: 212 435 5146

mfrancois@panynj.gov



New York State
Department of
Taxation and Finance

ST-120.1
(10/05)

New York State and Local Sales and Use Tax Contractor Exempt Purchase Certificate

To be used only by contractors who are registered with the Tax Department for sales tax purposes.

To vendors:

You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exemption certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

To contractors and vendors: read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

| | | | | | |
|----------------|-------|----------|-------------------------------|-------|----------|
| Name of vendor | | | Name of purchasing contractor | | |
| Street address | | | Street address | | |
| City | State | ZIP code | City | State | ZIP code |

1. I have been issued a New York State Certificate of Authority, _____, to collect
(enter your sales tax vendor identification number)
New York State and local sales and use tax, and this certificate has not expired or been suspended or revoked.

2. The tangible personal property or service being purchased will be used on the following project:

located at _____
for and with _____
pursuant to prime contract dated _____

3. These purchases are exempt from sales and use tax because:

(Mark an X in the appropriate box; for further explanation, see Items A through O in instructions.)

A. The tangible personal property is to be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under section 1116(a) of the Tax Law. *(For example, New York State government entities, United States governmental entities, United Nations and any international organization of which the United States is a member, certain posts or organizations of past or present members of the armed forces, and certain nonprofit organizations and Indian nations or tribes that have received New York State sales tax exempt organization status).* The tangible personal property will become an integral component part of such building, structure, or real property.

B. The tangible personal property is production machinery and equipment, and it will be incorporated into real property.

C. The tangible personal property will be used:

- in an Internet data center, or
- directly and predominantly in connection with telecommunications services for sale or Internet access services for sale, or
- directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs.

D. The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation.

Note: This certificate is not valid unless the purchaser completes the certification on page 2.

- E. The tangible personal property will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.
- F. The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. The tangible personal property will be used to erect, add to, improve, repair, maintain, or service a building, structure, or real property owned by a qualified empire zone enterprise (QEZE), and will become an integral component part of such building, structure, or real property. (Note: Item G purchases are exempt from the New York State tax rate and from the 3/8% Metropolitan Commuter Transportation District (MCTD) rate. Item G purchases may be exempt from local taxes. See instructions.)
- H. The tangible personal property is residential solar energy systems equipment. (Note: Item H purchases are exempt from the 4% New York State tax rate and from the 3/8% MCTD rate. Item H purchases may be exempt from local taxes. See instructions.)
- I. The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.
- J. The services are for the project described in line 2 above and will be resold. (This includes trash removal services in connection with repair services to real property.)
- K. The trash removal service being performed for the above project is in connection with a capital improvement to the real property of an organization exempt under section 1116(a) of the Tax Law.
- L. The services are to install, maintain, service, or repair tangible personal property used in an Internet data center, for telecommunication or Internet access services, or for radio or television broadcast production or transmission.
- M. The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.
- N. The services are to install residential solar energy systems equipment.
- O. The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*.

Caution: Contractors may not use this certificate to purchase services exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

I certify that the above statements are true and complete, and I make these statements with the knowledge that willfully issuing a false or fraudulent certificate, with the intent to evade tax, is a misdemeanor under section 1817(m) of the New York State Tax Law and Section 210.45 of the Penal Law, punishable by a fine of up to \$10,000 for an individual or \$20,000 for a corporation. I also understand that the Tax Department is authorized to investigate the validity of exemptions claimed or the accuracy of any information entered on this form.

| | |
|---|---------------|
| Type or print name and title of owner, partner, etc. of purchasing contractor | |
| Signature of owner, partner, etc. | Date prepared |

Substantial penalties will result from misuse of this certificate.

Instructions

Only a contractor who has a valid *Certificate of Authority* issued by the Tax Department may use this exemption certificate. The contractor must present a properly completed certificate to the vendor to purchase tangible personal property, or to a subcontractor to purchase services tax exempt. This certificate is not valid unless all entries have been completed.

The contractor may use this certificate to claim an exemption from sales or use tax on tangible personal property or services that will be used in the manner specified in items A through K below. The contractor may not use this certificate to purchase tangible personal property or services tax exempt on the basis that Form ST-124, *Certificate of Capital Improvement*, has been furnished by the project owner to the contractor. The contractor must use a separate Form ST-120.1, *Contractor Exempt Purchase Certificate*, for each project.

Purchase orders showing an exemption from the sales or use tax based on this certificate must contain the address of the project where the property will be used, as well as the name and address of the project owners (see page 1 of this form). Invoices and sales or delivery slips must also contain this information (name and address of the project for which the exempt purchases will be used or where the exempt services will be rendered, as shown on page 1 of this form).

Use of the certificate

This certificate may be used by a contractor to claim exemption from tax only on purchases of tangible personal property that is:

- A. Incorporated into real property under the terms of a contract entered into with an exempt organization that has furnished the contractor with a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, governmental purchase order, or voucher.
- B. Incorporated into real property and its production machinery or equipment for which the customer has given the contractor a copy of Form ST-121, *Exempt Use Certificate*.
- C. Used in one of the following situations:
 - Machinery, equipment, and other tangible personal property related to providing Web site services for sale to be installed in an Internet data center. (Examples of qualifying machinery, equipment, and tangible personal property include: computer system hardware, pre-written software, storage racks for computers, property relating to building systems designed for an Internet data center such as interior fiber optic and copper cable, property necessary to maintain the proper temperature and environment such as air filtration and air conditioning, property related to fire control, power generators, protective barriers, property that when installed will constitute raised flooring; and property related to providing security to the center.) The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*.
 - Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
 - Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also includes machinery, equipment, and other tangible personal property used by a broadcaster directly and predominantly to transmit live or recorded programs. (Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)
- D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.
- E. Used predominantly (more than 50%) either in farm production or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*. The exemption is allowed on tangible personal property whether or not the property is incorporated into a building or structure.
- F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. Incorporated into a building, structure, or real property located in the empire zone in which the qualified empire zone enterprise (QEZE) has qualified for tax benefits. The exemption is allowed on the New York State tax rate and on the 4% MCTD rate. The exemption does not apply to Municipal Assistance Corporation (MAC) taxes in New York City, or to county, city, or school district taxes, unless New York City or the county, city, or school district elects the exemption. In that case, purchases are exempt from the full, combined New York State and local tax rate. See Publication 718-Q, *Local Sales and Use Tax Rates on Sales to a Qualified Empire Zone Enterprise (QEZE)*, for a listing of sales tax rates pertaining to the QEZE exemption. The customer must furnish the contractor a completed Form ST-121.6, *Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate*.
- H. Residential solar energy systems equipment. *Residential solar energy systems equipment* means an arrangement of or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water, and/or electricity. The exemption is allowed on the New York State 4% tax rate and where applicable, the 4% MCTD rate. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. Note: No local exemption may be effective before December 1, 2005. The customer must furnish the contractor with a completed Form ST-121, *Exempt Use Certificate*, by completing the box marked *other*. For the definition of *residence* and for an exception relating to recreational equipment used for storage, as well as for other pertinent information, see TSB-M-05(11)S, *Sales and Use Tax Exemption for Residential Solar Energy Systems Equipment*.
- I. Delivered and used directly and exclusively in addition to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property*

Purchased for Leased Commercial Office Space in Lower Manhattan, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased within the first year of the qualifying tenant's lease.

This certificate may also be used by a contractor to claim exemption from tax on the following services:

- J. Installing tangible personal property, including production machinery and equipment, that does not become a part of the real property upon installation.
Repairing real property, when the services are for the project named on the front of this form and will be resold.
Trash removal services rendered in connection with repair services to real property, if the trash removal services will be resold.
Note: Purchases of services for resale can occur between prime contractors and subcontractors or between two subcontractors. The retail seller of the services, generally the prime contractor, must charge and collect tax on the contract price, unless the project owner gives the retail seller of the service a properly completed exemption certificate.
- K. Trash removal services purchased by a contractor and rendered in connection with a capital improvement to an exempt organization's property.
- L. Installing, maintaining, servicing, or repairing tangible personal property used for Web hosting, telecommunication or Internet access services, or by a broadcaster (described in C on page 3).
- M. Installing, maintaining, servicing, or repairing tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both (described in E on page 3).
- N. Installing residential solar energy systems equipment (described in H on page 3).
- O. Installing tangible personal property delivered to and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an

Integral component part of the building in which the leased premises are located.

To the purchaser

Warning for misuse of this form

Any person who intentionally issues a false exemption certificate to evade sales and compensating use tax may be assessed for the tax evaded, and will be subject to a penalty of 100% of the tax due and a penalty of \$50 for each such certificate issued. The purchaser will also be guilty of a misdemeanor punishable by a fine not to exceed \$10,000 (\$20,000 for a corporation). Other penalties may also apply.

In addition, your *Certificate of Authority*, allowing you to make certain tax-free purchases, may be revoked, prohibiting you from conducting any business in New York State for which a *Certificate of Authority* is required.

To the vendor

Do not accept this certificate unless all entries have been completed. The contractor must give you a properly completed exemption certificate no later than 90 days after delivery of the property or service; otherwise, the sale will be deemed to have been taxable at the time the transaction took place. When a certificate is received after the 90 days, both the seller (vendor) and contractor assume the burden of proving that the sale was exempt, and both may have to provide additional substantiation.

Your failure to collect sales or use tax, as a result of accepting an improperly completed exemption certificate or receiving the certificate more than 90 days after the sale, will make you personally liable for the tax plus any penalty and interest charges due.

You must keep this exemption certificate for at least three years after the due date of the last return to which it relates, or after the date when the return was filed; if later. You must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate you have on file for that customer.

Caution: You will be subject to additional penalties if you sell tangible personal property or services subject to tax, or purchase or sell tangible personal property for resale, without possessing a valid *Certificate of Authority*. In addition to the criminal penalties imposed under the New York State Tax Law, you will be subject to a penalty of up to \$500 for the first day on which such a sale or purchase is made, plus up to \$200 for each subsequent day on which such a sale or purchase is made, up to the maximum allowed:

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3676



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.
To order forms and publications: 1 800 462-8100
Business Tax Information Center: 1 800 972-1233
From areas outside the U.S. and outside Canada: (518) 485-6800



Hotline for the hearing and speech impaired:
If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

New York State and Local Sales and Use Tax
Certificate of Capital Improvement

After this certificate is completed and signed by both the customer and the contractor performing the capital improvement, it must be kept by the contractor.

Read this form completely before making any entries.

This certificate may not be used to purchase building materials.

| | | | | | |
|--|-------|----------|--|-------|----------|
| Name of customer (print or type) | | | Name of contractor (print or type) | | |
| Street address | | | Street address | | |
| City | State | ZIP code | City | State | ZIP code |
| Certificate of Authority number (if any) | | | Certificate of Authority number (if any) | | |

To be completed by the customer:

Describe capital improvement to be performed:

| | | | |
|--|------|-------|----------|
| Project name | | | |
| Street address (where the work is to be performed) | City | State | ZIP code |

I certify that:

- I am the owner, tenant, of the real property identified on this form, and
- The work described above will result in a capital improvement to the real property within the guidelines listed on the back of this form, and
- This contract (check one) includes, does not include, the sale of tangible personal property that, when installed, retains its identity as tangible personal property and does not become a permanent part of the real property.

I understand that:

- I will be responsible for any sales tax, interest, and penalty due on the contractor's total charge for tangible personal property and for labor, if it is determined that this work does not qualify as a capital improvement, and
- I will be required to pay the contractor the appropriate sales tax on tangible personal property (and any associated services) transferred to me pursuant to this contract, when the property installed by the contractor does not become a permanent part of the real property; and
- I will be subject to civil or criminal penalties (or both) under the Tax Law, if I issue a false or fraudulent certificate.

| | | |
|-----------------------|-------|------|
| Signature of customer | Title | Date |
|-----------------------|-------|------|

To be completed by the contractor:

I, the contractor, certify that I have entered into a contract to perform the work described by the customer named above. (A copy of the written contract, if any, is attached.)

I understand that my failure to collect tax as a result of accepting an improperly completed certificate will make me personally liable for the tax otherwise due, plus penalties and interest.

| | | |
|------------------------------------|-------|------|
| Signature of contractor or officer | Title | Date |
|------------------------------------|-------|------|

This certificate is not valid unless all entries are completed.

Guidelines

If a contractor gets a properly completed (that is, no required entries on the form are left blank) Form ST-124, *Certificate of Capital Improvement*, from the customer within 90 days after rendering services, the customer bears the burden of proving the job or transaction was a capital improvement (that is, was not taxable to the customer).

If a contractor does not get a properly completed *Certificate of Capital Improvement* within 90 days, the contractor bears the burden of proving the work or transaction was a capital improvement. The failure to get a properly completed certificate, however, does not change the taxable status of a transaction; that is, a contractor may still show that the transaction was a capital improvement. If a contractor erects a building for a customer, or performs some other work that constitutes a capital improvement, the contractor must pay tax on the purchase of building materials or other tangible personal property, but is not required to collect tax from the customer for the capital improvement. If the work performed is taxable (such as repair, service, or maintenance), the contractor must collect tax from the customer on the full charge to the customer, including labor and materials.

The contractor must keep any exemption certificate for at least three years after the due date of the last return to which it relates, or the date the return was filed, if later. The contractor must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate on file for that customer.

When the customer completes this certificate and gives it to the contractor, it is evidence that the work to be performed will result in a capital improvement to real property.

A capital improvement to real property is defined in section 1101(b)(9) of the Tax Law and Sales Tax Regulation section 527.7(a)(3), as an addition or alteration to real property that:

- (a) substantially adds to the value of the real property or appreciably prolongs the useful life of the real property,
- and
- (b) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself,
- and
- (c) is intended to become a permanent installation.

The work performed by the contractor must meet all three of these requirements to be considered a capital improvement. This certificate may not be issued unless the work qualifies as a capital improvement.

A contractor, subcontractor, property owner, or tenant, may not use this certificate to purchase building materials or other tangible personal property tax free. A contractor's acceptance of this certificate does not relieve the contractor of the liability for sales tax. A contractor must pay sales tax on the purchase of building materials or other tangible personal property subsequently incorporated into the real property as a capital improvement (see Publication 764, *Home Improvements and Repairs*, for additional information) unless the contractor can legally issue Form ST-120.1, *Contractor Exempt Purchase Certificate*.

The term *materials* is defined as items that become a physical component part of real or personal property, such as lumber, bricks, or steel (Sales Tax Regulation, section 541.2(l)).

This term also includes items such as doors, windows, kits, and prefabricated buildings used in construction.

Floor Covering

Floor covering such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile, and vinyl tile installed as the initial finished floor covering in (1) new construction, (2) a new addition to an existing building or structure, or (3) in a total reconstruction of an existing building or structure, constitutes a capital improvement regardless of the method of installation. As a capital improvement, the charge to the property owner for the installation of floor covering is not subject to New York State and local sales and use taxes. However, the retail purchase of floor covering (such as carpet or padding) itself is subject to tax.

Floor covering installed other than as described in the preceding paragraph does not qualify as a capital improvement, even though it meets the criteria stated in (a), (b), and (c). Therefore, the charge for materials and labor is subject to the sales tax, regardless of the manner in which the covering is installed (see Publication 864.1, *Floor Coverings and the Sales Tax Law*, for additional information), but the contractor may apply for a credit or refund of any sales tax already paid on the materials.

The term *floor covering* does not include flooring such as ceramic tile, hardwood, slate, terrazzo, and marble. Thus, the rules for determining when floor covering constitutes a capital improvement do not apply to such flooring. Rather, the criteria stated in (a), (b), and (c) above apply to the flooring.

For guidance as to whether a job is a repair or a capital improvement, refer to Publication 862, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*.

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday. For business tax information and forms, call the Business Tax Information Center at 1 800 972-1233. For general information, call toll free 1 800 225-5829. To order forms and publications, call toll free 1 800 462-8100. From areas outside the U.S. and Canada, call (518) 485-8800.

Fax-on-Demand Forms Ordering System - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch-Tone phone to order by fax. A fax code is used to identify each form.

Internet Access - <http://www.tax.state.ny.us> Access our website for forms, publications, and information.

Hotline for the Hearing and Speech Impaired - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll-free from the U.S. and Canada 1 800 834-2110. Assistance is available from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information numbers listed above.

Mailing Address - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.



Certification of Agency Appointment by a New York Governmental Entity

DTF-122
(7/05)

This form cannot be used for purchases by employees of governmental entities or in IDA projects.

I, Michael B. Francois Name of authorized representative affirm that 1 World Trade Center, LLC Name of designated agent with a federal employer identification number of 13-6400654 Designated agent's federal EIN was duly designated by a contract dated September 5, 2007 Date of designation as an official agent of The Port Authority of NY and NJ Legal name of New York governmental entity (an agency of other instrumentality of New York State

or its political subdivisions, including counties, municipalities, public school districts, or public corporations) for the purpose of making purchases on its behalf and for which purchases the credit of the above-named governmental entity is committed.

This agency appointment is effective for purchases (including leases and rentals) of tangible personal property and taxable services for the following named contract between the above governmental entity and agent (you must include the contract ID number or title):

Amended and Restated Agreement of Lease dated July 16, 2001

Clearly describe the scope of the agency and the types of purchases that the above party is authorized by the governmental entity to make on its behalf, and any limitations imposed on such entity (attach additional pages as needed):

Purchase of materials, supplies and services and purchase or rent of equipment for the construction of the Freedom Tower, 1 World Trade Center in Lower Manhattan, New York City, New York.

Effective period of the agency appointment
The designation and acceptance of agency is effective beginning on 9/5/2007 Date through and including 7/15/2100 Date

Acknowledgments

- (I) The governmental entity, through its authorized representative, hereby acknowledges the following with regard to purchases (including leases and rentals) made by the above-named agent pursuant to this certification that are within the scope of the agency designation and are made during the effective period of the agency appointment:
 1. the purchases shall be considered the legal equivalent of purchases made directly by the above-named governmental entity; and
 2. that any item or material purchased shall immediately, upon the vendor's delivery to the agent, become the property of the named governmental entity; and
 3. the named governmental entity, as principal, assumes direct liability to the vendor for the agent's purchases of any property or services.

The authorized representative further acknowledges that he or she is acting in the capacity of an officer or employee of the above-named governmental entity, that he or she has sufficient familiarity with the above-named contract to certify that the above contract creates a principal-agent relationship, and that he or she has the authority to execute this certification on behalf of the above-named governmental entity.
- (II) The authorized representative of the agent hereby acknowledges that it was designated an agent of the governmental entity named in the contract described above and that it has agreed to act on the entity's behalf. In addition, the entity named as designated agent may not rely on this form to create the agency relationship. If an agency relationship does not exist, the entity named as designated agent may owe tax on its purchases. The agent is not authorized to delegate this purchasing agency appointment to others; separate complete certifications of agency by this New York governmental entity are required for each contractor or subcontractor who is to purchase on behalf of this New York governmental entity.

Certification

We further certify that all of the statements made on this certificate are true and correct, and that it is within our authority to make such representations. We make these statements with the knowledge that knowingly making a false or fraudulent statement on this document is a misdemeanor under Tax Law section 1817 and Penal Law section 210.45, punishable by imprisonment for up to a year and a fine of up to \$10,000 for an individual or \$20,000 for a corporation. We understand that the Tax Department is authorized to investigate the validity of the exemption claimed or the accuracy of any information entered on this form.

New York governmental entity information

| | |
|--|----------|
| Name of New York governmental entity | |
| The Port Authority of NY and NJ | |
| Street address | |
| 225 Park Avenue South, 15th Floor | |
| City | State |
| New York | New York |
| ZIP code | |
| 10003 | |
| Name and title of authorized representative of governmental entity | |
| A. Paris Bianco | |
| Signature of authorized representative of governmental entity | Date |
| <i>A. Paris Bianco</i> | 10/16/07 |

Appointed agent information

| | |
|---|----------|
| Name of agent | |
| 1 World Trade Center, LLC c/o Port Authority | |
| Street address | |
| 225 Park Avenue South, 19th Floor | |
| City | State |
| New York | New York |
| ZIP code | |
| 10003 | |
| Name of authorized representative of agent | |
| Michael B. Francois | |
| Signature of authorized representative of agent | Date |
| <i>Michael B. Francois</i> | 10/16/07 |

Please note: For this form to be valid, the date of agency designation above must be on or before the beginning of the effective period of the agency appointment listed above. For a purchase for an eligible New York governmental entity through a designated agent to be eligible for exemption from tax, the designation of agency must be made and accepted before the time of the purchase transaction. For more details, see Publication 765, Sales and Fuel Excise Tax Information for Property Appointed Agents of New York Governmental Entities.



New York State Department of Taxation and Finance

New York State and Local Sales and Use Tax Exempt Purchase Certificate for an Agent of a New York Governmental Entity

ST-122

(7/05)

To be completed by the purchaser and given to the seller.

Read instructions on the back before completing or accepting this form.

Valid for purchases made on or after July 1, 2005.

This certificate is not valid unless all entries have been completed.

This form cannot be used by employees of governmental entities or in IDA projects.

You cannot use this form to purchase motor fuel, diesel motor fuel, or residual petroleum product exempt from tax.

Mark an X in one: Single-purchase certificate Blanket certificate (Agency designation and acceptance are effective on 9/15/07, through and including 7/15/2100 Date)

| | |
|---------------------|--|
| Name of seller | Name of purchaser |
| Street address | Street address |
| City State ZIP code | City State ZIP code |
| | Purchaser's federal employer identification number |
| | Purchaser's Certificate of Authority number (if any) |

1 World Trade Center, LLC
as Agent for The Port Authority of NY and NJ
225 Park Avenue South, 19th Floor
New York, New York 10003
13-6400654

Part I — Agent's statement

I have attached a copy of the completed Form DTF-122, *Certification of Agency Appointment by a New York Governmental Entity*, which certifies that the above purchaser has been appointed as the agent of the Legal name of New York governmental entity and I hereby affirm that all of the statements made in the attached Form DTF-122 remain true and accurate. Moreover, I affirm that any purchase(s) the above purchaser makes pursuant to this exemption certificate is made as the agent of the above-named governmental entity, and that this purchase(s) (and any subsequent purchase(s) if used as a blanket certificate) is within the scope of the purchaser's authority as agent as described in the attached Form DTF-122, and that such authority has not expired, been suspended, or been revoked.

Part II — Purchase information

Mark an X in the appropriate box(es) and provide a clear description of the items or services being purchased or, if this certificate is being issued as a blanket certificate, provide a general description of the type of item or service to be covered by the certificate.

Tangible personal property Taxable services

Description:

Part III — Certification

I certify that the above statements are true and correct. I make these statements with the knowledge that knowingly making a false or fraudulent statement on this document is a misdemeanor under section 1817 of the Tax Law and section 210.45 of the Penal Law, punishable by imprisonment for up to a year and a fine of up to \$10,000 for an individual or \$20,000 for a corporation. I understand that the Tax Department is authorized to investigate the validity of the exemption claimed or the accuracy of any information entered on this form.

| | |
|--|------------|
| Signature of agent, officer or authorized employee (give title and relationship) | Date |
| Michael B. Francois | 10/16/2007 |
| Type or print the name that appears in the signature box | |



New York State Taxes on Fuel (Articles 12-A, 13-A, 28, and 29) Fuel Tax Exempt Purchase Certificate for an Agent of a New York Governmental Entity

FT-122

(7/05)

To be completed by the purchaser and given to the seller.

Read instructions on the back before completing or accepting this form.

Valid for purchases made on or after July 1, 2005.

This certificate is not valid unless all entries have been completed.

This form cannot be used by employees of governmental entities or in IDA projects.

Mark an X in one: Single-purchase certificate Blanket certificate (Agency designation and acceptance are effective on 7/5/07, through and including 7/15/2190 Date)

| | | | | | |
|--|-------|----------|---|-------|----------|
| Name of seller | | | Name of purchaser World Trade Center, LLC as Agent for The Port Authority of NY and NJ | | |
| Street address | | | Street address 225 Park Avenue South, 19th Floor | | |
| City | State | ZIP code | City | State | ZIP code |
| | | | New York, New York | | 10003 |
| Purchaser's federal employer identification number | | | 13-6400654 | | |
| Purchaser's sales tax Certificate of Authority number (if any) | | | | | |

Part I — Agent's statement

I have attached a copy of the completed Form DTF-122, *Certification of Agency Appointment by a New York Governmental Entity*, which certifies that the above purchaser has been appointed as the agent of the The Port Authority of NY and NJ, Legal name of New York governmental entity and I hereby affirm that all of the statements made in the attached Form DTF-122 remain true and accurate. Moreover, I affirm that any purchase(s) the above purchaser makes pursuant to this exemption certificate is made as the agent of the above-named governmental entity, and that this purchase(s) (and any subsequent purchase(s) if used as a blanket certificate) is within the scope of the purchaser's authority as agent as described in the attached Form DTF-122, and that such authority has not expired, been suspended, or been revoked.

Part II — Purchase information

Mark an X in the appropriate box(es).

in the purchaser's capacity as agent of the above named governmental agency:

- The purchaser is purchasing motor fuel for the governmental entity's own use or consumption (exempt from the motor fuel tax, the petroleum business tax, and state and local sales taxes, but subject to the petroleum testing fee).
- The purchaser is purchasing diesel motor fuel for the governmental entity's own use or consumption (exempt from the diesel motor fuel tax, the petroleum business tax, and state and local sales taxes).
- The purchaser is purchasing residual petroleum product (mark an X in the appropriate box):
 - for the governmental entity's own use or consumption (exempt from the petroleum business tax and state and local sales taxes).
 - where the governmental entity is the purchaser, but the residual petroleum product is not for the governmental entity's own use or consumption (exempt from state and local sales taxes but subject to the petroleum business tax).

Part III — Certification

I certify that the above statements are true and correct. I make these statements with the knowledge that knowingly making a false or fraudulent statement on this document is a misdemeanor under sections 1812, 1812-f, and 1817 of the Tax Law, and section 210.45 of the Penal Law, punishable by imprisonment for up to a year and a fine of up to \$10,000 for an individual or \$20,000 for a corporation. I understand that the Tax Department is authorized to investigate the validity of the exemption claimed or the accuracy of any information entered on this form.

| | |
|--|--------------------|
| Signature of agent's official or authorized employee (give title and relationship) <i>Michael B. Francois</i> | Date 10-16-2007 |
| Type or print the name that appears in the signature box Michael B. Francois | |



Ex. 4

RIDER "J"
TEMPORARY SERVICES FOR CONSTRUCTION PURPOSES
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

May 29, 2008

RIDER "K"
PROJECT CORRUPTION PREVENTION PROGRAM
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

The Port Authority of New York and New Jersey and the WTC Memorial Foundation are implementing a Project Corruption Prevention Program ("PCPP") for the World Trade Center – National September 11 Memorial & Museum Project. The Office of the Inspector General of the Port Authority of New York and New Jersey is assisting in the design and implementation of the PCPP. The PCPP is grounded in the bedrock belief that fair and ethical business practices are an absolute prerequisite to doing business on this Project. These ethical practices must be followed by all contractors, subcontractors, consultants, vendors and suppliers on the 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 Project possess high ethical standards and a record of law abiding conduct. Screening is being performed through the use of a background qualification questionnaire ("BQQ").

To that end, and to facilitate the consideration of your firm for the award of a contract, we have enclosed a BQQ for your immediate attention. Please complete the BQQ in accordance with the instructions and return it to The Office of the Inspector General. In order to ensure timely processing of your completed questionnaire, please return it to the Office of the Inspector General via facsimile (973-565-4307), to the attention of Steven A. Pasichow, as soon as possible, but in no event later than two weeks after receipt of the BQQ, and then follow up with the original by regular mail to Steven A. Pasichow; Assistant Inspector General, 5 Marine View Plaza, Suite 502, Hoboken, NJ 07030.

We appreciate your cooperation.

* 

RIDER "K" – ATTACHMENT
WORLD TRADE CENTER – TOWER ONE PROJECT
BACKGROUND QUALIFICATION QUESTIONNAIRE
FOR

(¹The Company¹)

Tax ID# (or SSN#) _____

**World Trade Center – Tower One Project
Contractor Qualification Procedures**

Instructions

This Questionnaire must be completed by an officer who is knowledgeable about the past and present operations of the applicant. That person's name should be identified in question 26. That person must also complete the attached Exhibit A, which must be notarized.

A response should be provided to each question. If a particular question does not apply, the response should state "Not Applicable" ("N/A").

Please complete the Questionnaire and send the original along with a copy to:

**Steven A. Pasichow
Assistant Inspector General
The Port Authority of New York and New Jersey
5 Marine View Plaza, Suite 502
Hoboken, NJ 07030**

Please answer all questions truthfully, fully and accurately. The Company may expand on the answers given or the information submitted by attaching additional pages. Use 8 ½ X 11" paper, marking each page with the firm's name and Tax ID # (also known as Employer Identification Number-EIN). Individual contractors that do not have a Tax ID # should enter their Social Security Number.

In the event of changes in ownership, address, circumstances, conditions or status of the firm that would require amending the answers to this Questionnaire, the firm shall notify the above in writing of such changes within one month after the change has occurred.

Tax ID# (or SSN#) _____

General Identification

1. Tax ID # _____
- Company Name (the "Company") _____
- D/B/A name, if any _____
(D/B/A means "doing business as")
- Street address _____
- City/State/Zip _____
- Mailing address (if different) _____
- City/State/Zip _____
- Phone No. (____) _____ Fax No. (____) _____
- E-mail address _____

2. a. Has the Company changed address(es) in the past five years?
 No Yes
- b. Has the Company operated under any other name(s) in the past five years?
 No Yes
- c. Does the Company have offices, plants or warehouses at other addresses?
 No Yes

If 'yes', to question 2 a, b, or c provide details below:

| Name | Address | From (Mo./Yr.) | To (Mo./Yr.) |
|------|---------|-------------------|-----------------|
| | | | |
| | | | |
| | | | |

Business Organization and History

3. Type of Company: Corporation Partnership Proprietorship
 Limited Liability Company Other (Specify) _____
4. a. Date the Company was formed ____/____/____
b. Date of incorporation if different than date the Company was formed _____
c. State in which formed or incorporated _____
d. Number of shares authorized for issuance if company is a corporation _____
e. Number of shares issued to individuals or entities _____
f. Registered Agent (Lawyer/incorporator) _____

Tax ID# (or SSN#) _____

5. Was the Company purchased as an existing business by its present owner(s)?
 No Yes (if yes, provide information below)

Date purchased ____ / ____ / ____

Previous Owner(s) Name(s): _____

6. Does the Company own, rent, or lease any of its office facilities?
 Own
 Lease/Rent (if leased or rented, provide information below)

Owner name: _____

Phone No.: (____) _____

Address: _____

7. Does the Company share office space, staff, or equipment (including telephone exchanges) with any other business or organization?
 No Yes (list below)

| Tax # | Firm Name | Address/Nature Of Shared Facilities |
|-------|-----------|-------------------------------------|
| | | |
| | | |
| | | |

8. Identify all Key People

Instructions: On the following page, fill in the required information on all present and past **Key People for the past five years**. "Key People" include:

- Principals, directors, officers
- Shareholders of 5% or more of the Company's issued and outstanding stock
- Any manager or individual who participates in overall policy-making or financial decisions for the Company
- Any person in a position to control and direct the Company's overall operations
- Authorized signatories to bank accounts and any debt instruments, whether or not otherwise considered Key People

"Shareholders" are owners of stock or other securities that can be converted to stock that, if converted, would constitute 5% of the Company's issued and outstanding stock. Other securities include stock options, secured or unsecured bonds, warrants and rights.

Be sure to include all those who fit the definition of Key People for the past five years whether or not they are currently with the Company. Copy the table on the following page if more space is required.

Tax ID# (or SSN#) _____

**KEY PEOPLE TABLE
COMPLETE ALL BLANK AREAS**

| | PERSON #1 | PERSON #2 | PERSON #3 |
|--------------------------|-----------|-----------|-----------|
| *NAME AND HOME ADDRESS | | | |
| Date of Birth | | | |
| SS # | | | |
| Title | | | |
| From (Date) | | | |
| To (Date) | | | |
| % of Ownership | | | |
| Number of Shares Owned | | | |
| How Shares Were Acquired | | | |

* Provide current proper legal name and specify any name change, including maiden or married names or aliases.

9. Number of employees (not including key people) _____

10. At present or during the past five years:

- a. Has the Company been a subsidiary of any other firm?
 No Yes
- b. Has the Company consisted of a partnership in which one or more partners are other firms?
 No Yes
- c. Has any other firm owned 5% or more of the Company?
 No Yes
- d. Has the Company been a joint venture partner with any other firms?
 No Yes

If 'yes' to question 10 a, b, c, or d, list the other firms below and indicate the percent of stock, if any, owned in the Company.

| | FIRM #1 | FIRM #2 |
|---|---------|---------|
| Tax ID# | | |
| Firm Name | | |
| Address | | |
| Relationship To The Company (Co. Owner, Partner, Etc.) | | |
| % of the Company Owned | | |
| From (Date) | | |
| To (Date) | | |
| Representative Name/Title | | |

Tax ID# (or SSN#) _____

11. At present or during the past five years:

- a. Has the Company had any subsidiaries?
 No Yes
- b. Has the Company owned 5% or more of any other firm?
 No Yes

If 'yes', to question 11 a or b, list the firms below and indicate the percent of the other firm's stock owned by the Company.

| Tax Id# | Firm Name and Address | % Owned By The Company | Dates of Ownership From/To |
|---------|-----------------------|------------------------|----------------------------|
| | | | |
| | | | |

12. At present or during the past five years have any of the Key People of the Company served as a Key Person (see definition on page 3) or owned 5% or more of any other firm (including firms that are inactive or have been dissolved)?

- No Yes

If 'yes,' list below:

| Firm Name and Address | Tax Id# | Key Person | Position Held | % Owned | Remainder Owned By | Dates Owned To/From |
|-----------------------|---------|------------|---------------|---------|--------------------|---------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

All firms listed in questions 10 a-d, 11 a-b, and 12 will be referred to in the following questions as "Affiliate Firms."

13. Are any Key People of the Company:

- a. present or past employees of The Port Authority of New York and New Jersey or Tishman Construction Corporation?
 No Yes
- b. related by kinship or marriage to any present or past employee of The Port Authority of New York and New Jersey or Tishman Construction Corporation?
 No Yes

If 'yes', to question 13a or b, provide names of such individual(s) and indicate relationship to the current/former employee.

Financial Information

14. At present or in the past five years:

- a. Has the Company been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more?
 No Yes
- b. Have any of the Company's Key People been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more, for the benefit of the Company?
 No Yes
- c. Has the Company pledged any of its stock to guarantee any of the above obligations?
 No Yes N/A
- d. Has any individual or the Company been a guarantor, co-maker or co-signer of any of these obligations on behalf of the Company?
 No Yes N/A

If 'yes', to any portion of question 14a-d, provide details below:

| Name of Creditor | Name of Borrower | Amount of Loan & Balance Remaining | Terms of Pledge or Loan | Name of Guarantor, or Co-Signer |
|------------------|------------------|------------------------------------|-------------------------|---------------------------------|
| | | | | |
| | | | | |

- e. Have monies generated by the Company in the cumulative amount of \$50,000 or more been loaned to another firm or individual by the Company or its key people? No Yes

If 'yes', please provide details below:

Name: _____
 Address: _____

- f. Has the Company or any of its affiliates or key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people? No Yes

If yes, explain: _____

- 15. Has the Company, or its affiliates or any of its Key People been a party to a bankruptcy or reorganization proceeding?
 No Yes

If 'yes,' provide details below:

| Caption | Date | Docket # | Court | County |
|---------|------|----------|-------|--------|
| | | | | |
| | | | | |

Tax ID# (or SSN#) _____

16. During the past five years, has the Company ever:
- a. been the subject of a lien, judgment or litigated claim of \$25,000 or more by a subcontractor, supplier or other creditor?
 No Yes
 - b. failed to complete a contract for a commercial or private owner or government agency?
 No Yes
 - c. had, or does it currently have, any delinquent local, city, state or federal taxes outstanding?
 No Yes

If 'yes', to question 16a, b or c, supply details below:

| Agency/Owner | Contract # | Describe Circumstances & Current Status | Date of Events | Name/Phone No. of Contact Person |
|--------------|------------|---|----------------|----------------------------------|
| | | | | |
| | | | | |

Experience/Performance

17. On the following table state the Company's gross revenues for the past three years:

| Fiscal Year End | Total Income |
|-----------------|--------------|
| 2007 | |
| 2006 | |
| 2005 | |

18. Does the Company have a bonding capacity?
 No Yes

If 'yes', provide information below on all surety companies that have agreed to furnish the Company with performance and payment bonds and answer all related questions:

- a. Surety Name: _____
Address: _____
Agent/Broker: _____
Phone No. (____) _____

- b. In writing bonds for the Company, does the surety company rely on the indemnity of any other firm(s) or individual(s)?
 No Yes

If 'yes', supply names & addresses of others:

Tax ID# (or SSN#) _____

c. What is the Company's bonding capacity:

Single Job: \$ _____ Aggregate: \$ _____

19. Has the Company or any of its officers, owners or managers had any business related licenses, certificates or certifications revoked in the past 5 years?

No Yes (if yes, explain below)

Compliance Information

20. Has the Company or any of its affiliate firms been the subject of any of the following actions by any government agency:

Government agencies include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations.

- a. been suspended, debarred, disqualified, had its prequalification revoked or otherwise been declared ineligible to bid or to perform work?
 No Yes
- b. been barred from bidding or denied a contract as a result of refusal of Key People to testify before a grand jury or administrative board?
 No Yes
- c. been denied a contract despite being the low bidder for any other reason?
 No Yes
- d. been defaulted on any contract?
 No Yes
- e. had a contract terminated, for either "cause" or "convenience"?
 No Yes
- f. been given a final unsatisfactory performance determination or deemed a poor performer (by letter or formal proceedings)?
 No Yes
- g. been prevented, or barred from bidding for any other reason?
 No Yes
- h. been denied a contract for failure to obtain surety or otherwise provide required security?
 No Yes
- i. had liquidated damages assessed against it upon completion of a contract or failure to complete a contract?
 No Yes

Matters under appeal must be disclosed

If 'yes', to any portion of question 20 supply details below:

| Agency | Contract # | Date of Action | Describe Action | Name/Phone # of Agency or Owner Contact Person |
|--------|------------|----------------|-----------------|--|
| | | | | |
| | | | | |
| | | | | |

21. In the past five years, has the Company or any current or past Key People or affiliate firms been a plaintiff or defendant in any lawsuits arising out of the Company's operations?
 No Yes

If 'yes', to question 21, supply details below and submit documentation if applicable. Indicate in P/D column whether the Company's Key People or key firms were plaintiffs (P) or defendants (D).

| Caption or Action | P/D | Court | Index/Docket No. | Date | Status |
|-------------------|-----|-------|------------------|------|--------|
| | | | | | |
| | | | | | |

22. In the past ten years has the Company or any of its current or past Key People or affiliate firms:
- a. voluntarily engaged the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (hereinafter collectively referred to as an "integrity monitor") in connection with the performance of any public or private contract?
 No Yes
 - b. been required to engage the services of an integrity monitor in connection with the award of, or in order to complete, any public or private contract?
 No Yes
 - c. otherwise been the subject of audits/investigations performed by an integrity monitor in connection with any public or private contract?
 No Yes

If yes to any portion of question 22, explain below:

23. Has the Company or any of its current or past Key People or affiliate firms:
- a. been under investigation involving any alleged violation of criminal law relating to business activities?
 No Yes

An INVESTIGATION includes an appearance before a grand jury by representatives of a business entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body including, but not limited to, subpoenas and/or search warrants, or questioning of employees concerning the general operation or a specific project or activities of such business entity.

Tax ID# (or SSN#) _____

- b. had records in its or his/her control, custody or ownership subpoenaed by any law enforcement agency?
 No Yes
- c. been questioned by any officer or agent of a law enforcement agency regarding any practices or conduct relating to the providing of construction related services?
 No Yes
- d. been advised of being the target or subject of an investigation involving any violation of criminal law?
 No Yes
- e. been notified of being the subject of court ordered electronic surveillance?
 No Yes
- f. been arrested or indicted or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument?
 No Yes
- g. been convicted, after trial or by plea, of any felony under state or federal law?
 No Yes
- h. been convicted of any misdemeanor involving business-related crimes?
 No Yes
- i. entered a plea of nolo contendere to any felony and/or business-related misdemeanor?
 No Yes
- j. entered into a consent decree?
 No Yes
- k. been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?
 No Yes
- l. taken the Fifth Amendment in testimony regarding a business related crime?
 No Yes

If 'yes', to any portion of question 23, supply details below and submit documentation.

| Agency Or Court | Nature Of Action | Person Or Entity Named or Involved | Date | Status/Outcome |
|-----------------|------------------|------------------------------------|------|----------------|
| | | | | |

24. Do any current or past Key People listed in this application have any felony or misdemeanor charges pending against them that were filed either before, during or after their employment with the Company?
- No Yes

If 'yes', provide details below:

| Agency or Court | Nature of Charges | Key Person Named | Date of Charges |
|-----------------|-------------------|------------------|-----------------|
| | | | |
| | | | |

Tax ID# (or SSN#) _____

25. Has the Company or any of its current or past Key People or affiliate firms engaged in any of the following practices:
- a. filed with a government agency or submitted to a government employee a written instrument which the Company or any of its Key People or affiliate firms knew contained a false statement or false information?
 No Yes
 - b. falsified business records?
 No Yes
 - c. given, or offered to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant?
 No Yes
 - d. given or offered to give, money, gifts or anything of value or any benefit to a labor official or public servant for any reason?
 No Yes
 - e. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?
 No Yes
 - f. agreed with another to bid below prevailing market rate?
 No Yes
 - g. agreed with another to submit identical or complementary bids or otherwise not to bid competitively or agree to withdraw or abstain from bidding?
 No Yes
 - h. agreed with another not to submit competitive bids in another's territory established either by geography or customers?
 No Yes
 - i. agreed with another to take turns in obtaining contracts by pre-determining which firm shall submit the lowest bid?
 No Yes

If 'yes', to any portion of question 25, explain below:

26. This document was prepared by:

(Name)

(Title)

(Signature)

(Date)

Tax ID# (or SSN#) _____

**EXHIBIT A
CERTIFICATION**

Certifications must be notarized when signed.

I _____, being duly sworn, state that I am _____
(full name) (title)
of the Company, and that I have read and understood the questions contained in the attached questionnaire.

I certify that to the best of my knowledge the information given in response to each question is full, complete and truthful as of this date hereof. I agree and warrant that truthfully answering the questions is an event entirely within my control.

I recognize that all the information submitted is for the express purpose of inducing the Port Authority to enter into a contract with, or to approve the award of a contract to, the Company.

I acknowledge that the Port Authority, may by means it deems appropriate, determine the accuracy, truth and completeness of the answers to the questions in the questionnaire. I authorize the Port Authority to contact any person or entity for purposes of verifying the information supplied by the Company.

Name (please print)

Signature

Sworn to before me

this _____ day of _____ 20____.

Notary Public



RIDER "L"
CONTRACTOR PAYMENT PROCEDURES
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: December 14, 2006

TRADE: ALL TRADES

1. SCHEDULE OF VALUES

Prior to the commencement of Work hereunder, Contractor shall prepare and submit to Construction Manager, for approval by 1 WTC, a "Schedule of Values" furnishing a complete, detailed and itemized breakdown of the various divisions of the Work, including values for materials and labor. The total of this cost breakdown shall be equal to the Lump Sum.

2. PROGRESS PAYMENTS

With each pencil draft and official Application for Payment, the Contractor shall attach an Affidavit of Payment and Waiver of Claims (in the form attached) to the date of the last advance, as well as a statement of any back charges and credits to which the Construction Manager is entitled, a sworn statement of any claim for charges or extras due to the Contractor, such claim not to be valid unless made at the time and in the manner aforesaid, a sworn statement setting forth all amounts, if any, owed by Contractor to its subcontractors and suppliers, and a Schedule of Values showing the percentages of the various divisions of work completed, including values for materials and labor, and any other documentation or information requested by 1 WTC or Construction Manager. All requisitions shall be made on and in compliance with Construction Manager's standard form of Contractor's requisition (in the form attached) and shall be subject to the terms thereof, including the submission of sworn statements from Contractor's subcontractors and vendors. In addition to retainage and other amounts withheld under this Contract, the Construction Manager shall also retain a sum sufficient, in its opinion, to complete the Work in accordance with the terms of this Contract. Moreover, in each instance of requisition prior to completion, the Contractor shall certify to the Construction Manager that the cost of the Work remaining to be done under this Contract does not exceed 90% of the balance of the Lump Sum unpaid. In no event will the Construction Manager be required to pay in excess of 90% of the Lump Sum prior to the completion of all the Work the Contractor is obligated to perform under this Contract.

3. WITHHOLDING BY CONSTRUCTION MANAGER

The Construction Manager may withhold payment to the Contractor as set forth in the Contract, including, without limitation, on account of (1) the failure of the Contractor to comply fully with any requirements of this Contract, including the failure of the Contractor to make payments to subcontractors or for material or labor, (2) the failure of the Contractor to prevent the filing of liens or claims or to avoid the reasonable probability of the filing of liens or claims against the Construction Manager, 1 WTC, the Authority, the Project or the Contractor, and (3) damage to another contractor by reason of acts or failure to act of the Contractor.

FIRM NAME: _____



RIDER "L"
CONTRACTOR PAYMENT PROCEDURES
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: December 14, 2006

4. FINAL PAYMENT

The balance owing to the Contractor under the terms of this Contract shall not be due and payable except as set forth in the Contract and until:

- (1) the completion of all Work in this Contract, including patching and the furnishing of missing material,
- (2) acceptance thereof by the Construction Manager and 1 WTC, and
- (3) receipt by the Construction Manager of (A) all Contractor's "as built" drawings, records and related data; (B) all guaranties and warranties to which the Construction Manager is entitled hereunder; (C) all permits, licenses, approvals, certificates and authorizations required by any authority having jurisdiction; (D) a general release from the Contractor in form and substance satisfactory to 1 WTC, in favor of 1 WTC, the Authority, other persons and entities designated by 1 WTC, Construction Manager and sureties, if any; and (E) satisfactory proof that all claims, including taxes, growing out of the Work to be performed hereunder and any liens or attempts at liens growing out of the same which shall have been filed or recorded, have been released.
- (4) Payment of the Lump Sum and/or any other sums for the Work or any portion thereof and/or any other amounts due or claimed to be due or claimed to be due to Contractor shall be made by Construction Manager only from funds which Construction Manager has actually received in hand from 1 WTC and designated by 1 WTC for disbursement to Contractor. CONTRACTOR AGREES TO LOOK SOLELY TO SUCH FUNDS FOR PAYMENT. Contractor understands and agrees that Construction Manager shall have no responsibility to pay Contractor any amounts due to Contractor upon the Lump Sum and/or for the Work or any portion thereof and/or for any other amounts due or claimed to be due to Contractor except from and to the extent that Construction Manager has actually received funds from 1 WTC specifically designated for disbursement to Contractor. Receipt of such funds by the Construction Manager shall be a condition precedent to payment by Construction Manager to Contractor.

FIRM NAME: _____

REQUISITION NO.

TO

DATE

TISHMAN CONSTRUCTION CORP

BUILDER

CONTRACTOR _____ TRADE _____
 ADDRESS _____ PROJECT PERIOD _____
 _____ ENDING _____

| ITEM | CONTRACTOR USE ONLY | DO NOT WRITE IN THIS COLUMN |
|--|---------------------|-----------------------------|
| 1. Amount on Contract | | |
| 2. Change Orders Issued to Date (Item II, Attached Summary) | | |
| 3. Pending Change Orders (Item III, Attached Summary) | | |
| 4. Total of Above | | |
| 5. Value of Work Completed to Date (Item IV, Attached Breakdown) | | |
| 6. Less 10% Retained | | |
| 7. Net of Items 5 and 6 | | |
| 8. Total Prior Payments | | |
| 9. Amount of This Requisition (Net of Item 7 less 8) | | |
| 10. Total Payments to Date | | |

Attached hereto is our Contract Breakdown together with claimed value of work completed to date substantiating the amount specified in Item 5 above. Neither payment on account hereof or any invoice, change order or other request, nor any entry by Builder in its records relating to such payment or work, shall constitute acceptance by Builder of any part of any work or the completion or value thereof or serve to waive any of Builder's rights under the Contract. If the Builder is acting in the capacity of a General Contractor all references in this entire requisition to "Contractor" shall be deemed to mean "Subcontractor."

By _____ Contractor
 _____ (Title)

AFFIDAVIT ON REVERSE SIDE MUST BE EXECUTED BY CONTRACTOR
 (DO NOT WRITE BELOW)

Checked by _____ Approved by _____ \$ _____
 Approved by _____ Final Release in hand _____

ACCOUNTING USE ONLY

| REQUISITION NUMBER | | DATED | CHECK NUMBER | CHECK DATE | |
|--------------------|---------------|-------|--------------|---------------|---------|
| J R | R E Q | / / | | | |
| PROJECT | CONTRACTOR NO | TRADE | TENANT | VALUE OF WORK | PAYMENT |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

Remarks _____

COST BREAKDOWN SUMMARY

Project: _____ For Period Ending _____

Contractor _____ Trade _____

I CONTRACT BREAKDOWN

Total Contract \$ _____ Total Completed to Date \$ _____

Do not Write
In This Col.

II CHANGE ORDERS ISSUED TO DATE

CHANGE
ORDER

| NO. | DESCRIPTION | AMOUNT | VALUE COMPLETED |
|-----|-------------|--------|-----------------|
| 1 | _____ | _____ | _____ |
| 2 | _____ | _____ | _____ |
| 3 | _____ | _____ | _____ |
| 4 | _____ | _____ | _____ |
| 5 | _____ | _____ | _____ |
| 6 | _____ | _____ | _____ |
| 7 | _____ | _____ | _____ |
| 8 | _____ | _____ | _____ |
| 9 | _____ | _____ | _____ |
| 10 | _____ | _____ | _____ |
| 11 | _____ | _____ | _____ |
| 12 | _____ | _____ | _____ |
| 13 | _____ | _____ | _____ |
| 14 | _____ | _____ | _____ |
| 15 | _____ | _____ | _____ |
| 16 | _____ | _____ | _____ |

Do not Write
In This Col.

Total Change Orders \$ _____ Total Completed to Date \$ _____

III PENDING CHANGE ORDERS

| DATE & DESCRIPTION | AMOUNT | VALUE COMPLETED |
|--------------------|--------|-----------------|
| 1 | _____ | _____ |
| 2 | _____ | _____ |
| 3 | _____ | _____ |
| 4 | _____ | _____ |
| 5 | _____ | _____ |
| 6 | _____ | _____ |
| 7 | _____ | _____ |
| 8 | _____ | _____ |
| 9 | _____ | _____ |
| 10 | _____ | _____ |
| 11 | _____ | _____ |
| 12 | _____ | _____ |
| 13 | _____ | _____ |
| 14 | _____ | _____ |
| 15 | _____ | _____ |
| 16 | _____ | _____ |

Do not Write
In This Col.

Total Pending Changes \$ _____ Completed to Date \$ _____

IV TOTAL WORK UNDER ITEMS I, II, III COMPLETED TO DATE \$ _____

**AFFIDAVIT OF PAYMENT
AND WAIVER OF CLAIMS**

Re: _____
(Project)

STATE OF)
) ss:
COUNTY OF)

_____ being duly sworn, deposes and says:

1. That s/he is the _____ of _____ (hereafter called the "Contractor") which has a contract with TISHMAN CONSTRUCTION CORPORATION as agent for 1 World Trade Center, LLC (hereafter called the "Builder") covering the _____ work for the building at 1 World Trade Center, NY, NY.
2. That the said Contractor has paid in full (at the prevailing recognized rate and without any improper or illegal deductions or rebates), in accordance with the specifications and contract obligations, for all work, labor, materials and services supplied or performed in connection with said work to the date of the requisition on the reverse side hereof, including all Social Security, Unemployment Insurance and Sales and other Taxes applicable thereto, and there are no unpaid claims for any said labor or materials in connection with the performance of said Work or any of the said Taxes except as stated in paragraph 3 below, and any claim for such amounts is hereby forfeited and waived.
3. That as of the date hereof no amounts are due and no claims have been made against the said Contractor for any unpaid material or labor with the exception of the following: all of which are for labor and/or materials provided since the date of the requisition preceding this requisition, and as to such unpaid claims the Builder is hereby authorized, at its option, in behalf of the Contractor, to make direct payment to such claimants and charge same to the Contractor, i.e.:

| NAME & ADDRESS | ITEM | AMOUNT |
|----------------|------|--------|
|----------------|------|--------|

4. That no payment made to the Contractor shall be deemed an acceptance by the Builder of defective work or materials or shall operate as an admission on the part of the Builder or Architect that the said contract, or any portion thereof, has been complied with the Contractor in case the fact shall be otherwise.
5. All sums received by the Contractor shall be held in trust to pay for any labor or materials in connection with the work, before being used for any other purpose.

6. This Affidavit and Waiver is made for the purpose of inducing the Builder to make payment under the terms of the subject contract relying on the truth of the statement contained herein.

Subscribed and sworn to before me

(Company Name)

this _____ day of _____

By _____
(Title)

Notary Public

BILL OF SALE

For and in consideration of the total value of materials \$ _____ less retainage of \$ _____ current payment due \$ _____ by **1 World Trade Center LLC** (hereinafter referred to as "Purchaser")

_____ (hereinafter referred to as "Seller"), the receipt whereof is to be acknowledged Seller does hereby grant, bargain, sell, convey, set over, transfer, assign and deliver unto Purchaser all the right title and interest which it has in the personal property set forth in Invoice# _____ dated _____ attached hereto and made part hereof by reference, and described in attached listing of materials received from vendors.

Seller does hereby covenant and warrant that it is the true and lawful owner of the property assigned, transferred, sold, and conveyed pursuant to this Bill of Sale; that said property is free and clear from all encumbrances and liens; that Seller has good right and full power and authority to sell, transfer, assign and convey all of said property; and the Seller will warrant and defend the title to all of said property unto Purchaser, its successors and assigns, against all claims and demands of all persons, firms or corporations whatsoever. Materials are being stored at: _____ and at (see below)*.

IN WITNESS HEREOF, the parties hereto, by their duly authorized officers, have executed and set their hands and seals to this Bill of Sale, this _____ day of _____.

Company: _____ (Seller)
Signature: _____
Title: _____

STATE OF))
COUNTY OF))

Sworn to before me this _____ day
of _____ 200__

1 World Trade Center, LLC

(NOTARY)

RIDER "M"

November 2, 2005

Tishman Construction Safety Guidelines

"Tishman Values Safety"

Tishman Construction Corporation
666 Fifth Avenue
New York, NY 10103



#

A circular stamp with the text "INITIAL HERE" and a signature.

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FORWARD

The Tishman Construction Safety Guidelines:

- *Serve as a guide to the implementation of safety procedures and administration for your project.*

- *Identify general Tishman Construction Policy regardless of location and site requirements.*

- *Outline qualifications and responsibilities of the CM and the contractor's respective safety representative.*

- *Serve as a guide to OSHA CFR 1926.1 and its applicable provisions for the inspection and program administration, as well as provide information on OSHA inspection and complaint procedures.*

Note: Regional requirements may augment, add to, or enhance, but shall not replace these guidelines.

PART I

TISHMAN CONSTRUCTION'S SAFETY OVERVIEW

1.1 TISHMAN CONSTRUCTION'S SAFETY OVERVIEW

Tishman Construction Corporation (Tishman Construction) is firmly committed to providing all of its employees and contractors with a safe and healthy work environment, which allows the contractors' submitted and approved safety plans to contribute to the achievement of an accident-free work environment. Furthermore, it is a matter of company policy to provide our employees with information about OSHA regulations, including, but not limited to, personal protection, training and the Hazard Communication Standard.

SAFETY WILL NOT BE SACRIFICIED FOR PRODUCTION. Project Safety will be considered an integral part of quality control, cost reduction, and job efficiency. Every level of management and supervision shall be held responsible for the safety performance of employees under their supervision. It is the policy of Tishman Construction that a safe work place is provided. Tishman Construction and all others employed on the project will work in a safe manner consistent with good construction safety practices, all written requirements, and the submitted and approved safety plan of all parties.

Management and supervision personnel are charged with the implementation and *monitoring of the Safety Guidelines*. The ultimate success of the safety program depends fully upon the total cooperation of every individual employee. It is management's responsibility to ensure that safety rules and procedures are enforced and to ensure that effective training and education programs are employed. Work will be performed in a safe manner to protect all employees, visitors, the public and adjacent property.

The Objective of the Safety Guidelines is to prevent or control the exposure to the failures that cause fatalities, injuries, illnesses, equipment damage and/or fire damage, or destruction of property at the Tishman Construction site.

Goals of the Safety Guidelines include:

- The total elimination of incidents that cause or could cause injuries or illness.
- The achievement of zero fatalities, zero permanent disabling injuries, and zero lost workday cases.

Tishman Construction requires full compliance with these safety guidelines and with all federal, state, and local laws, statutes, ordinances, rules, regulations, requirements, and guidelines of government authorities bearing on the performance of the work.

The Federal Occupational Safety and Health Act, as well as other federal, state, and local project codes or regulations promulgated in the interest of safety, are required by law and/or the contract.

The Safety Guidelines are supplementary to all government rules, codes, and regulations and do not negate, abrogate, alter, or otherwise change any provisions of these rules, codes, and/or regulations. The safety guidelines are intended to supplement and enforce the individual program of each trade contractor and to coordinate the overall safety effort. CONTRACTORS SHALL BEAR SOLE AND EXCLUSIVE RESPONSIBILITY FOR SAFETY IN ALL PHASES OF THEIR WORK; NOTHING CONTAINED HEREIN SHALL RELIEVE SUCH RESPONSIBILITY.

These construction Safety Guidelines are one of the construction contract documents. All contractors are required to ensure that they and their employees, subcontractors, suppliers, vendors, and visitors, while on the job and in the conduct of contracts, comply with the provisions of this manual. **THE PROVISIONS OF THESE GUIDELINES SHALL BE STRICTLY ENFORCED.** Non-compliance with safety requirements shall be treated the same as non-compliance with any other item. Any non-compliance may result in work stoppage and/or employee dismissal. Willful and/or repeated non-compliance will result in contractor dismissal.

It shall be the responsibility of each contractor/subcontractor to comply with 29CFR1926 OSHA Construction Safety Standard. In addition, each contractor/subcontractor shall comply with the applicable city, state, and federal regulatory requirements that govern construction safety.

Before contractors begin work on the site, they are each required to provide their written safety program to Tishman Construction and the designated project safety representative for approval. Contractors must identify their own full-time, on-site, competent safety person, as defined by OSHA. (see section 3.4). This competent person designation will be incorporated in the Site Safety Manual. If the contractor does not possess an accepted and approved safety plan, at a minimum they will comply with and be held accountable to all federal, state, and local laws of a general or specific nature that apply to their trade and the work for which they have been contracted.

Depending on location, Tishman Construction will provide appropriate safety personnel for monitoring safety compliance on the project.

The contractor will inform the CM safety representative of any violation of the site safety standards. The CM safety representative shall immediately notify the persons involved in the violation to correct the deficiency. If the safety representative is unable to obtain the cooperation of these persons in correcting the violation, he or she will be instructed to inform their direct supervisor and

request that the supervisor order the necessary corrective action. If the supervisor is not present at the site or is not available, the safety representative will notify any other supervisory personnel of the contractor present on the job or any other responsible manager of the contractor. In the event that no responsible party is available, it is the obligation of the CM and their safety representative to take corrective action to ensure the safety of the site and its personnel. The CM and their safety representative should inform the offending contractor in writing of the corrective action and the cost, if any, to Tishman for the actions taken on behalf of the contractor. The contractor will then be obligated to respond to the CM as to what steps must be taken to avoid a repeat of the violation.

Through commitment, responsibility, vigilance and proactive communication, the Tishman team will achieve the goals and objectives set forth in these Safety Guidelines.

PART II
SAFETY COMPLIANCE

PROGRAM RESPONSIBILITIES & ADMINISTRATION

- 2.1 General Information
- 2.2 Contractor's Safety Representative Requirements
- 2.3 Construction Manager's Responsibilities
- 2.4 Contractor Responsibilities
- 2.5 General Requirements for the Construction Safety
- 2.6 Site Appearance

2.1 GENERAL INFORMATION

DESIGNATION OF SAFETY REPRESENTATIVE

Depending on regional practices, Tishman Construction will designate an internal (Tishman) construction safety representative, or through the bid process retain an outside safety representative, who in either case, will be responsible for monitoring the contractors' compliance to their own safety requirements outlined in their individual submitted and **approved** safety plans.

2.2 CONTRACTOR'S SAFETY REPRESENTATIVE REQUIREMENTS

An acceptable safety representative must be a competent person as defined by OSHA CFR 1926. The individual must be "capable of identifying existing and predictable hazards in the surroundings or working conditions, which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them." The safety representative must be an "on job" representative who possesses some valid training in safety-related processes and procedures associated to his or her trade.

2.3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

Through its on-site personnel and safety representative, the Construction Manager shall have a daily inspection to determine contractor compliance with safety requirements and job-specific safety program.

Tishman Construction is responsible for ensuring that all participants in the construction activities adhere to the contents of this program in the performance of their work.

The Project Executive, Project Manager, Project Superintendents, Assistant Superintendent (and/or Area Superintendent and/or Foreman), and Project Safety Representative are responsible for the implementation, execution and monitoring of the project safety program for all areas under their control. In addition, the Project Safety Representative is also responsible for inspecting the site on a daily basis.

1. **Project Executive** - The project executive has full responsibility for the implementation and execution of the project safety program.
2. **Project Manager** - The project manager has full responsibility for the implementation and execution of the project safety program for all areas under his/her control.

3. **Project Superintendent** - The project superintendent is responsible for the implementation and execution of the project safety program for all areas under his/her control.

- ◆ Establish with his/her line supervisors a clear understanding of each member's responsibilities and specific duties.
- ◆ Make a thorough review of all incident investigations and, in collaboration with the offending contractor, initiate corrective action.
- ◆ Hold one formal safety meeting each week with his/her line supervisors.
- ◆ Review weekly the safety performance and take actions as may be necessary within his/her area of responsibility.
- ◆ In the event of a fatal or disabling injury, assist in coordinating an investigation according to the prescribed requirements.
- ◆ Maintain effective and prompt line of communications of safety matters through all levels of supervision.
- ◆ Monitor contractors' compliance regarding the required weekly safety toolbox meetings with their employees.
- ◆ Monitor compliance with established environmental and pollution control standards and regulations.
- ◆ Have working knowledge of, and conduct as necessary, job hazard assessment (JHA) with the contractor(s).

4. **Assistant Superintendent, Area Superintendent, and/or foremen** - The assistant superintendent, area superintendent, and/or foremen are responsible for the safety performance in his/her assigned area. They are responsible for administration of the following:

- ◆ Enforce all phases of the established safety program, including, special controls issued by the project superintendents
- ◆ Communicate safety information to his/her contractors and alert them daily on potential dangers that may develop from their daily operations.
- ◆ Install a workable housekeeping program to maintain the structural soundness and cleanliness of the site. Assign definite duties to

individual contractors. Perform daily check of work areas. Make weekly housekeeping inspections (accompanied by a contractor supervisor). Keep records of deficiencies found, and hold contractor accountable for taking corrective action.

- ◆ Ensure that contractors are requiring all employees to make proper use of Personal Protective Equipment (PPE).
- ◆ Make spot checks covering housekeeping, unsafe acts, unsafe conditions, conditions of equipment, and observance of safety rules.
- ◆ Maintain an effective line of communication of safety matters to the workers.
- ◆ Instill in all personnel, by action, example, and training, a sincere attitude towards safety. This develops a better understanding of efficiency in accident prevention and/or loss control.
- ◆ Assist with developing and communicating safe job procedures for unusual or hazardous operations.
- ◆ Enforce compliance with federal, state, city and other agencies on their safety manual requirements. Be prepared to employ such remedies, as they deem necessary to ensure the contractors' compliance with their own safety plans.

5. Site, Corporate, or Project Safety Representative (where required)

- ◆ Serves as a technical advisor to project management on safety, health planning, training, and problem resolution.
- ◆ Applies recognized policies, procedures, and work practices to promote the company's project safety and health program. Administers assigned functions to aid in this overall responsibility.
- ◆ Administers the project safety program.
- ◆ Monitors, as necessary, medical and emergency first aid services and programs.
- ◆ Monitors compliance with mandatory safety and health laws, standards, and codes.
- ◆ Fosters and maintains a close working relationship with all government and local safety health and fire-prevention officers.

- ◆ Supports hearings on matters involving the project's safety and loss prevention program.
- ◆ Investigates injuries, conditions, and incidents that do or could involve actual or potential liability. Also, maintains adequate records of pertinent data and compiles the required reports of job occupational injuries and illnesses.
- ◆ Assists project management in the inspection of equipment, facilities, and work-in-progress.
- ◆ In conjunction with project controls and construction engineering, develops and initiates specific safety and health procedures in order to translate policies and regulations into effective work practices.
- ◆ Plans and utilizes promotional material to further safety and health education among job, craft, and supervisory personnel.
- ◆ Promulgates safety standards during the course of the project as necessary.
- ◆ Conducts preconstruction safety orientation prior to contractor mobilization.
- ◆ In the interest of safety and for the protection of all employees, the project safety representative will render any tool, piece of equipment, or materials that create or could create a hazard to employees inoperable, as he deems necessary.
- ◆ Administers the project incentive programs, if any, in accordance with the Project Safety Guidelines.
- ◆ Personally inspects, on a regular basis, the specific areas and items (listed below) and notifies responsible personnel employed by the general contractors, construction manager, or any subcontractors when violations occur.
- ◆ Ensures that all daily entries in a site safety log are completed. Entries must be recorded by 7:00 a.m. on the day following the activities.
- ◆ Inspects the construction site in accordance with the schedule to determine that the conditions at the site meet the public safety and security parameters for the appropriate work.
- ◆ Items to be recorded in the Site Safety Log:

- Details of areas inspected by the safety representative.
- Companies and representatives met with weekly to ascertain their compliance.
- Any unsafe acts and/or conditions (dates and locations).
- Companies and representatives notified of unsafe acts and/or conditions.
- Date(s) of notification of unsafe acts and/or conditions.
- Date(s) of correction of unsafe acts and/or conditions.
- Any accident or damage to public or private property.
- Any equipment brought onto the job that requires permits, including a description of the equipment, where it is to be located, permit number, issue and expiration dates of the permit, and certificate of inspection (if required) shall be entered on a Permit Log (if applicable).
- Any visits to the site by any regulatory agency.
- Any phone or written correspondence with any regulatory agency.

2.4 **CONTRACTOR RESPONSIBILITIES (Competent Person / Safety Coordinator)**

Contractor management, line supervisors, and safety personnel have the same duties and responsibilities of those described above. All contractors must ensure that a designated competent safety person(s) who is knowledgeable in safety, health, and fire prevention is on the site at all times (includes overtime work, off hour work, and subcontractor coverage). There shall be no deviation from this requirement.

The contractor's responsibility cannot be delegated to their subcontractors, suppliers, or other persons.

Contractors must perform "Job (task) Hazard Analysis" as described in these guidelines. The competent person, or person trained in JHA's, must perform job hazard analysis on all operations prior to the beginning of work.

1. Within ten (10) days after receipt of notification of contract award, submit to the project safety representative a letter signed by an officer

of the company setting forth the following:

- a. A statement of their company's safety plan based upon compliance with the project safety program.
 - b. A detailed safety program that is specific to the job and that reflects the contractor's intentions for full and complete compliance with the project safety program and hazard communications program.
 - c. Furnish a copy of their disciplinary program to the project safety representative. Contractor's disciplinary program will not supercede project requirements except where they are more stringent.
2. In accordance to OSHA regulations and contract inclusions, the contractors are required to comply immediately with all verbal and written safety directives, including stop work directives. Failure to comply with such directives will result in corrective action by the Construction Manager, General Contractor, or Program Manager and the cost will be deducted from the contractor's progress payment.

An eminently dangerous condition will result in a stop work order; work will not resume until corrections are made.

It is imperative that employees at every level comply with the provisions and directives of the safety program at all times.

3. The contractor is responsible for the orientation of their employees, subcontractor(s), and visitor(s). Newly employed, promoted, and/or transferred personnel shall receive orientation regarding the General Safety and Health Standards, as well as site specific hazards and policies. Documentation of this orientation shall be submitted to the construction manager's safety representative.
- a. The Safety Representative is responsible for the orientation, which shall include, but is not limited to:
 - i. Fall Protection (6' Rule)
 - ii. Struck-by
 - iii. Electrical Hazards
 - iv. PPE - including 100% eye, hard hat protection
 - v. Fire protection
 - vi. Housekeeping
 - vii. Floor and Wall Openings
 - viii. Accident Reporting
 - ix. Emergency Procedures

- x. Hazardous Communication and location of MSDS's

ALL DEFICIENCIES SHALL BE DOCUMENTED IN WRITING AND ADDRESSED ACCORDINLY. (i.e. – toolbox meetings, retraining)

4. Contractors are required to maintain a continual employee safety-training program. The program will include, but is not limited to, identifying hazards in all areas of the job, personal protective equipment (PPE), proper procedures for reporting unsafe jobs, and explaining and properly executing the project safety program. The contractors are responsible for ensuring that immediate action is taken to eliminate all unsafe conditions. If contractor delays or refuses immediate corrective action, the construction manager, general contractor, program manager or its representative will immediately take the following steps:
 - a. Cease the operation.
 - b. Stop payment for the work performed.
 - c. Correct the situation and back charge the responsible contractor for expenses incurred.
 - d. Permanently remove the responsible manager or supervisor from the project.
5. In addition to any initial training given to their employees, all contractors are responsible for implementing retraining programs where necessary. These programs shall be documented and submitted to the safety representative. Retraining techniques *may* commonly be accomplished in the form of a toolbox meeting, but, ultimately, the decision is open to each contractor's discretion and will vary for each individual contractor.
6. Contractors are responsible for ensuring the site is safe and will perform routine safety audits throughout the day, in which corrective actions will be taken to terminate any and all unsafe acts and/or conditions. Observations shall be reported to the project safety representative using a safety report on a daily basis.
7. Hazard communications will be in compliance with OSHA standards and regulations.
8. Contractors will hold weekly safety toolbox meetings, assist in incident investigations involving injuries, property damage, and fire,

and file and prepare the required safety/incident reports.

9. Attend safety meeting as required.
10. Contractors are responsible for providing tools and proper PPE for all jobs.
11. Each contractor must supply a list of contractor/subcontractor supervisors with the complete after hours phone numbers, which should be current and updated.
12. Each contractor will ensure that all field trailers are anchored in at least eight locations and secure all material that may become air borne during high winds.
13. Failure to adhere to all safety regulations may result in permanent removal from the site.

2.5 GENERAL SAFETY REQUIREMENTS FOR CONSTRUCTION SITES

- ▶ All areas (roof, sidewalk shed, walkway, etc.), especially those used by the public, shall be clean and free from debris, snow, water, equipment, materials, tools, etc. that may constitute a slipping, tripping, or other hazard.
- ▶ All equipment and tools shall be kept away from edges and openings at a minimum of 10 feet and secured when not being used.
- ▶ All openings or holes in the floor, hose lines, wire ropes, etc. shall be covered and identified at all times. Covers used to protect openings and holes in the floor shall be marked with the word "HOLE" or "COVER" (with fluorescent paint) to provide warning of the hazard. The cover shall be capable of supporting without failure at least twice the weight of employees, equipment, and material. All covers shall be secured to prevent displacement and be in compliance with CFR 1926.502 (i).
- ▶ Adjoining property shall be protected when the height of the building exceeds that of the adjoining property.
- ▶ Standpipes shall be connected to water sources and Siamese connection, and should be kept free from obstruction and marked with a red light and a sign reading "Standpipe Siamese connection."

- ◆ Valves shall be in place at each story below the construction floor.
- ◆ All stairwells must have handrails and sufficient lighting.
- ◆ Guards, shields, or barricades must surround all exposed, electrically charged, moving, or otherwise dangerous machine parts and construction equipment.
- ◆ Sufficient containers shall be in place for garbage and debris. Garbage and debris shall be placed in these proper containers for storage and removal and covered and secured when full. Combustible waste shall be stored separately in a labeled container and removed daily.
- ◆ **When exterior walls are not in place, stored material should be kept at least ten feet from the perimeter of the building. If the floor area is less than one thousand square feet, stored material may be kept not less than five feet back from perimeter of building.**
- ◆ Dangerous and hazardous areas shall be marked with warning signs or lights.
- ◆ In addition, the safety representative or construction manager (where applicable) shall use reasonable prudence to ensure that safety is maintained at the job site as job conditions and contractor's safety policy dictate.

PART III
FEDERAL SAFETY REQUIREMENTS/COMPLIANCE

- 3.1 Workplace Health Program
- 3.2 Posting Requirements
- 3.3 The Hazard Communication Standard
- 3.4 Competent Person
- 3.5 OSHA Inspection/Focused Inspection
- 3.6 Safety Complaints
- 3.7 Fall Protection
- 3.8 Electrical Guidelines
- 3.9 Lockout/Tagout
- 3.10 Illumination
- 3.11 Struck-by and Fall/Flying Objects
- 3.12 Personal Protective Equipment (PPE)
- 3.13 Housekeeping Tips
- 3.14 Toilets & Washing Facilities
- 3.15 Drinking Water
- 3.16 Fire Prevention and Torch Use
- 3.17 Stairs, Guardrails, Passageways, and Ladders
- 3.18 Emergency Evacuation
- 3.19 Scaffolding
- 3.20 Concrete Hazards
- 3.21 Handtools – Power
- 3.22 Cranes
- 3.23 Confined Space

3.1 WORKPLACE HEALTH PROGRAMS (AS REQUIRED BY OSHA)

WHAT IS "OSHA"?

- O - Occupational
- S - Safety and
- H - Health
- A - Administration

What is the Occupational Safety and Health Administration's mission?

OSHA's mission is to prevent work-related injuries, illnesses, and deaths. Since the agency was created in 1971, occupational deaths have been cut by 62% and injuries have declined by 42%.

Source: www.osha.gov



OSHA Poster

- ◆ The contractor shall furnish a health and safety plan as prescribed by OSHA 1926 Subpart C & D. The plan shall include, at a minimum, general company policies, fall protection plan, job safety analysis, personal protective equipment, general safety rules, accident reporting, general first aid practice, safety responsibilities of supervisors, disciplinary policy, and employee training.

- ◆ Contractor shall develop and submit their HASP to the safety representative for review. The HASP shall specifically address hazards to be encountered by the contractor during the installation of his/her work. The HASP shall be in compliance with the applicable parts of 29 CFR 1926 and 1910, OSHA standards for construction and general industry and any other applicable federal, state and local regulatory requirements.

Tishman bears no responsibility for either the quality of such plans or their enforcement. As required by law, each contractor is responsible for protecting the health and safety of their employees ensuring a safe and healthful place to work.

3.2.1 POSTING REQUIREMENTS

The following forms should be posted at each job site:

- ◆ OSHA poster
- ◆ OSHA Annual Summary
- ◆ Emergency Phone Numbers
- ◆ OSHA 300 Form

3.2.2 THE HAZARD COMMUNICATION STANDARD (CFR1910.1200 (Hazardous Communication) (Toxic and Hazardous Substances)

The Hazard Communication Standard (HCS), as stipulated in section 1910.1200 of the Code of Federal Regulations, is comprised of four basic areas that must be complied with by the contractor:

- ◆ An HCS program must be written.
- ◆ A chemical inventory and Material Safety Data Sheets (MSDS) of all chemicals used on site must be made available to employees and ARTICLE 19/OSHA officials.
- ◆ All containers and pipes must be properly labeled.

- Employees must be trained on aspects of the HCS program.

The HCS should be used to inform employees of the contractor's responsibilities and obligations to the Standard and about potential hazards at the worksite. All employees should be trained on how to use MSDS files and chemical inventory, labeling, and how to identify potential physical and health hazards. The chemical inventory list and MSDS will be contained in binders on site and should be easily accessible to employees. All employees should know where the chemical inventory list and MSDS can be found and how they are filed and interpreted.

The Chemical Inventory List and MSDS files should include all chemicals used on the site. The chemical name, trade name, trade, and MSDS number should be easy to locate and written legibly. The MSDS is the document that discloses the physical and chemical properties of the product, as well as the known physical and health hazards and precautions for safe handling and use. The HCS states the trade secrets do not have to be disclosed, but all properties and hazards of the chemical must be stated in the MSDS.

All chemicals, waste containers, and pipes on the site must be labeled. Labels must identify hazardous materials, the appropriate hazard warning, name and address of the manufacturer or responsible party, and precaution regarding the chemical. All labels should be written clearly in English and should never be removed or defaced. Exemptions from labeling include food, food additive, drugs or cosmetics (flavors, fragrances, etc.) used for personal consumption. Tobacco products, pesticides as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, distilled spirits not intended for industrial use, and wood products do not need to be labeled.

3.3 COMPETENT PERSON - AS DEFINED BY OSHA (CFR 1926.32 (f))

OSHA defines a competent person as "...one who is capable of identifying existing and predictable hazards in the surroundings or working conditions, which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."

Currently, there is not a certification process for a "competent person" but it is recommended and highly desirable that the contractor's competent person, in addition to competency as defined by OSHA, should have attended a 10-hour or 30-hour OSHA course. The broker and carrier will be enlisted to furnish training of this nature when necessary to further this process.

3.4 OSHA INSPECTION/FOCUSED INSPECTION (CFR 1926.3)

OSHA may inspect the site at any time without advance notice to evaluate the safety of the site. Inspections may be made as a result of a fatality/catastrophe, a complaint, as a follow-up inspection, or as a federal or state routine inspection. Hostile attitudes from superintendents, managers, or foremen can result in fines and penalties. Inspectors must adhere to the code of conduct of federal employees. The Construction Manager's Superintendent or their designated alternate should receive the inspector and review his/her identification papers. Inspectors are not required to sign a waiver or release for entry into the job site. Before the start of the walk around inspection, assistants and foremen should perform a *final check of all OSHA records, job site conditions, methods, materials, and equipment* to determine that all are in compliance with OSHA regulations. The inspector is required to conduct an opening conference prior to the inspection, in which the nature, purpose, and scope of the inspection will be explained. An employer and employee representative will accompany the inspector throughout the inspection. Inspections may range from a few hours to a few weeks, and inspectors may receive complaints from employees about safety conditions. The employer has the right to defend himself against all allegations.

The closing conference is required to disclose apparent health and safety violations. Normally, citations are not issued during an inspection, but an "on site" citation may be issued by the inspector at the end of the inspection. All deviations from the inspection procedures by the inspector should be documented and contested within fifteen days.

3.5 SAFETY COMPLAINTS

OSHA gives employees the right to notify Federal/State Department of Labor to request an inspection if they believe that unfair and/or unhealthy conditions exist at the work site. Assistants and foremen should pass along all employee complaints to the Superintendent. The Superintendent shall contact and hear the details of the complaint without delay and investigate and correct the unsafe/unfair condition. All complaints should be documented and corrective action for violations should be ordered to the "controlling contractor," both verbally and in writing.

3.6 FALL PROTECTION

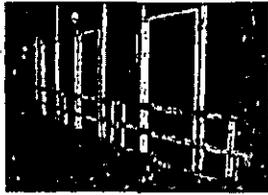
The contractor shall furnish a written fall protection plan for the scope of Unless otherwise contractually specified, it shall be the goal to achieve 100% fall protection (guardrails, safety nets, personal fall arrest systems, All conditions shall be controlled where there is a danger of employees or materials falling through floor openings, roof openings, holes, roof



Orange Vertical Debris Nets



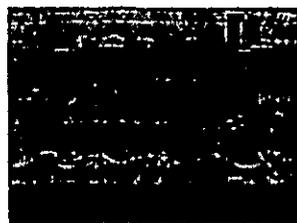
Perimeter Fall Protection



Standard Railing with Top Rail, Midrail and posts



Openings cover with cleat attached to prevent displacement



Labeled Cover



Runway with standard railings, toe board and debris net

perimeter edges, etc. The minimum requirements are:

- ▶ Guarding and/or covers shall only be removed after other means of fall protection are in place. The perimeter protection and floor and wall opening protection are to be maintained at all times. Notification of violations that are not rectified immediately will result in the removal of the supervisor responsible for the activity.

The perimeter floor and wall opening protection will include the installation of orange, four-foot-high, vertical debris nets along with perimeter floor and wall opening fall protection. Vertical debris nets are required in lieu of toe boards and are part of the guarding system. They shall be installed in accordance with the manufacturer's specifications.

- ▶ A standard railing shall consist of a top rail, an intermediate (midrail) rail, four-foot-high, vertical debris nets, and posts.
 - The upper surface of the top rail will be approximately 42 inches from the floor, platform, or ramp level.
 - The midrail shall be halfway between the top rail and the floor runway, platform, or ramp.
 - The toeboard 8-inch minimum height shall be securely fastened in place and have not more than one-fourth-inch gap between it and the floor level so that debris net cannot be installed. The Project Safety Representative will make this determination.
- ▶ Other types, sizes, and arrangements of railing construction are acceptable only by written approval from the Project Safety Representative.

Covered Floor Openings

- ▶ Floor openings covers shall be capable of supporting the maximum intended load and shall be installed to prevent accidental displacement.
- ▶ Covers shall be labeled "hole" or "cover" with a stencil and fluorescent paint.
- ▶ All floor openings that are more than three square feet require a protective cover and a standard railing with four-foot high debris nets.

Runways and Openings

- ▶ Wall openings from which there is a drop of more than three feet shall be guarded.
- ▶ Runways shall be guarded by standard railing or the equivalent on all open sides 19 inches or more above the floor or ground level. A toeboard shall be provided on each exposed side when tools, machine

parts, or materials are likely to be used along the runway.

- All open side floors, walkways, platforms, or runways above or adjacent to dangerous equipment and hazards shall be guarded with a standard railing and four-foot-high debris net.

3.7 ELECTRICAL GUIDELINES [(Subpart K) (CFR 1926.400, 402, and 403)]

All electrical work should comply with all federal, state, local and OSHA codes and regulations. All areas must be well illuminated and lock out/tag out plans must be developed and implemented. All electrical equipment must be continuously checked for possible external and internal defects. Damaged equipment must be removed promptly from the site.



Electrical cords attached to a Ground Fault Circuit Interrupter

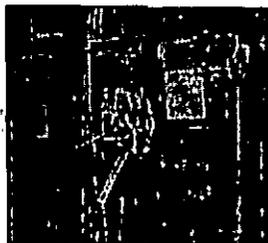
An assured grounding program must be established and maintained that covers all cord sets, receptacles that are not part of the building, and plugs that are available for use or used by employees. All grounding systems must be tested and recorded at intervals of less than three months and grounding conductors must be tested for continuity.

A ground fault circuit interrupter program may be used for receptacle branch circuits in lieu of an assured grounding program. The program will be for all 120 volt, single phase, and 15- to 20-ampere receptacle outlets that are not part of the permanent wiring of the building or structure and that are used by employees.

3.8 LOCKOUT/TAGOUT (CFR 1926.417)

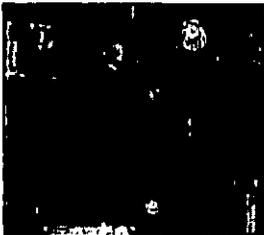
All machines and power sources must be locked out and tagged out before making an adjustment or repair. The machine shall be shut off and the employee should wait until the machine comes to a COMPLETE STOP and the main switch should be locked out. All elevated ramps and other mechanisms should be blocked so that they cannot operate. Lockout procedures will vary for individual jobs and machines but basic rules are:

- Contact supervisor to schedule a shut down and help locate switchers and power sources.
- Disconnect and tag the main control of the entire unit.
 - Tag shall include employee's name, date, and reason for taking the machine out of service.
- Padlock the controls.
 - Each employee using the machine should have their own padlock and key.



Lockout/Tagout

- ◆ Disconnect the plug of a portable unit and attach the tag.
- ◆ Bleed air and hydraulic lines.
- ◆ Perform necessary repair or adjustment.
- ◆ Replace all guards and safety devices.
- ◆ Remove lock and tag.
 - NOTE: If more than 1 worker is working on the machine, **REMOVE ONLY YOUR LOCK AND TAG!**
- ◆ When all is clear, restore power and test-run the equipment.
- ◆ Repeat lock out steps as necessary.



Illumination

3.9 ILLUMINATION (CFR 1926.56)

All areas where employees have access must be illuminated, such as stairs, ladders, passageways, etc. All areas should provide enough light to enable a person to read newsprint.

3.10 STRUCK-BY AND FALL/FLYING OBJECTS

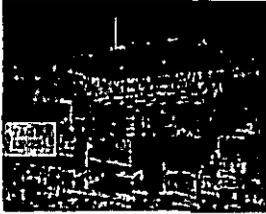
Struck-by

The use of vehicles and equipment (concrete buggies, Ariel lifts, etc.) may present struck-by hazards if proper safety measures are not taken. There is a risk of being pinned between construction vehicles or walls, struck-by swinging backhoes, crushed beneath overturned vehicles or suspended loads.

- ◆ Use barricades, flag person, traffic signs when next to public roadways and walkways.
- ◆ Workers must be highly visible in all levels of lights. Use warning clothing, such as red or orange reflective vest.
- ◆ Do not exceed vehicles rated load or lift capacity.
- ◆ All vehicles/equipment must have adequate breaking equipment and reverse alarms.



Example of "caught in between"



Tag Lines help avoid "Struck By" conditions

- ◆ Do not drive vehicle/equipment in reverse with an obstructed view. Flag person with signage or hand signals should be used to assist movement.
- ◆ Drive vehicles/equipment only on roadways or grades safely constructed.
- ◆ Set parking brakes when vehicles/equipment are parked and chock the wheel when they are on an incline.
- ◆ Do not stand between operation vehicle/equipment and / or walls.
- ◆ Ensure proper training on vehicle/equipment (concrete buggies, Ariel lifts, etc.).
- ◆ For concrete construction, ensure adequate bracing and shoring are in place until concrete reaches sufficient strength. Ensure shoring on building perimeter is secured to prevent displacement.
- ◆ Do not place construction loads on concrete structure until a qualified person indicates it can support the load.
- ◆ Do not over load scaffolding (suspended and tubular frame) or work/walk surface.

Fall/Flying Objects

When you are beneath scaffolds, cranes, building perimeter, overhead work is being performed etc.; you are at risk from falling objects. Power tools, or activities like pulling, pushing, or prying, may cause objects to become air borne and create the risk of injury. Injuries can range from minor abrasion to concussion, blindness, or death. Here are some protective measures you can take to prevent such injuries:

General

- ◆ Wear hard hats
- ◆ Ensure materials are stacked to prevent sliding, collapsing, or falling.
- ◆ Use toe boards on elevated work surfaces (scaffolding, building perimeter, etc.)

Power Tools, Machines, etc.

- ◆ Where machines (air compressor, paint sprayer, etc.) or tools (chipping gun, impact drill, etc) may cause flying particles Use eye protection such as glasses, face shield, goggles etc.
- ◆ Inspect tool with moving parts to ensure protective guards are in place. Chop saw, circular saw, hand grinders are some tool examples.
- ◆ Make sure you are properly trained/certified for powder actuated tools.
- ◆ Never use compressed air to clean clothing.
- ◆ Ensure under ground utilities (electrical, water, communication lines, etc.) are identified prior to excavation and mechanical feeds (electrical, plumbing, duct work, etc.) are identified prior demolition of wall surfaces.

Crane and Hoist

- ◆ Avoid working underneath suspended loads.
- ◆ Provide barricades (fencing, Jersey barricade, danger tape) and/or signage for hazardous areas.
- ◆ Do not exceed lifting capacity.
- ◆ Inspect rigging for serviceability (nylon straps, wire rope chokers, lifting hooks, etc.).
- ◆ Provide guardrails/barriers for open hoist ways.

Overhead Work

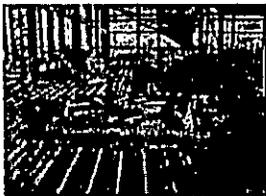
- ◆ Use toe boards, screens, nets, guardrails on scaffold, canopies on overhead work/walk platform.
- ◆ Secure material to prevent them from falling and keep unnecessary material and equipment from work/walk surface perimeter.
- ◆ Use barricades or control access zone below.

3.11 PERSONAL PROTECTION EQUIPMENT [CFR 1926.28, .95, .951(a)]

All employees must wear appropriate personal protective equipment (PPE) in all operations where they are exposed to hazardous conditions or where hazards with equipment may be reduced. Types of PPE are:

- ▶ **Head Protection:** hard hats, with a stamped expiration date (after this date they should not be used), should be worn in all areas where there is a possible danger of head injury from impact, falling or flying objects, or from electrical shocks or burns.
- ▶ **Hearing Protection:** used in areas where it is not possible to reduce the noise below OSHA Permissible Noise Exposure levels — plain cotton is not an acceptable protective device.
- ▶ **Eye and Face Protection:** used when operating machines, chemical agents, or any operation that presents a risk of physical injury to the eyes or face.
 - 100% eye protection shall be utilized.
 - It is the goal to achieve 100% eye protection for all workers. To achieve this goal, contractors shall encourage their employees to carry eye protection at all times.
- ▶ **Respiratory Protection:** required when performing work in hazardous or enclosed environments.
- ▶ **Personnel Fall Arrest System:** required where guardrail and netting does not and/or cannot provide protection as described in CFR1926.
 - 100% fall protection shall be utilized on all leading edges.

3.12 HOUSEKEEPING TIPS (see also CFR 1926.25 (Housekeeping), Subpart G (Signs, Signals, and Barricades), Subpart H (Materials Handling, Storage, Use, and Disposal))



Debris Net

All materials (tools, chemicals, etc.) should be kept in a neat and orderly manner to minimize damage, and returned to proper storage location after use.

- ▶ Stacked or blocked materials should maintain a limited height to reduce collapsing or sliding. Similar size or types of materials should be grouped together.
- ▶ Scrap material should be stored in orderly piles for disposal and should not interfere with construction work.
- ▶ Always keep ramps, ladders, runways, stairways, scaffolds, and all paths of travel clear.

- ◆ Avoid running hoses, power cords, welding leads, ropes, and other tripping hazards across traffic area.
- ◆ Always remove debris. Bend or remove nails. Remove greasy/oily rags, etc. from site area and store in appropriate place and/or labeled container.

This reduces fire hazards and accident potential.

3.13 TOILETS and WASHING FACILITIES AT CONSTRUCTION SITE (CFR 1926.51)

Facilities should be located no more than four stories or 60 feet above or below, nor more than 500 feet on the same level, from the work location of any person. Separate, clearly marked toilet facilities shall be provided for female employees.

| Number of Employees | Minimum Number of Facilities |
|---------------------|---|
| 20 or Less | 1 |
| 21 or 199 | 1 toilet seat and 1 urinal per 40 workers |
| 200 or More | 1 toilet seat and 1 urinal per 50 workers |

Adequate wash facilities shall be provided for employees engaged in operations with harmful chemicals. These facilities shall be in near proximity to the worksite.

3.14 DRINKING WATER (CFR 1926.51)

- ◆ An adequate supply of drinking water shall be provided in all places of employment.
- ◆ Potable drinking water containers shall be capable of being tightly closed and equipped with a tap.
- ◆ The common drinking cup is prohibited.
- ◆ Unused, disposable cups shall be kept in sanitary containers, and a receptacle shall be provided for used cups.



PPE Gear shown here: Hard hats, goggles, gloves and respiratory protection

3.15 FIRE PREVENTION AND TORCH USE [(Subpart F) CFR 1926.150 – 154]

- ◆ Obey all smoking regulations.
 - Flammable vapors cannot be seen but will ignite by lighting a match.

- ◆ Dispose of all flammable wastes and place in appropriate containers. **NEVER POUR FLAMMABLE LIQUIDS DOWN DRAINS OR SEWERS.** All gasoline operated tools and equipment must be turned off when refueling and a funnel shall be used to prevent spillage.
- ◆ Know how to activate and locate a fire alarm, fire extinguisher, and fire exits.
 - NOTE: There are different classes of fires that require the use of specific types of fire extinguishers.

| Fire Class | Cause(s) | Fire Extinguisher |
|-----------------|---------------------------------|------------------------------------|
| Class "A" Fires | Rubbish, paper, rags, etc. | water, soda-acid, carbon dioxide |
| Class "B" Fires | flammable liquids, oils, grease | carbon dioxide, dry chemical, foam |
| Class "C" Fires | electrical equipment | carbon dioxide, dry chemical |

Fire extinguishers should be inspected regularly and kept clean and accessible. Hoses, horns, and dispensing components should be checked for blockage.



Accessible fire Extinguisher

- ◆ Immediately remove clothes that come in contact with oil, kerosene, naphtha, or any flammable liquid.
- ◆ Temporary standpipe risers shall be used as a means of general fire protection for the structure. Siamese connections at street level shall have signage and a red light (maintained 24hrs) for designation for local fire department.
- ◆ All flame-producing tools and devices shall have an adequate fire protection, a fire watch, and a Hot Work Permit. The fire watch shall ensure the area of concern, is inspected during, and at the conclusion of, the operation for any fire and/or smoldering material.
- ◆ All fire extinguishers shall be inspected prior to use and in accordance to the manufacturer's recommendations.

3.16 STAIRS, GUARDRAILS, PASSAGEWAYS, AND LADDERS (Subpart X)

Stairs

During construction, stairs shall be provided on all structures that are two or more floors or more than 20 feet in height. Prior to the installation of permanent stairways, temporary stairs will be provided. Ladder access to all elevated platforms and upper levels will be held to a minimum and only used until temporary stairways are provided.

- ◆ Permanent stairway placement will follow other construction activities.
- ◆ All stairway parts shall be free of hazardous projections. Materials will not be stored or left under stairways and all debris and other loose material shall not accumulate.
- ◆ Permanent steel stairways having hollow pan-type treads and landings that are to be used prior to concrete placement shall have the pans filled with solid material to the level of the hosing.
- ◆ Temporary stairs shall not have a landing less than 30" wide in the direction of travel for every 12 feet of vertical rise. Wooden treads for temporary service shall be full width.
- ◆ Riser height and tread shall be uniform throughout any flight of stairs.
- ◆ A platform is necessary where a door opens directly into stairway; platform shall extend 20' beyond the swing of the door and be protected with a guardrail.

Guardrails

- ◆ All stairways will be provided with guardrails when having four or more risers.



Stairwells with Guardrails

| | | |
|------------|----------------------|---------|
| Top Rail: | 42" plus or minus 3" | 200 lbs |
| Mid Rail: | 1"x 6" | 150 lbs |
| Toe Board: | 1"x 6" | 50 lbs |

- ◆ Guardrails must support at least 200 pounds of pressure.
- ◆ Enclosed sides of stairs must have one handrail 30 to 34 inches in height.
- ◆ Stairs greater than 44 inches in width must have guard railing, not hand railings.
- ◆ Stairs greater than 88 inches in width must have one center guardrail in addition to side guard railings.
- ◆ Top rails must be a minimum of 42 inches above treads of floor surface.

Passageways

- ◆ Platforms six feet or more above ground and ramps or runways more than four feet above ground will be guarded by standard guardrail systems.
- ◆ A standard guardrail system will be used regardless of height when hazards exist below.

Ladders

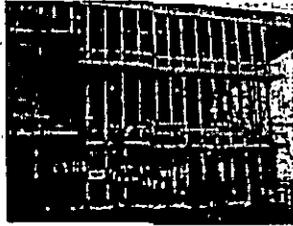
Where permanent or temporary stairways or suitable ramps are not provided, ladders to be used must meet the following guidelines:

- ◆ Pre-manufactured, portable, heavy-duty, rated wood, metal, or Fiberglas construction ladders must be in accordance with ANSI standards. All ladders must have proper certifications, ratings, and instructions permanently affixed.
- ◆ All damaged ladders are to immediately be red tagged and taken out of service and removed from the job site.
- ◆ Ladders are prohibited from being used on platforms, runways, and scaffolds.
- ◆ Ladders must extend at least 36 inches above the landing.
- ◆ Ladders are to be secured against displacement at all times.
- ◆ Metals ladders are not to be used when danger of electrical shock is present.

3.17 EMERGENCY EVACUATION (CFR 1926.35, CFR 1910)

- ◆ An audible signal system shall be used for notification of evacuation.
- ◆ Contractors shall instruct workers to meet at a pre-designated location for accountability.
- ◆ Notification of missing personnel must be furnished to CM safety representative and CM supervisor.

3.18 SCAFFOLDING [Subpart L (Scaffolds), Subpart R (Steel Erection)]



Scaffolding

No scaffold may be erected, moved, dismantled, or altered except under the supervision of a competent person. Scaffold must be inspected daily by the designated competent person.

- Scaffolds and their components must be capable of supporting without failure at least four times the maximum intended load.
- Scaffolds 6 feet or more in height must be provided with a standard guardrail system with the top rail at 42 inches above work surface. Where persons can pass under any such scaffold, a screen between guardrails and toe board must be provided (18 gauge one-half-inch wire mesh or equivalent).
- Overhead protection shall be provided for personnel on a scaffold exposed to overhead hazards.
- Scaffold classifications are:

| | |
|-----------------------|------------------|
| Light Duty Scaffold: | 25 PSF Live Load |
| Medium Duty Scaffold: | 50 PSF Live Load |
| Heavy Duty Scaffold: | 75 PSF Live Load |

- No employee shall ride on mobile scaffolds.
- Height of mobile scaffold shall not exceed four times its minimum base dimension.

Load limits for suspension scaffolds are:

| Maximum Number Workers | Work Load Limit |
|------------------------|-----------------|
| 2 | 500 lbs |
| 3 | 750 lbs |

3.19 CONCRETE HAZARDS [(Subpart Q) CFR 1926.700 – 706]

Cement can cause irritation, burns, drying, and cracking to the skin when contacted. Direct skin contact should be immediately followed by washing the area with fresh water. To minimize contact, long sleeves, full-length trousers, and waterproof gloves and boots should be worn. All clothing exposed to concrete should be rinsed with clean water. In addition, concrete contains chemical additives, which may create additional hazards. Employees should be advised of chemical additives and refer to the Material Safety Data Sheets (MSDS) for hazards. Wet concrete conducts electricity and all cords and tools should be grounded. Good lifting techniques (legs bent, do not twist at waist, ask for help, etc.)

should be used when working, wheeling, dumping, shoveling, and handling concrete.

Respiratory protection is required for all chopping, chipping, grinding, and dust-producing operation (ex. mixing of cement) of any concrete surface. **Respiratory protection shall have at a minimum NIOSH N95 classification.** Respiratory filters shall be changed in accordance to the manufacturer's recommendations.

All concrete pump pipe and hose connections shall be mechanically fastened to prevent displacement.

3.20 **HANDTOOLS – POWER** Subpart I (Tools- Hand and Power) Subpart J (Welding and Cutting, Gas Cylinders)

Power tools and gas cylinders can be hazardous when improperly used. There are several types of power tools, based on the power source they use: electric, liquid fuel, hydraulic, and power actuated. Employees should be trained in the use of all tools and should understand the potential hazards and safety precautions to prevent those hazards from occurring. The following precautions should be observed when using power tools:



Construction worker using a GFCI (Ground Fault Circuit Interrupter) with a power tool

- ▶ All electrical equipment and tools shall be protected by a portable GFCI (Ground Fault Circuit Interrupter).
- ▶ Work area should be well lighted.
- ▶ Read manufacturer's instructions prior to use. Do not attempt to circumvent safety features. Follow instructions for lubrication and changing accessories.
- ▶ All guards and safety switches are in place and working properly.
- ▶ Proper protective safety gear, such as eye and ear protection must be worn at all times. Proper apparel must be worn at all times. Loose clothing, ties, or jewelry can become caught in moving parts.
- ▶ Make sure stable footing is provided and maintain good balance.
- ▶ Tools should be used in well-ventilated areas.
- ▶ Tools should never be left unattended and should never be pointed at anybody.
- ▶ Tools must be maintained with care and should not be used in damp or wet locations. They should be kept sharp and clean and stored in a dry place when not in use for best performance.
- ▶ All portable electric tools and gas cylinders that are damaged must be tagged "DO NOT USE" and removed from the work area.
- ▶ Never carry a tool by the cord or hose.
- ▶ Never yank the cord or hose to disconnect the tool from the receptacle.
- ▶ Disconnect tools when not in use, before servicing, and when charging accessories, such as blades, bits, and cutters.
- ▶ All observers should be kept at a safe distance from the work area.

- ◆ Secure work with a clamp or vice, freeing both hands to operate tool. Never clamp a hand-held grinder in a vice.
- ◆ Avoid accidental starts. Do not hold a finger on the start button while carrying a plugged in tool.
- ◆ Never stand close to moving parts. Abrasive wheel tools may explode during start-up and an employee should not stand directly in front of the wheel until it reaches its full operating speed.
- ◆ Pneumatic tools that shoot nails, rivets, or staples and operate at pressures more than 100 pounds per square inch, must be equipped with a special device that prevents pulling the trigger until the safety device is manually released.
- ◆ Pneumatic power tools and hose connections shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected.
- ◆ Tools that require combustible, flammable gases must be in accordance with the Fire Department and requires a Fire Department permit 99% of the time.
- ◆ No welding, cutting, or heating shall be done where flammable paints, flammable compounds, or heavy dust exists. Sparks or heat transfer from the tool may introduce a fire hazard.
- ◆ Jacks must be set-up so that the base rests in a firm, level surface and is correctly centered.

Gas Cylinders (Program and Standards) (CFR 1926.350)



Gas Cylinders

- ◆ When stored, all compressed gas tanks must be valved shut at the tank and not at the device.
- ◆ Compressed gas cylinders will not be stored inside of ANY structure nor brought into a closed or confined space. Compressed gas cylinders shall not be stored in any structure without approval of TCC safety representative and/or local fire department requirements. Cylinders should be capped and secured in an upright position.
- ◆ When cylinders are moved they shall not be hoisted or transported by means of a magnet or choker slings. Cylinders when hoisted shall be secured on a cradle, slingboard, or pallet.
- ◆ The contractor shall furnish a list of compressed gas cylinder suppliers to the safety representative and ensure timely removal from the project as required and/or as per the direction of the safety representative.

- Empty cylinders shall be marked "EMPTY".
- Cylinders shall be kept away from sources of heat and out of the direct rays of the sun.
- Oxygen cylinders shall not be stored close to cylinders containing acetylene or other fueled gas. These tanks should be separated by a minimum of 20 feet or by a non-combustible barrier with at least a two (2) hour fire rating.

Welding, Cutting and Burning (Standard) (CFR 1926.350)

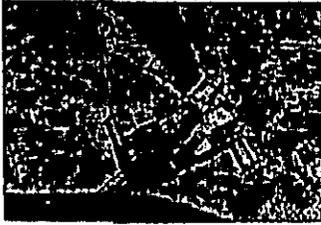


Hat, eye protection and gloves

- No welding, cutting, burning, or other spark- or flame-producing operation shall be permitted until the owner/ construction manager/ general contractor/ program manager has issued a flame/spark permit.
- A proper fire extinguisher is required to be positioned near each separate cutting and welding operation.
- Welding screens and shields must be used at all times.
- All hoses should be frequently inspected for leaks, worn places, and loose connections. Elevate hoses at least eight feet above the work area to allow passage of workers and equipment.
- If objects to be welded can not be moved and all the fire hazards can not be removed, a positive means shall be taken to confine heat, sparks, and slag, and protect the immovable fire hazard.
- Hot Work Permits shall be provided to the safety representative. Fire watch procedures shall be followed as per OSHA standard.
- All portable fire extinguishers used for fire protection shall have the classification at a minimum an ABC fire classification.

3.21 CRANES (CFR 1926 Subpart N)

- Employee shall comply with the manufacturer's specifications and limitations at all times.
- The designated competent person shall inspect all machinery and equipment both prior to each use and during use. All deficiencies shall be repaired and defective parts shall be replaced before continued use.
- ANSI standard hand signals shall be used at all times.



Controlled Access Zone for
Crane

- ▶ The swing radius of the crane shall be clearly marked and barricaded to prevent any person(s) from being struck or crushed by the crane.
- ▶ Combustible and flammable materials shall be removed from the immediate area prior to operations.
- ▶ Tag lines shall be used with all crane picks.
- ▶ Contractors shall ensure annual inspection is in place upon arrival of crane on site. All cranes shall be inspected in accordance to the manufacturer's recommendation.

3.22 CONFINED SPACE (CFR 1926.21, 1910.146)

- ▶ Confined space permit (vessel entry permit) shall be furnished to construction safety representative 24 hours prior to entry.
- ▶ Danger signs shall be posted in areas of confined space.
 - For example: "DANGER — PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER".

It is critical that no employee be exposed to hazards in confined spaces. The unfavorable ventilation in a confined space can cause the atmosphere to become hazardous. This standard has been developed to establish procedures and controls for employees who enter confined spaces that may contain hazardous atmospheres. These atmospheres are divided into four categories:

1. Flammable
2. Toxic
3. Asphyxiating
4. Irritant and/or Corrosive

These can exist in combinations.

Entry into a permit-required confined space (Permit Space) requires special training, procedures and equipment and shall not be attempted by personnel who are not familiar with these protocols. Any contractor intending to perform work inside a confined space shall provide to Tishman a copy of a written program that complies with the requirements of 29 CFR 1910.146 (c) (OSHA).

The written program shall include provisions for implementing a permitting system and a copy of a blank permit form. Implementation of

the written program shall be the sole responsibility of the contractor. This shall include, but not be limited to, providing any type of air monitoring equipment needed to safely perform the work, making arrangements for rescues personnel and guarding of unattended confined spaces.

Tishman reserves the right to audit confined space entry work procedures to ensure compliance with applicable standards and the contractors' written plan.

Any contractor intending to perform confined space entry work shall provide prior notice to the Tishman General Superintendent.

A confined space has limited or restricted means of entry or exit, is large enough for an employee to enter and perform assigned work, and is not designed for continuous occupancy by the employee.

A permit-required confined space is one that meets the definition of a confined space and has one or more of the following characteristics:

1. Contains or has the potential to contain a hazardous atmosphere;
2. Contains a material that has the potential for engulfing an entrant;
3. Has an internal configuration that might cause an entrant to be trapped or asphyxiated by inwardly converging walls or by a floor that slopes downward and tapers to a smaller cross section;
4. Contains any other recognized serious safety or health hazards.

No one will enter a confined space unless a qualified person has completed a confined space entry permit.

The use of appropriate environmental and chemical monitoring devices, such as oxygen monitors, combustible gas meters, and toxic gas monitors are required prior to and during the entry.

An attendant named on the confined space entry permit shall remain outside the confined space at all times. He/she shall maintain continuous communication by voice, visual observation, radio, telephone or other equally effective means with all the entrants he/she is responsible for. If it is not possible for one attendant to maintain communications with each entrant, then other arrangements will be made to assure that the attendant is continuously aware of the location and condition of every entrant he/she is responsible for. The attendant must remain at his/her post until replaced by another qualified person.

No employee involved in a confined space operation shall perform any confined space function (qualified person, entrant, attendant, or rescue personnel) until he/she has been trained to the level required by the job function. Certification of this training must be presented to the Tishman Safety Representative.

SECTION IV FORMS

- SAFETY LOG
- SAFETY VIOLATION FORM
- HOT WORK PERMIT
- HAZARD CONTROL LOG



SAFETY VIOLATION

CONTRACTOR _____

As per your contract, failure to comply with the safety requirements of the project will result the following amounts being deducted from the contract price.

- | | |
|---------------------------|--|
| 1. First Offense | Warning — No monetary deduction |
| 2. Second Offense | \$500.00 |
| 3. Third Offense | \$1000.00 |
| 4. Further Offense | \$2000.00 for any further offense |

ON _____ (DATE) @ _____

ON/IN _____ (LOCATION) _____

Your worker(s) were observed engaging in unsafe activities as defined by the Safety Requirements of the Project Specifically:

Site Safety Manager



HOT WORK PERMIT

CONTRACTOR: _____

FIRE WATCH: _____

LOCATION: _____

WORK BEING PERFORMED: _____

BEFORE OPERATION CHECK LIST

1. Remove combustible materials/flammable materials in the area
1. Place welding screens/blankets in place to protect Workers/equipment/material
2. Ventilation for welding fumes
3. Fire protection
4. Valid NYC certificate of fitness/welding license

PRECAUTIONS AFTER OPERATION

1. Secure all heat producing devices (valves, cylinders, torch)
2. Checked for any smoldering material
3. Visually check area/material for damage

Site Safety Manager



Tishman Hazard Prevention and Control Inspection Log

Date: _____

Project: _____

| | Problem | Corrective Action | Location | Contractor/Assigned Abatement |
|----|---------|-------------------|----------|-------------------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |
| 12 | | | | |
| 13 | | | | |
| 14 | | | | |

* See Tishman Safety Manager for additional instructions



RIDER "A"



THE PORT AUTHORITY OF NY & NJ

World Trade Center Site

RULES and REGULATIONS

Effective January 1, 2006



RIDER "N"

FOREWORD

The World Trade Center (WTC) Site Rules and Regulations as set forth herein have been adopted in the interest of the safe, efficient, and environmentally sensitive operation of the WTC Site while it is under redevelopment.

The Manager of the WTC Site is authorized to act for the undersigned in connection with all Port Authority Rules and Regulations.

Steven Plate
Director
Priority Capital Programs
The Port Authority of New York and New Jersey

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IMPORTANT TELEPHONE NUMBERS

- Port Authority Police**
(212) 608-5111 or 5115
- WTC Site Manager**
(212) 435-5501
- WTC Site Security**
(212) 732-8415
- WTC Site Safety Manager**
(212) 435-5524

Copies of this booklet may be obtained at the following location:

WTC Site Manager
Priority Capital Programs
The Port Authority of New York and New Jersey
115 Broadway, 5th Floor
New York, NY 10006

WTC Site Manager bulletins may be issued by the Site Manager as necessary to implement these Rules and Regulations.

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PART A. General Conditions.

1. Use of Premises May be Denied or Withdrawn.

The WTC Site Manager or the persons designated to act in his or her stead, may deny permission to enter or remain on the WTC Site to persons who violate Port Authority rules or regulations, WTC Site policies or procedures, applicable laws, ordinances or regulations of other government bodies, or for such other reason as may be permitted by law.

2. Closed and Restricted Areas.

- a. No person shall enter or remain in any area posted as a closed area, or otherwise identified as closed, without permission of the WTC Site Manager, or the persons designated to act in his or her stead.
- b. No person shall enter or remain in any area posted as a restricted area, or otherwise identified as a restricted area, unless such person complies with any applicable restriction, or is given permission to enter or remain by the WTC Site Manager, or the persons designated to act in his or her stead.

3. Fences.

- a. The climbing of any fence, the marking or painting of any fence, the affixing of any sign or object to any fence, or the removal of any fence is prohibited.
- b. The foregoing does not apply to the Port Authority, or any person authorized to act on behalf of the Port Authority, or any person engaged in construction or maintenance activity at the World Trade Center Site pursuant to an agreement with the Port Authority or pursuant to an agreement with a lessee of the Port Authority.

4. Compliance with Orders.

No person shall refuse to follow the lawful order of any Port Authority employee including a Port Authority police officer.

5. Endangering Persons or Property.

No person shall do or omit to do any act if the doing or omission thereof unreasonably endangers persons or property.

6. Interference with Traffic or Activities.

No person shall unreasonably interfere with:

- a. Pedestrian or vehicular traffic.
- b. Use of any doorway, entrance, or exit; stairway or landing, entrance or exit thereof; elevator, entrance or exit thereof; escalator or landing thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area; sidewalk cut or sidewalk adjacent to a crosswalk.
- c. Entry to or exit from any vehicle.
- d. The formation of any line of persons waiting to enter or use any thing, place or service described in b. or c.
- e. Any reclamation, construction or maintenance activity.
- f. The duties of a flag person.
- g. Instructions or information found on or within a sign, pavement marking, or traffic signal.
- h. The storage of materials, equipment, supplies, vehicles, debris, waste, garbage, or refuse.

7. Duty of Individuals Involved in Accidents.

- a. Any individual involved in an accident at the WTC Site which results in death, personal injury or property damage shall provide his or her name and address, and if a motor vehicle is involved, display the relevant operator's license, vehicle registration and proof of insurance document, upon demand at the scene of the accident, to any injured person, any owner of damaged property, and, to any police officer, or employee of The Port Authority of New York and New Jersey, at, or who arrives at, the scene of the accident.
- b. The operator of a motor vehicle involved in an accident shall make a report of such accident in conformance with the law of the State of New York.

8. Animals.

- a. No animal shall be brought onto or remain on the WTC Site unless it is continuously restrained by a leash or harness or by a fully closed cage or carrier.
- b. Any person who has custody of an animal shall not permit the animal to urinate or defecate in any place other than in a roadway, and shall not permit the animal to do so if such action will interfere with traffic or pose a danger to the animal or any person or property.
- c. Any person who has custody of an animal that has defecated at the WTC Site shall collect the feces in suitable wrapping material for disposal as refuse.
- d. This section is not applicable to any disabled person to the extent such person is unable to comply therewith with respect to such person's service animal.
- e. This section is not applicable to law enforcement or search canines.

RIDER "N"

9. Defacing or Damaging of Property.

No person shall deface, mark, damage, or affix any thing or object to, any wall, post, surface, walkway, street fixture or any other property at the WTC Site.

10. Abandonment of Property.

No person shall intentionally abandon any property at the WTC Site.

11. Garbage Disposal.

a. Public Areas.

No person shall dispose of garbage, debris, or any refuse except by depositing such material in waste containers as shall be placed at the WTC Site for such purpose. If no waste containers are available, all garbage, debris, or refuse shall be carried from the WTC Site.

b. Closed and Restricted Areas.

i. Each person is responsible for the garbage he/she generates and any other garbage within his/her area of control.

ii. Each entity is responsible for the garbage generated within its area of control.

iii. All garbage, debris, or refuse generated by persons individually or on behalf of others, including one or more entities, shall be disposed of by the person(s) generating such garbage, debris or refuse, or by the person(s) controlling the area within which the garbage, debris or refuse is located, or by the entity controlling the area.

iv. Such garbage, debris, or refuse shall be disposed of in containers provided by the entity controlling the area. Such containers shall be emptied regularly to lawful disposal locations outside of the World Trade Center Site, at a frequency that prevents the attraction of rodents and other pests, odors, seepage, and overflow.

12. Alcoholic Beverages.

a. Public Areas.

No person shall drink, or carry an open container of, any alcoholic beverage in a public area

b. Closed and Restricted Areas.

Alcoholic beverages are prohibited within closed and restricted areas. No person shall drink, carry an open container of, or carry a closed container of, any alcoholic beverage in a closed and restricted area.

13. Personal Hygiene.

a. No person shall spit, urinate or defecate except in toilet facilities.

b. No person other than authorized persons shall bathe, shower, shave, launder, change clothes or remain undressed in any restroom, washroom, wash station, sink, or washing facility.

14. Touching.

The intentional touching of any person without his or her consent is prohibited.

15. Sitting, Lying Down, Sleeping.

- a. Public Areas.
 - i. Except for a person in a wheelchair, stroller, or other similar apparatus, or a person waiting for emergency medical assistance, no person may sit or lie down.
 - ii. No person may sleep at the WTC Site.
- b. Closed and Restricted Areas.
 - i. No person may sleep at the WTC Site.

16. Skateboarding, Roller-Skating, Bicycle Riding.

- a. Skateboarding, roller-skating, bicycle riding or use of a scooter or other similar motorized or self-propelled apparatus is prohibited.
- b. This section is not applicable to use of a wheelchair or similar apparatus by a disabled person, or to use of a motorized or self-propelled apparatus used in reclamation, construction or maintenance activity.

17. Noise.

- a. Noise Resulting from Activity other than Reclamation, Construction or Maintenance Activity.
 - i. No person may make or cause to be made any sound in excess of 86 dBA on the A weighted scale measured at 5 feet from the source of the sound.
 - ii. No person shall operate or use any personal radio, television, compact disk, tape recorder or other sound reproduction device in such manner that the sound reproduction device is audible to another person.

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- b. Noise Resulting from Reclamation, Construction or Maintenance Activity.
 - i. Tenants, contractors, and subcontractors, or other parties performing reclamation, construction or maintenance activity, shall comply with all applicable federal laws and regulations with respect to noise control and mitigation, and shall act in conformance with all state and local laws and regulations with respect to noise control and mitigation which would be applicable if the WTC Site were owned and operated solely by a private party.
 - ii. Environmental Performance Commitments Pertaining to Noise.

Tenants, contractors, and subcontractors, or other parties performing reclamation, construction, or maintenance activity, shall comply with all Environmental Performance Commitments pertaining to noise. A copy of the current Environmental Performance Commitments (EPCs) is available from the Port Authority Resident Engineer or Port Authority Program Manager responsible for the reclamation, construction, or maintenance activity.

18. Structures.

- a. Public Areas.

The erection of any table, chair, mechanical device or other structure is prohibited, except:

 - i. pursuant to a written permit issued by, or a written agreement with, the Port Authority, or Port Authority lessee; or

- ii. as provided in the section describing "Continuous Expressive Activity";
- b. Closed and Restricted Areas.
Construction and redevelopment activity at the WTC Site shall commence only after receiving Port Authority approval in the form of one of the following:
 - i. approved Tenant Construction Application (TCA) or Tenant Alteration Application (TAA),
 - ii. fully executed contract with The Port Authority of New York and New Jersey, or
 - iii. other fully executed agreement with The Port Authority of New York and New Jersey containing conditions for construction and/or redevelopment activity.

19. Distribution or Sales.

- The following is prohibited, whether for free or for payment, unless conducted pursuant to a written permit issued by, or a written agreement with, the Port Authority:
- a. The distribution of any merchandise including, but not limited to, jewelry, foodstuffs, candles, and flowers.
 - b. The provision of any service including, but not limited to, shoe shining.

20. Gambling and Contests.

The conduct of any actual or purported game of chance or skill is prohibited.

21. Continuous Expressive Activity.

- a. For the purpose of these regulations, "continuous expressive activity" refers to the following: Continuous expressive

- activity directed at passersby, including display of a sign to passersby, continuous distribution of literature to passersby, and continuous speech addressed to passersby.
- b. Continuous expressive activity is permitted at the following locations, subject to Section 21 d:
 - i. On the pavement adjacent to Church Street, 12.5 feet or less from the pavement curb.
 - ii. Within the location described as Location E in the diagram attached to these regulations as Exhibit A, when that location is not being used by persons engaged in activity authorized by a written permit issued by, or a written agreement with, the Port Authority.

iii. By a person engaged in coordinated continuous

expressive activity as part of a group of 25 or more persons, within the locations described as Locations A through D in the diagram attached to these regulations as Exhibit A pursuant to Section 21 c herein.

- c. A person may engage in coordinated continuous expressive activity as part of a group of 25 or more persons only if a permit has been issued for that activity as set forth in Section 21 f herein, subject to the following restrictions:

- i. A person may engage in coordinated continuous expressive activity as part of a group of 25 or more persons only in the following locations:

(A) Within the locations described as Locations A through D and 1 through 9 in the diagram attached to these regulations as Exhibit A

RIDER "N"

(B) Within the location described as Location E in the diagram attached to these regulations as Exhibit A, when that location is not being used by persons engaged in activity authorized by a written permit issued by, or a written agreement with, the Port Authority.

(C) Coordinated continuous expressive activity by a group of 25 or more persons may not occur simultaneously in both (I) one or more of locations A through E on the diagram attached to these regulations as Exhibit A and (II) one or more of locations 1 through 9 on the diagram attached to these regulations as Exhibit A.

ii. The number of persons within each of the locations available for coordinated continuous expressive activity, as designated on the diagram maintained by the WTC Site Manager, described as Locations A through E and 1 through 9 on the diagram attached to these regulations as Exhibit A may not exceed the maximum number of persons indicated for that area on Exhibit A.

d. i. Notwithstanding Part A, Section 21 b i, continuous expressive activity is prohibited in, or within 10 feet of, any of the following: Doorway, entrance or exit; stairway or, entrance or exit landing thereof; sidewalk cut or crosswalk; elevator or entrance or exit thereof; escalator or landing, entrance or exit thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area;

ii. Notwithstanding any other regulation, including Part A, Sections 21 b-c, continuous expressive activity is prohibited in, or within 10 feet of, any of the following: reclamation, construction or maintenance equipment

or activity; a barrier marking or surrounding an area containing reclamation, construction or maintenance equipment or activity.

iii. Interested persons may contact the WTC Site Manager at (212) 435-5501 for identification of the locations described in Sections 21 b-c which are not available at that time for use for expressive activity pursuant to Section 21 d i or 21 d ii.

e. No person, while engaged in continuous expressive activity, shall:

i. Distribute any merchandise including, but not limited to, jewelry, foodstuffs, candles, and flowers.

ii. Misrepresent through words, signs, leaflets, attire or otherwise, an affiliation or association with, or support from, any person, organization, group, entity or cause, including any affiliation with or support by The Port Authority of New York and New Jersey or a subsidiary thereof, or an organization or association of employees thereof, or a victim of the events of September 11, 2001, or any organization or association of victims.

iii. Erect any table, chair, mechanical device or other structure unless:

(A) It is used for the actual distribution or display of expressive material such as leaflets.

(B) It does not interfere with:

(1) Pedestrian or vehicular traffic flow.

(2) Use of any doorway, entrance or exit; stairway or, entrance or exit landing thereof; sidewalk cut or crosswalk; elevator or entrance or exit

RIDER "N"

thereof; escalator or landing, entrance or exit thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area; a barrier marking or surrounding an area containing reclamation, construction or maintenance equipment or activity.

(3) Entry to or exit from any vehicle.

(4) The formation of any line of persons waiting to enter or use any thing, place or service described in 2 or 3.

(5) Any reclamation, construction or maintenance activity.

iv. Sell or offer for sale, or exchange or offer for exchange, any item in return for payment at the WTC Site by soliciting and receiving cash or checks, by engaging in or offering to engage in a credit or debit card transaction, or by any other means, at any location other than the location described at Section 21 b ii.

v. Engage in any conduct not specifically addressed in this section that is prohibited in other sections.

f. Permit application procedures and restrictions:

i. A permit application shall be submitted in writing no later than thirty-six (36) hours preceding the commencement of the activities for which the permit is sought, and no earlier than seven (7) days preceding the commencement of the activities for which the permit is sought.

ii. Permit applications shall be submitted in person to the

WTC Site Manager, or the designee thereof, during the hours of 10:00 AM to 12:00 Noon and 1:00 PM to 3:00 PM, Monday through Friday, excluding holidays. An application for a permit to engage in activity occurring on a Saturday, Sunday or holiday shall be submitted before 12:00 Noon of the preceding business day.

iii. The permit application shall set forth the type, time, location and duration of activities to be conducted in four-hour increments, the name, address and telephone number of the person making the request (in the case of a group, it shall be sufficient to supply the name, address, and telephone number of the person who can be contacted if problems arise concerning the granting of the request). If a person making the application indicates an affiliation with an organization or group, the name, address of a local representative of the organization or group to act as a liaison will be requested; however, refusal to provide such information shall not be grounds for denial of a permit.

iv. A permit to use a location for any period(s) of the day shall be valid for a number of days as specified by the applicant, not exceeding seven (7) days, pursuant to a single application. An applicant seeking permits with different dates of expiration for a location and/or a period of time each day shall use a different application for each such permit.

v. A holder of a permit may continue to use the area(s) set forth in a permit, pursuant to these regulations, after expiration of the permit period only if a new permit application is submitted and no other permit has been granted to other applicants for such areas. Renewal applications shall be processed as if they

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were new applications. All locations will be assigned on a first-come, first-served basis, without regard to renewal status. The use of space previously used pursuant to a permit is not guaranteed by acceptance of a renewal application.

vi. Permits will be granted on a first-come, first serve basis. An application will be denied only if the area requested is unavailable, the application is incomplete, or the application discloses that the activities to be performed thereunder will violate these rules.

vii. A permit will be issued, or the application denied, by the WTC Site Manager, or a designee thereof, no later than 5:00 PM of the day following submission of the application, excluding Saturdays, Sundays and holidays. The reason for the denial of an application shall be set forth in writing.

viii. Upon denial of an application for a permit, or the failure to issue a permit by 5:00 PM of the day following submission of an application, excluding Saturdays, Sundays and holidays, a person may submit a written appeal to the General Manager, WTC Site, or a designee thereof, setting forth the reasons why the application should not have been denied. An appeal shall be submitted in person to the WTC Site Manager, or a designee thereof, during the hours of 9:00 AM to 5:00 PM, Monday through Friday, excluding holidays. An appeal of a denial of an application for permit to engage in activity occurring on a Saturday, Sunday, or holiday shall be submitted before 12:00 Noon of the preceding business day. The WTC Site Manager, or designee thereof, shall cause the appeal to be delivered to the General Manager, WTC Site, or a designee thereof.

ix. A written decision denying the appeal, or issuing a permit, shall be made no later than 5:00 PM of the day following submission of the appeal, excluding Saturdays, Sundays and holidays. If no decision is issued by 5:00 PM of the day following submission of the appeal, excluding Saturdays, Sundays and holidays, the appeal shall be deemed to be denied on the basis of the original decision denying the application.

x. Any person whose application for a permit has been denied may seek review of such denial in a proceeding commenced pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.

xi. Upon the issuance of any permit, a badge indicating the area and time period in which the activity will take place will be issued for each area. Such badge must be worn on the upper left breast of the outermost garment and be clearly visible at all times during which the area is used. A person who obtains permission to use an area or areas on behalf of a group may obtain the badges for the members of the group for use by such persons actually engaged in expressive activity; however, the number of badges issued will not exceed the maximum number of persons who may engage in expressive activity at one time in the area or areas.

xii. Each time a person or group ceases use of a designated area for expressive activity, such action shall be reported to the WTC Site Manager or a designee thereof, and the badge or badges described herein must be returned so the availability of the area for use by another may be recorded.

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xiii. For the purposes of this regulation, "holidays" refers to the following:

| | |
|-----------------------------|--------------------------|
| New Year's Day | January 1 |
| Martin Luther King, Jr. Day | 3rd Monday in January |
| Presidents' Day | 3rd Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | 1st Monday in September |
| Columbus Day | 2nd Monday in October |
| Veterans Day | November 11 |
| Thanksgiving Day | 4th Thursday in November |
| Day after Thanksgiving | 4th Friday in November |
| Christmas Day | December 25 |

If New Year's Day, July 4, Veterans Day or Christmas Day occur on a Saturday, the holiday is observed on the preceding Friday; if any of those holidays occurs on a Sunday, the holiday is observed on the succeeding Monday.

xiv. Emergency Conditions.

The WTC Site Manager, or the persons designated to act in his or her stead for general management purposes, may prohibit expressive activity at the WTC Site which would otherwise be permitted, or suspend or cancel a permit to engage in such activity, in the event of, and during the pendency of, an emergency condition, such as a snowstorm, fire, accident, or power failure, of such nature and character that the

conduct of permitted activities would cause a danger to persons or property during the pendency of such emergency condition.

22. Emergencies.

In the event of an emergency, telephone contact should be made immediately with:

Port Authority Police at the WTC Site - (212) 608-5111 or (212) 608-5115

23. Photography and Sound Recording Activity.

a. As used herein, "photography" refers to any method of recording or transmitting images including, but not limited to, filming and videography, and digital image transmission or recording.

b. Public Areas.

Photography and sound recording activity in public areas is limited to the use of devices carried on or by the person or persons engaged in such activity.

c. Closed and Restricted Areas.

Photography and sound recording activity in closed and restricted areas is limited to activities which have been pre-approved by the Port Authority.

24. Lost and Found.

Personal property found within the WTC Site shall be delivered to the Port Authority Police Command Post at the WTC Site as soon as practical after the property is found.

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25. Communications Requirements in Closed and Restricted Areas.

- i. A person who is not able to read and speak English may enter and remain in Closed and Restricted Areas of the WTC Site only if and when accompanied by an interpreter able to fluently read and speak English and the language of the person he or she is accompanying.
- ii. The interpreter must comply with all WTC Site Rules and Regulations.
- iii. Individuals not capable of reading and speaking in English shall be issued a WTC ID endorsed with a requirement that the holder be accompanied by an interpreter.

PART B. WTC Site Security.

1. Adherence to Security Procedures, Rules, and Regulations.

All persons entering the WTC Site shall comply with all applicable security policies, procedures, rules, and regulations, whether contained in these Rules and Regulations or communicated via the WTC Site Manager or his/her designee.

2. Manager's Right to Rescind Access to Closed or Restricted Areas of the WTC Site.

a. The WTC Site Manager and his or her designee are authorized to suspend or revoke a permission or privilege to enter closed or restricted areas of the WTC Site, or permission to escort other persons into closed or restricted areas of the WTC Site, or permission to bring a vehicle into closed or restricted areas of the WTC Site, for any reason not contrary to law, including but not limited to, violations of WTC Site Rules and Regulations.

b. Any person possessing a document or key or other item issued as evidence of permission or privilege to enter closed or restricted areas of the WTC Site without an escort, including a WTC ID or Vehicle Pass, or as evidence of permission to escort other persons into closed or restricted areas of the WTC Site, shall return such document to the WTC Site Manager or his or her designee upon expiration or receipt of notice that such permission or privilege has terminated or has been suspended or revoked.

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c. The WTC Site Manager, or his or her designee, may revoke, confiscate, retain, and refuse to return a document or key or other item issued as evidence of permission or privilege to enter closed or restricted areas of the WTC Site, including a WTC ID or WTC Vehicle Pass, or as evidence of permission to escort other persons into restricted or closed areas of the WTC Site upon the expiration, termination, suspension, or revocation of such permission or privilege.

3. Valid WTC Site Identification.

- a. Only persons and vehicles displaying a valid WTC Site ID and valid WTC Vehicle Pass, as applicable, will be allowed entry to closed and restricted areas of the WTC Site.
- b. WTC Site IDs and Vehicle Passes issued by WTC Site Security specifically for access to closed and restricted areas of the WTC Site are the only identification media valid for such access.
- c. All WTC Site IDs and Vehicle Passes are the property of The Port Authority of New York and New Jersey.
- d. All WTC IDs and Vehicle Passes must be validated at the point of entry to the Site each time a person or vehicle enters the WTC Site.
- e. Any person who does not have a WTC Site ID must be escorted into the WTC Site by a person with escort privileges.

4. Responsibility to Display WTC Site IDs and Vehicle Passes.

- a. A WTC ID must be worn on the outside of the outermost garment, between the waist and neck.

- b. A WTC Vehicle Pass must be displayed in the driver's side windshield of a vehicle for which it was issued, in full view.
- c. WTC Site IDs and Vehicle Passes must be presented to PAPD, WTC Site Security, the WTC Site Manager or his or her designee upon request.

5. Responsibility to Update WTC Site IDs and Vehicle Passes.

- a. if the physical features of an individual change significantly, including but not limited to, a new hairstyle or color, the addition or removal of a beard or mustache, the addition or removal of eyeglasses, the individual must update the relevant information at the WTC Site Security Office.
- b. if an individual's personal information changes, including but not limited to name or appearance, address, or telephone number, the individual must update the relevant information at the WTC Site Security Office.
- c. if an individual's employment information changes, including but not limited to employer or company name, trade or union affiliation, company name, address, telephone number, and/or supervisor, the individual must update the relevant information at the WTC Site Security Office.
- d. For vehicle passes only, if vehicle information changes, including but not limited to name of owner, address, telephone number, company name and/or supervisor name, vehicle, vehicle color, license plate, insurance company or insurance/policy number/expiration date, the owner or lessee of the vehicle must update the relevant information at the WTC Site Security Office.

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6. Care of WTC IDs and Vehicle Passes.

- a. Care shall be used to secure and protect a WTC ID or WTC Vehicle Pass at all times, and to maintain a WTC ID or Vehicle Pass in the condition in which it was issued.
- b. A WTC ID or Vehicle Pass shall not be damaged or altered.
- c. A WTC ID or Vehicle Pass shall not be used by any person other than the person to whom it is issued.
- d. Any person who has knowledge that a WTC ID or Vehicle Pass has been lost, damaged or altered, or used by any person other than the person to whom it is issued, shall, without unreasonable delay, report such information to PAPD and/or WTC Site Security, and, submit the document in question, if in his or her possession, to PAPD or WTC Site Security.

7. Breaches of Security and Other Suspicious Activity.

- a. Any person who has knowledge of a breach of security shall immediately report such information to the PAPD.
- b. Any person who has knowledge of suspicious activity, a suspicious item or suspicious object, such as a vehicle, piece of equipment, container, or package, or an item located in a suspicious location shall immediately report such information to the PAPD.

8. Escort Privileges.

- a. An Escort Privilege may be issued to a person (an "Escorter") permitting the person to escort a person or persons without WTC ID to enter certain closed and restricted areas, as identified by the WTC Site Manager or his or her designee.

- b. No person without a WTC ID may enter any closed or restricted area unless accompanied by an Escorter and:
 - i. such person presents to WTC Site Security for inspection one or more pieces of valid government-issued photo identification as directed by WTC Site Security, and
 - ii. the accompanying Escorter follows the current procedures, as instructed by WTC Site Security, for identifying persons who have been issued Escorter's privileges.
- c. An Escorter shall at all times accompany and supervise any escorted person in a manner sufficient to insure that the escorted person does not engage in activity other than the activity for which the associated Escort Privilege is granted.

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- d. An Escorter shall not allow any escorted person to circumvent or disable a fall protection system or any other safety device or interfere with any safety procedure.
- e. Only one person may escort each group, and only one group may be escorted by each Escorter.
- f. A group of five or more persons shall not be escorted into a closed or restricted area of the World Trade Center Site by any person, including an Escorter, unless the entry by escort of that group into such closed or restricted area of the World Trade Center Site has been approved in advance by the WTC Site Manager.
- g. An Escorter shall instruct any person under escort to wear personal protective equipment required by these Rules and Regulations or by the WTC Site Manager or his or her designee, and shall notify WTC Site Security in the event of refusal to follow such instructions by any person under escort.

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- c. No person may make a delivery to any closed or restricted area of the WTC Site unless the delivery person or persons, any delivery vehicle and any occupant thereof, is accompanied by the delivery recipient, or a person acting on behalf of the delivery recipient, who possesses a valid WTC ID, and who has been granted Escort Privileges for deliveries. Such Escort shall accompany the delivery person or persons, any delivery vehicle and any occupant thereof, from the entrance to the respective closed or restricted area of the WTC Site, during delivery, and, upon the completion of the delivery, to the exit from the respective closed or restricted area of the WTC Site.

9. Vehicle Pass Requirements and Procedures.

- a. No vehicle may enter any closed or restricted area of the WTC Site unless the driver presents a valid vehicle operator's license for the respective class of vehicle, vehicle registration, and proof of insurance document for the vehicle.
- b. No vehicle may enter any closed or restricted area of the WTC Site unless the driver and each occupant displays a valid WTC Site ID Badge.
- c. Drivers must observe all signals, signs, markings, and other traffic devices found within the closed and restricted areas of the WTC Site.
- d. Speed limits within the closed and restricted areas of the WTC Site are established by the WTC Site Manager and communicated by signage and in the Traffic Management Plan.
- e. Parking is prohibited within the closed and restricted areas of the WTC Site in areas designated as no parking areas by signs, pavement marking or striping.
- f. Obstruction of roadways, vehicles, equipment, walkways, ramps, doors, or gates is prohibited.

10. Deliveries.

- a. No delivery may be made to any closed or restricted area of the WTC Site unless such delivery has been arranged in advance and written notice of such deliveries has been given to WTC Site Security by the recipient of such delivery.
- b. No person may make a delivery to any closed or restricted area of the WTC Site unless the delivery satisfies the requirements of Part B, 3, 4, 9, and 10 a.

PART C. WTC Site Safety.

1. General.

- a. Tenants, contractors, subcontractors, and all others performing work at the WTC Site shall prepare and implement the programs, plans, and procedures required by the Port Authority to protect worker health and safety, and shall conform with federal, state, and local codes, rules, regulations, and ordinances, including those established by The Port Authority of New York and New Jersey with respect to worker and public safety.
- b. Individuals who do not follow the programs, plans, and procedures so set forth in Part C. Section 1. a. shall be subject to immediate removal from the Site and suspension or revocation of privileges to enter closed and restricted areas.

2. Personal Protective Equipment.

- a. Personal protective equipment appropriate to the hazard of the respective work sites shall be worn at all times in closed or restricted areas of the WTC Site, and shall at a minimum include but not be limited to:
 - i. hard hat
 - ii. reflective safety vest
 - iii. work shoe or boot
 - iv. safety glasses or goggles (when required or directed)
 - v. hearing protection (when required or directed)
 - vi. respirator (when required or directed)
- b. Additional personal protective equipment, as noted on signage around specific areas, or as required by each

employer to conform with federal, state, and local codes, rules, regulations, and ordinances, and to comply with programs, plans and procedures required by The Port Authority of New York and New Jersey, shall also be worn at all times by individuals in designated areas.

3. Traffic Management Plan.

- a. The WTC Site Manager shall establish a Traffic Management Plan for pedestrian and vehicular movement within closed and restricted areas of the WTC Site.
- b. Each occupant of closed and restricted areas of the WTC Site shall obtain and/or retain a copy of the current Traffic Management Plan provided in the WTC Security Office, and adhere to the current plan.

4. Hazardous Material/Chemical Management.

a. Materials Allowed

The following hazardous materials, as identified in 49 CFR Subchapter C, Part 172, shall be allowed onto the WTC Site if Part B, Section 10 has been met, and the driver presents shipping papers and a delivery receipt indicating the name of the contractor requesting the products, the quantity and type of material being delivered, and all of the information provided herein is verifiable by WTC Site Security upon delivery. In addition, prior to delivery, the contractor's safety manager shall be in possession of the appropriate Material Safety Data Sheet for the materials.

Class 2 – Oxygen, Flammable Gas, Non-Flammable Gas

Class 3 – Flammables, Gasoline, Combustibles, Fuel Oil

Class 9 – Miscellaneous

b. Materials Prohibited

i. The following hazardous materials, as identified in 49 CFR Subchapter C, Part 172, and vehicles carrying the following hazardous materials, shall not enter the WTC Site without prior approval of the WTC Site Safety Manager and compliance with the procedures set forth herein.

Class 1 – Explosives, Blasting Agents

Class 2 – Inhalation Hazard

Class 4 – Flammable Solids, Spontaneously

Combustibles, Dangerous When Wet

Class 5 – Oxidizers, Organic Peroxide

Class 6 – Inhalation Hazards, Poisons, Harmful/Stow
Away from Food Stuff

Class 7 – Radioactive

Class 8 – Corrosives

Dangerous Cargo

ii. Vehicles with the placards indicating carriage of materials within the foregoing classes shall be detained at the entrance to the WTC Site until completion of the procedures set forth below.

iii. The World Trade Center Site Safety Manager shall be notified of the arrival of such vehicles.

iv. Upon notice to the World Trade Center Site Safety Manager of the arrival of such material for delivery to such contractor, the contractor's safety manager shall meet with World Trade Center Site Safety Manager to review the procedures to be followed for delivery, the contractor's safety manager shall bring with him the appropriate Material Safety Data Sheet for the materials to the meeting, and the contractor

shall follow those procedures to effect delivery as directed by the World Trade Center Site Safety Manager at the meeting.

c. Storage Guidelines

Consistent with the requirements in U.S. OSHA 29 CFR 1910, Subpart Z: Hazard Communication, 29 CFR 1926 Subpart F: Fire Protection and Prevention, Subpart J: Welding and Cutting, and U.S. DOT 49 CFR, Subpart E, Part 172: Labeling, each contractor shall at a minimum comply with the following:

i. Establish and maintain a secure hazardous chemicals storage location adequately sized, designed, and constructed for the type and quantity of materials to be stored. All chemicals shall be stored in appropriate containers compatible with their hazard class.

ii. Confine the storage of hazardous chemicals to the area assigned or work location. Hazardous chemicals cannot be stored in common areas, roadways, or established entry/egress routes.

iii. Each storage location shall be framed, sheathed, and roofed with approved fire-retardant treated lumber; fenced and roofed; caged; or otherwise securely enclosed. The entrance door shall be constructed in such a manner as to allow for the visual identification of the stored contents. The entrance door shall be lockable and remain locked at all times when not occupied, with keys provided to the WTC Site Manager, WTC Site Safety Manager, Port Authority Resident Engineer, and PAPD.

iv. The wall to floor seam of each storage location shall

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- be bermed with an appropriate and compatible absorbent material to capture any liquid in the event of a release.
- v. Warning signs consistent with the labeling requirements of U.S. DOT 49 CFR: Part 172 shall be conspicuously posted at all entrances into the storage location. Smoking shall be prohibited within all chemical storage locations, and shall be signed accordingly.
 - vi. The contractor shall maintain on-site an adequate supply of spill response equipment, materials, and personnel protective equipment appropriate and compatible for the type and quantity of the chemical products in storage.
 - vii. The contractor shall maintain on-site a material safety data sheet (MSDS) for each chemical product stored. The contractor shall also ensure that workers are trained in the hazards and use of the product.
 - viii. The contractor shall select, issue, and train workers in the maintenance, use and storage of the personal protective equipment required when using the chemical products.
 - ix. The contractor shall provide worker training in the proper methods to respond to spills and releases from the storage area.
 - x. Compressed gas cylinders, flammable and combustible liquids, and all chemical products shall be stored and signed/labeled in accordance with their hazard class. The co-mingling of different hazard classes in storage is prohibited.
 - xi. When required, storage areas shall be protected from vehicular impact by the use of "jersey barriers" or a similar impact resistant material.
 - xii. Enclosed storage facilities (i.e. trailers) used for the storage of flammable gases and liquids shall be properly ventilated by either mechanical or natural means based upon the characteristic of the chemical product being stored. If lighting is installed, explosion proof, intrinsically safe wiring is required.
 - xiii. The contractor shall select and provide the appropriate type, size, and number of fire extinguishers suitable for the fire hazards presented by the stored chemicals.
- d. Storage Requirements
- i. If stored in drums, all drums shall be raised off the ground.
 - ii. Flammable and combustible liquids, such as gasoline, kerosene, diesel, and mixed fuels shall be stored in either Type I or II approved metal safety storage cans with flashback protection.
 - iii. All fuel containers (drums, gas cans, etc.) shall be appropriately color-coded and permanently labeled as "Gasoline", "Kerosene", "Diesel", or "Mixed-Fuel".
 - iv. Flammable and combustible liquid cans shall be stored in approved fire cabinets with a quantity limited to 60-gals of flammable and 120-gals of combustible liquid per cabinet. No more than three storage cabinets shall be stored in one area.
 - v. A properly charged and maintained portable fire extinguisher with a rating of not less than 4-A:60B:C

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- vi. The contractor shall maintain on-site an adequate supply of spill response equipment, materials, and personnel protective equipment appropriate and compatible for the type and quantity of the chemical products in storage.
- vii. The contractor shall maintain on-site a material safety data sheet (MSDS) for each chemical product stored. The contractor shall also ensure that workers are trained in the hazards and use of the product.
- viii. The contractor shall select, issue, and train workers in the maintenance, use and storage of the personal protective equipment required when using the chemical products.
- ix. The contractor shall provide worker training in the proper methods to respond to spills and releases from the storage area.
- x. Compressed gas cylinders, flammable and combustible liquids, and all chemical products shall be stored and signed/labeled in accordance with their hazard class. The co-mingling of different hazard classes in storage is prohibited.
- xi. When required, storage areas shall be protected from

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- shall be permanently mounted in a conspicuous location readily accessible within 50 feet of the storage location.
- vi. Compressed gas cylinders (CGC) shall be stored with their valve protection caps secured on the cylinder.
 - vii. CGC shall only be stored vertically with 3-point contact maintained at all times.
 - viii. Flammable gases and oxygen must be stored separately at least 20 feet apart, or together with a 5 foot high, 30 minute fire-rated wall separating them.
- e. Incident Response
- i. Anyone with knowledge that a hazardous material and/or chemical release has occurred shall immediately contact PAPD at the WTC Command and provide the following information:
 - (A) Incident location.
 - (B) Description of incident.
 - (C) Description of personal injury.
 - (D) Description of fire condition.
 - ii. Each contractor shall employ a call-in hazmat contractor and provide to the PA Resident Engineer, WTC Site Manager, and WTC Site Safety Manager, the name and contact information of such call-in hazmat contractor.

5. Firearms, Weapons, and Explosives.

No person shall carry, keep, store, handle, use, dispense, or transport, into or through the WTC Site, any firearm, weapon, explosive device or or explosive material which is not a hazardous material as identified under Part C, 4, without the prior approval of the WTC Site Manager and Port Authority Police.

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Exhibit A

PART D. WTC Site Reclamation, Construction, and Maintenance Activity.

1. General.

Reclamation, construction and maintenance activity at the WTC Site shall commence only after receiving Port Authority approval in the form of one of the following:

- a. approved Tenant Construction Application (TCA) or Tenant Alteration Application (TAA),
- b. fully executed contract with The Port Authority of New York and New Jersey, or
- c. other fully executed agreement with The Port Authority of New York and New Jersey containing conditions for construction and/or redevelopment activity.

2. Environmental Performance Commitments (EPCs).

No person shall engage in conduct that violates any applicable EPC. A copy of the current EPCs for a Port Authority project involving reclamation, construction, or maintenance activity, is available from the Port Authority Resident Engineer or Port Authority Program Manager assigned to the project. A copy of the current EPCs for a non-Port Authority project involving reclamation, construction, or maintenance activity, is available from the party responsible for the project. The identity of a party responsible for any project involving reclamation, construction, or maintenance activity, be sought from the WTC Site Manager.

3. Required Permits.

Each of the following required permits may be obtained through the Port Authority Resident Engineer or Port Authority Program Manager assigned to the activity.

- a. Confined Space
- b. Cutting & Welding
- c. Hot Work



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AVAILABLE DOCUMENTS
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NEW YORK, NEW YORK

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Ex. 4

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NEW YORK, NEW YORK

October 17, 2007

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WTC SITE SECURITY REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: April 9, 2008

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.



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WTC SITE SECURITY REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: April 9, 2008

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 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 points at all times. The Authority shall operate, relocate, and

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
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NEW YORK, NEW YORK

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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.

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.

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NEW YORK, NEW YORK

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- 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) Exhibit

- A. WTC ID Process-Disqualifying Crimes June 2006

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: April 9, 2008

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).

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: April 9, 2008

(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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WTC SITE SECURITY REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: April 9, 2008

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) Sediton.
- (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

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
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NEW YORK, NEW YORK

Revised: April 9, 2008

- (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

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

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: April 9, 2008

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.

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

Revised: April 9, 2008

- (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.
 - * (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



RIDER "T"
MILESTONE DATES
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

June 17, 2008

TRADE: **GLAZED ENCLOSURE @ PODIUM**

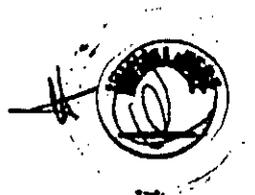
The following criteria defines the corresponding Milestone Dates included in the Lump Sum Trade Contract;

The Contractor has sufficiently completed all the **Glazed Enclosure @ Podium** Work as necessary and required for the Construction Manager to commence Temporary Certificate of Occupancy Inspections on November 11, 2011.

/s/ 

RIDER "U"
ADDITIONAL PROVISIONS
[INTENTIONALLY DELETED]
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"
NEW YORK, NEW YORK

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WORLD TRADE CENTER

**STRUCTURAL STEEL AND METAL DECK (TOWER)
LUMP SUM CONTRACT**

CONTRACT WTC-1001.07

DATE: JULY 13, 2007



PROJECT: WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

TRADE: STRUCTURAL STEEL AND METAL DECK - (TOWER)

OWNER: 1WTC, LLC
225 Park Avenue South
New York, New York 10003
(herein called "1WTC")

**CONSTRUCTION
MANAGER:** TISHMAN CONSTRUCTION CORPORATION
666 Fifth Avenue
New York, New York 10103
(herein called the "Construction Manager"
as Agent for the "Owner")

CONTRACTOR: DCM ERECTORS, INC.
110 East 42nd St, Suite 1704
New York, NY 10017
(herein called the "Contractor")

IN WITNESS WHEREOF, the parties hereto have caused this agreement to be
duly executed as of the day and year first above written.

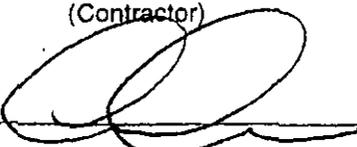
ACCEPTED:

CONSTRUCTION MANAGER:

DCM ERECTORS INC.

TISHMAN CONSTRUCTION CORPORATION
(as Agent for the "Owner")

(Contractor)

BY: 

BY: _____

(Signature)

Larry Davis PRESIDENT

Martin Adelman, Vice President

(Print Name & Title)

DATE: July 25/07

DATE: _____

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- Rider "A-2", Tower Cranes #1 & #2 Equipment Lease Addendum, dated June 16, 2005 (Revision #5)
[Requirements Only As They Pertain To The Work Of This Contract]
- Rider "B", List of Drawings and Specifications, dated July 2, 2007
- Rider "C", Alternatives & Unit Prices, dated July 9, 2007 (Revision #3)
- Rider "D", Insurance Rider, dated November 30, 2006
- Rider "DX", Owner Controlled Insurance Program (or OCIP), including Attachment DX-1,
dated May 18, 2007
- Rider "E", [Intentionally Deleted]
- Rider "F", Non-Disclosure and Confidentiality Agreement, dated May 11, 2007 (incl. Exhibits A,B,C)
- Rider "G", Sustainable Construction Requirements, dated May 11, 2007 (Revision #6)
- Rider "H", Requirements for Work in PATH Right of Way, dated June 16, 2006
- Rider "I", Sales And Use Tax Requirements, dated June 21, 2007
- Rider "J", Below Grade Temporary Services For Construction Purposes, dated February 2, 2007
- Rider "K", Project Corruption Prevention Program, dated January 8, 2007
- Rider "L", Payment Procedures, dated December 14, 2006
- Rider "M", Tishman Construction Safety Guidelines, dated November 2, 2005
- Rider "N", Port Authority of New York & New Jersey WTC Site Rules and Regulations, dated January 1,
2006
- Rider "O", Reserved For Future Use, undated
- Rider "P", [Intentionally Deleted]
- Rider "Q", Above and Below Grade Site Logistics Plans, dated June 18, 2007
- Rider "R", [Intentionally Deleted]
- Rider "S", Site Security Requirements, dated January 8, 2007
- Rider "T", Milestone Dates and Liquidated Damages, dated July 12, 1007 (Revision #3)
- Rider "U", Additional Provisions, dated July 18, 2007 (Revision #1)
Waiver Of Delay Claim Addendum – Re: Modifications To Steel Frame – Concrete Core
Erection Sequence, dated July 16, 2007 (Revision #2)
Corporate Guarantee Agreement, dated July 18, 2007
Blake, Cassels & Graydon LLP Letter, dated July 25, 2007

INSTRUCTIONS FOR BIDDERS AND BID PROPOSAL FORM

1. FORM AND SUBMISSION OF PROPOSALS

Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103 ("Construction Manager"), as agent for 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York 10003 ("1 WTC"), invites Proposals in the annexed form. Proposals will be received at a date and time designated by Construction Manager at Construction Manager's office located at 170 Broadway, New York, New York 10038. Each Proposal must be contained in the envelope furnished by the Construction Manager, which shall be sealed and conspicuously endorsed with the bidder's name and the number of this Contract in the space provided. This Contract booklet shall not be unstapled or taken apart.

The Proposal must be submitted upon the blank form bound herewith and must give all information required.¹ The Proposal must be signed and the acknowledgment taken on the appropriate form following the Proposal.

No effort is made to emphasize any particular provision of the Contract, but bidders must familiarize themselves with every provision and its effect. All Bid Proposal information (i.e., Lump Sum, unit price, alternates, etc.) is to be formatted on a spreadsheet prepared for the bid opening and available from Construction Manager. The spreadsheet should be prepared in a Lotus or Excel format and the computer file accessible to only the Construction Manager and approved personnel. Information to be contained on the spreadsheet may include, at the discretion of the Construction Manager, the following (or other additional items):

- a. Project date, trade
- b. Contractor's name, address, phone number
- c. Contact
- d. Lump Sum
- e. Budget (Adjusted to reflect bid package)
- f. Unit Prices
- g. Alternates
- h. Bidder's Alternates
- i. Schedule Duration
- j. Qualifications
- k. Exclusions.

All revised information is to be documented on a new spreadsheet and denoted as revised.

¹ While two or more copies of this booklet may be furnished to each prospective bidder, only one should be submitted. The extra copies are for the bidder's use.

Bidder shall assume for purposes of its Proposal that no New York State sales, use or other tax applies to any materials or equipment purchased in connection with the performance of the Bidder's Work. Therefore, Bidder represents that any prices in its Proposal including, but not limited to, the Lump Sum, Unit Prices and Alternates do not include any such tax. For more detailed information, please see the tax provisions in this Agreement, including, without limitation, Sections 19 and 20 herein.

2. PAPERS ACCOMPANYING PROPOSALS

Each Proposal must be accompanied by the following papers, which, unless otherwise indicated, should be enclosed with the Proposal:

- A. If the bidder be a corporation, a statement of the names and residences of its officers, which should be included on the page following the Proposal.

If the bidder be a partnership, a statement of the names and residences of its members, indicating which are general and which are special partners, which should be included on the page following the Proposal.

If the bidder be an individual, a statement of his residence, which should be included on the page following the Proposal.

B.

- 1.) If requested, Contractor may be required, within seven (7) days of such request, certified financial statements, including applicable notes, reflecting the bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the bidder's most recent fiscal year.
- 2.) Where such certified financial statements are not available, then either reviewed or compiled statements from an independent accountant setting forth the information described in paragraph 1. above.
- 3.) Where neither certified financial statements nor financial statements from an independent accountant are available, then financial statements containing the information described in paragraph 1, above, prepared directly by the bidder. However, such financial statements must be accompanied by a signed copy of the bidder's most recent federal income tax return and a statement in writing, signed by a duly authorized representative of the bidder, that such statements accurately reflect the current financial condition of the bidder.

Where statements submitted pursuant to either paragraph 1 or 2, above, show the position of the bidder as of a date more than forty-five (45) days prior to the date on which Proposals are opened, the bidder shall also submit a statement in writing signed by a duly authorized representative of the bidder, that the present financial condition of the bidder is at least as good as that shown on the statements submitted.
- 4.) A statement of work which the bidder has on hand, including any work on which a bid has been submitted, containing a description of the work, the dollar value, the location by city and state, the current percentage of completion and the expected date for completion.
- 5.) Fill in below the name and address of the bidder's chief banking representative handling the bidder's account.

Banking Institution: _____

Address: _____

Bank Representative: _____

Telephone Number: _____

- 6.) Fill in below the bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes); the bidder's Dun and Bradstreet number, if any; the name of any other credit service to which the bidder has furnished information and the number, if any, assigned by such service to the bidder's account.

Federal Employer Identification No.

Dun and Bradstreet No.

Other Credit Service

Account No

- 7.) A letter from bidder's surety (a letter from a broker is unacceptable) confirming that such bidder shall be capable of providing a payment and performance bond in the full amount of the bidder's bid.
- 8.) Bidder shall complete and submit the certifications and all necessary disclosure forms required under **Rider K** (Project Corruption Prevention Program) to this Contract.
- C. With the bid, the bidder's analysis of bid filled in on the form furnished herewith. The Contractor will be required to furnish a more detailed analysis of bid at a later date in accordance with the requirements of the Section of Division 1 of the Specifications referring to the Analysis of Bid.
- D. The Form of Contract bound herewith, with the bidder's Lump Sum inserted in the clause thereof entitled "General Agreement." The amount must be given both in figures and in writing and, in case of discrepancy, the writing shall control. One copy of each addendum, if any, issued during the bidding period shall be initialed and attached to the Proposal, but any Proposal submitted without such addendum initialed and attached will nevertheless be construed as though such addendum had been initialed and attached.

3. QUALIFICATION INFORMATION

At any time after the opening of Proposals, the Construction Manager may give oral or written notice to one or more bidders to attend a pre-award meeting and to furnish the Construction Manager with information relating to his qualifications to perform the Work, including the following, which information shall be furnished within seven (7) days thereafter:

- A. The bidder's MBE/WBE Participation Plan submitted in accordance with Section 8, "Minority and Women's Business Enterprises Program," and a detailed list of the plant and equipment which the bidder proposes to use, indicating which portions it already possesses.
- B. Detailed information relating to work which the bidder has completed for others, including personal and corporate references, sufficient to the Construction Manager to determine the Contractor's responsibility, experience and capacity to perform the Work. If required by the Construction Manager, the foregoing information shall include information to demonstrate to the satisfaction of the Construction Manager that the contractor has within the past five years been a contractor on at least one contract of the same general type, extent and complexity as the Contract on which the Proposal has been submitted, and completed the work skillfully, in a satisfactory manner and on time.
- C. Information to supplement a) data shown in the financial statements and the statement of work on hand required to be submitted with the Proposal; and b) any statement submitted under the clause hereof 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", Certification of Participation in a State-Registered Apprenticeship Program or "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee".
- D. Moreover, in the event that the bidder's performance on a past Construction Manager or Authority or PATH contract or contracts has been rated less than satisfactory, the Construction Manager may give oral or written notice to the bidder to furnish information demonstrating to the satisfaction of the Construction Manager that, notwithstanding such rating, such performance was, in fact, satisfactory, or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of the Contract, and that such performance will be satisfactory.
- E. If the bidder has performed a contract for the States of New York or New Jersey, or any governmental entity within such States and has filed a questionnaire or other document required to be submitted in order for the bidder to qualify to perform the contract, the bidder may be requested by the Construction Manager to submit the most recent completed questionnaire or other such document, or if the most recent completed questionnaire or other such document is not available, to submit a written statement indicating the approximate date of the contract and the name of the governmental entity which awarded them the contract.
- F. Any additional information relevant to the bidder's Proposal including information to supplement the bidder's initial analysis of bid.

In the event that any of the foregoing is requested and is not furnished within seven days thereafter or within such additional time as the Construction Manager, in his sole discretion, may allow, the Construction Manager may not be in a position to determine whether the bidder is qualified, whether the bidder understands the requirements of the contract or whether the bid is responsive and may, in its sole discretion, reject the bidder's Proposal.

The giving of such notice to the bidder in connection with any of the foregoing lists, statement or information shall not be construed as an acceptance of his Proposal. However, the Construction Manager reserves the right in its sole and absolute discretion, to accept the Proposal of a bidder despite the fact that said bidder has not submitted any information, list or statement required pursuant to this Section within the above-stated time period.

4. ACCEPTANCE OR REJECTION OF PROPOSAL

Within one hundred twenty (120) days after the opening of the Proposals, the Construction Manager may, in its discretion, accept one of the Proposals, if Construction Manager accepts any. The acceptance of a Proposal will be only by mailing to or delivering at the office designated in the Proposal a notice in writing specifically indicating acceptance signed by Construction Manager. No other act of the Construction Manager shall constitute acceptance of a Proposal. Such notice will state whether or not the Construction Manager elects to require the bidder to furnish a Performance and Payment Bond. Rejection of a Proposal will be only by either (a) a notice in writing specifically stating that the Proposal is rejected, signed by Construction Manager and mailed to or delivered at the office designated in the Proposal or (b) omission of the Construction Manager to accept a Proposal within one hundred eighty (180) days after the opening of Proposals; and no other act of the Construction Manager shall constitute rejection of a Proposal, including any counter offer or other act of the Construction Manager.

The Construction Manager reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, seek modifications to one or more Proposals, or to accept that Proposal if any, which in its judgment will under all the circumstances best serve the public interest and to waive defects in any Proposal.

In the event that a successful bidder defaults upon the Contract by failing to furnish a satisfactory Performance and Payment Bond, if required, and the Construction Manager terminates the Contract, the Construction Manager reserves the option to accept the Proposal of any other bidder within one hundred eighty (180) days after the opening of Proposals, in which case such acceptance shall have the same effect as to such other bidder as though he were the originally successful bidder.

5. INTENTIONALLY DELETED

6. DISPOSAL OF CONTRACT DOCUMENTS

All recipients of Contract documents, including bidders and those who do not bid and their prospective Subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Construction Manager.

7. AVAILABLE DOCUMENTS

Certain documents, specified in **Rider O** (Reserved For Future Use), are available for reference and examination by bidders by contacting Construction Manager at Construction Manager's office to review such documents during regular business hours. These documents were not prepared for the purpose of providing information for bidders upon the present Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Construction Manager makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the bidders merely for the purpose of providing them with such information as is in the possession of the Construction Manager, whether or not such information may be accurate, complete or pertinent or of any value to the bidders. Bidders accept all risks of inaccurate or incomplete information.

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

The Construction Manager and 1 WTC adopt the Authority's 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.

"Minority-owned business" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned and controlled 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 fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned and controlled 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:

- A. Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
- B. Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central, or South American culture or origin, regardless of race);
- C. 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);
- D. Native American 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).

To ensure meaningful participation of MBEs and WBEs on this Project, J WTC has set goals of twelve percent (12%) for firms owned and controlled by minorities, and five percent (5%) for firms owned and controlled by women. The MBE/WBE Participation Plan, described below, should meet or exceed these goals. If such goals are not met, Contractor shall be responsible for demonstrating its "good faith" efforts to achieve the goals.

Each Bidder's Proposal shall be accompanied by a complete Minority Business Enterprises/Women Business Enterprises Participation Plan ("MBE/WBE Participation Plan") on a form approved by Construction Manager. The MBE/WBE Participation Plan must be approved by Construction Manager before award of the Contract. The MBE/WBE Participation Plan shall include the following information:

- A. Name and telephone number of designated MBE/WBE contact person;
- B. Names and addresses of proposed MBE/WBE contractors; the proposed MBE/WBE contractors must be approved as described below in this Section 8;
- C. Description of work and approximate dollar value of work to be performed by each MBE/WBE contractor;
- D. Percent of participation in relationship to the cost of the overall Project for each MBE/WBE contractor.

Subsequent to contract award, the Contractor shall use and document every good faith effort to comply with its MBE/WBE Participation Plan and to permit its MBE/WBE Subcontractors to perform. Participation percentages shall be monitored throughout the performance of this Contract. Such good faith efforts shall include at least the following:

- A. Attendance at pre-bid meetings, if any, scheduled by the Construction Manager;
- B. Utilization of the Authority's Directory of certified MBE/WBEs available on-line (see MBE/WBE Directory Letter in back of Contract Book) 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 or Proposals 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 in order to increase the likelihood of achieving the MBE/WBE goals;
- F. Providing a sufficient supply of plans and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review;

- G. Utilizing the services of available minority and women's community organizations; contractor's groups; local, state and federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;
- H. Ensuring that progress payments are made in a timely fashion in accordance with the requirements of this Contract;
- I. Not requiring bonds from and/or providing bonds and insurance for Subcontractors where appropriate;
- J. Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Construction Manager's staff responsible for such participation;
- K. 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.);
- L. Establishment of impress funds to facilitate MBE/WBE cash flow; and
- M. Directing other contractors to solicit MBE/WBE subcontractor participation.

Subsequent to contract award, the Contractor shall also provide the Construction Manager, at its 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 Construction Manager, on a monthly basis, the Statement of Subcontractor's Payments in a form approved by Construction Manager.

In order to assure that the planned goals are being met, a monthly Statement of Payments Reports reflecting the actual payments to MBE/WBE contractors must be submitted throughout the duration of performance of the Contract.

In calculating the progress toward meeting the goal, Contractor shall receive credit for only sixty percent (60%) of the amounts paid to materialmen/suppliers who are MBE/WBE firms, except in the case of firms who manufacture materials. Contractor shall receive one hundred percent (100%) credit for suppliers who manufacture products or make material changes to products before sale.

In the event that, prior to contract award and following review of the MBE/WBE Participation Plan submitted by the bidder pursuant to the clause hereof entitled "Qualification Information", the Construction Manager determines that the Contractor has not made a good faith effort to meet the MBE/WBE participation goals set forth above and that the Contractor has not demonstrated that a full or partial waiver of such goals is appropriate, the Construction Manager may advise the bidder that it is not responsible and may reject the bidder's Proposal.

If, during the performance of the Contract, the Contractor fails to demonstrate good faith in carrying out its MBE/WBE Participation Plan and in permitting its MBE/WBE Subcontractors to perform and the Contractor has not demonstrated that a full or partial waiver of the above referenced MBE/WBE participation goals is appropriate, then, upon receipt of a future Proposal or Proposals from the Contractor, the Construction Manager may advise the Contractor that it is not a responsible bidder and may reject such Proposal(s).

Either prior or subsequent to acceptance of the bidder's Proposal, the bidder may request a full or partial waiver of the above described MBE/WBE participation goals by providing a reasonable demonstration to the Construction Manager that its good faith efforts will not result in compliance with the goals set forth above because participation by eligible MBE/WBEs could not be obtained at a reasonable price or that such MBE/WBEs were not available or refused to perform as Subcontractors. The bidder shall provide such documentation to support its request as the Construction Manager may require.

Once approved, the MBE/WBE Participation Plan submitted by the bidder may be modified only with the written approval of the Construction Manager.

Following approval by the Construction Manager 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 Construction Manager in accordance with this numbered clause, I WTC may, at its sole option, provide to said approved MBE/WBEs, without charge, whatever appropriate consultant services may be available under the L.E.A.P. Program; provided, however, that such consultant services will only be furnished pursuant to a request in writing from the Contractor to the General Manager, Small Business Programs, Office of Regional and Economic Development 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 General Manager, Small Business Programs, Office of Regional and Economic Development 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 MBE/WBE Subcontractor. Prior to being accepted as a participant in the L.E.A.P. Program, the MBE/WBE Subcontractor will be required to release the Construction Manager, I WTC and the individuals furnishing consultant 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 Construction Manager 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 required MBE/WBE participation.

If the Contractor wishes to perform a portion of the Work through a firm not listed in the Directory² 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 General Manager, Small Business Programs, Office of Regional and Economic Development 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 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 Construction Manager to determine whether the firm is in fact an MBE/WBE and technically competent to perform portions of the Work.

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| 1. | <p>Queens Air Services Development Office JFK International Airport Building #141 Federal Circle, First Floor Jamaica, NY 11430 (718) 244-6852 Fax (718) 244-7371</p> | 2. | <p>Hispanic American Chamber of Commerce of Essex County P.O. Box 9146 Newark, NJ 07104 (973) 484-5441 Fax (973) 350-9238</p> |
| 3. | <p>Association of Minority Enterprises of NY, Inc. 135-20 Liberty Avenue Richmond Hill, NY 11419 (718) 291-1641 Fax (718) 297-2986</p> | 4. | <p>Statewide Hispanic Chamber of Commerce of New Jersey 150 Warren Street, Suite 110 Jersey City, NJ 07302 (201) 451-9512 Fax (201) 451-9547</p> |
| 5. | <p>Newark Opportunity Center 17 Academy Street, Suite 501 Newark, NJ 07102 (973) 622-4537 Fax (973) 622-3914</p> | 6. | <p>Jamaica Business Resource Center 90-33 16th Street Jamaica, NY 11432 (718) 206-2255 Fax (718) 206-3693</p> |

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 Construction Manager for a determination as to eligibility as provided above.

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| 7. | <p>Council for Airport Opportunity 90-04 161st Street Jamaica, NY 11432 (718) 523-7100 Fax (718) 526-3472</p> | 8. | <p>Urban Business Assistance Corp. New York University Stern School of Business 44 West 4th Street, Suite 5-61 New York, NY 10012 (212) 995-4404 Fax (212) 995-4255</p> |
| 9. | <p>Greater Jamaica Development Corp. 90-04 161st Street Jamaica, NY 11432 (718) 291-0282 Fax (718) 291-7918</p> | 10. | <p>NYS Assn. Of Minority Contractors Brooklyn Navy Yard Building 280, 4th Floor, Suite 414 Brooklyn, NY 11205 (212) 246-8380 Fax (718) 246-8376</p> |
| 11. | <p>Professional Women in Construction 315 E. 56th Street, Suite 202 New York, NY 10022 (212) 486-7745 Fax (212) 486-0228</p> | 12. | <p>NY/NJ Minority Purchasing Council 205 East 42nd Street New York, NY 10017 (212) 573-2385 Fax (212) 522-4004</p> |
| 13. | <p>Jamaica Chamber of Commerce 90-25 161st Street, Room 505 Jamaica, NY 11432 (718) 657-4800 Fax (718) 658-4642</p> | 14. | <p>Queens Overall Economic Development Office 120-55 Queens Boulevard, Suite 309 Kew Gardens, NY 11424 (718) 263-0546 Fax (718) 263-0594</p> |

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| <p>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</p> | <p>16. Small Business Development Center - Rutgers University, University Heights 49 Bleeker Street Newark, NJ 07102 (973) 353-1927 Fax (973) 353-1110</p> |
| <p>17. Small Business Development Center - Kean University East Campus, Room 242 Union, NJ 07083 (908) 527-2946 Fax (908) 527-2960</p> | <p>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</p> |
| <p>19. Caribbean-American Chamber of Commerce Brooklyn Navy Yard Brooklyn, NY 11205 (718) 834-4544 Fax (718) 834-9774</p> | <p>20. Manhattan Hispanic Chamber of Commerce P.O. Box 3494 Grand Central Station New York, NY 10163 (212) 683-5955 Fax (212) 683-5999</p> |
| <p>21. Asian Women in Business 358 Fifth Avenue, Suite 504 New York, NY 10001 (212) 868-1368 Fax (212) 868-1373</p> | <p>22. Asian American Business Development Center 80 Wall Street, Suite 418 New York, NY 10005 (212) 966-0100 Fax (212) 966-2786</p> |

23. New York State Federation of Hispanic
Chambers of Commerce
2710 Broadway
New York, NY 10025
(212) 222-8300
Fax (212) 222-8412

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

Please note that the Contractor must 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. However only sixty percent (60%) of the amounts paid by the Contractor to such Materialmen who are MBEs/WBEs, except in the case of firms who themselves manufacture materials for use under the Contract, shall be allowed in computing the percentages of the Lump Sum required to be paid to MBEs/WBEs hereunder.

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

9. INSPECTION OF SITE

Each bidder or his authorized representative must make proper arrangements with the Construction Manager at the construction site before inspecting the construction site. To make such arrangements call Construction Manager at 212.748.1001.

10. QUESTIONS BY BIDDERS

Questions by prospective bidders concerning the Contract may be addressed to Construction Manager, who, however, is authorized only to direct the attention of prospective bidders to various portions of the Contract so that they may read and interpret such portions for themselves. Neither Construction Manager nor any other employee or representative of the Construction Manager is authorized to give interpretations of any portion of the Contract or to give information as to the requirements of the Contract *in addition to that contained in the Contract*. Interpretations of the Contract or additional information as to its requirements, where necessary, shall be communicated to bidders only by written addendum, which addendum shall be considered part of this Contract. Accordingly, nothing contained herein and no representation, statement or promise, oral or in writing, of the Construction Manager, or 1 WTC its Directors, officers, agents, representatives or employees shall impair or limit the effect of the warranties of the Contractor contained in the clause of the Form of Contract entitled "Contractor's Warranties" or elsewhere in this Contract. The provisions of this clause shall apply to questions addressed by prospective bidders both before and after their receipt of Contract documents.

11. AUTHORITY SECURITY REQUIREMENTS

Bidder shall comply with the security requirements set forth herein both pre- and post-contract award, including, without limitation, the requirements set forth in **Rider S** (Site Security Requirements).

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. I WTC and Construction Manager reserve the right to impose multiple layers of security requirements on the Contractor, its staff and Subcontractors and their staffs depending upon the level of security required, as determined by I WTC. This includes the Contractor's responsibility to perform Contractor/Subcontractor identity checks and background screening, including, but not limited to: inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history. The Contractor shall, and shall instruct its Subcontractors, to cooperate with Construction Manager's staff in adopting security requirements. These security requirements may include, but are not limited to the following:

a. Access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;

b. Issuance of photo identification cards:

No person will be permitted on or about the construction site without a photo identification badge approved by the Construction Manager. The Construction Manager will provide such identification badges for Contractor and Subcontractor staff, and Materialmen, if necessary. All employees of the Contractor, Subcontractors and Materialmen shall wear identification badges in a conspicuous and clearly visible position whenever they are working at the construction site.

c. Access control, inspection, and monitoring by security guards:

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

d. Neither the Contractor nor any Subcontractors shall issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to I WTC or the Authority or the Work performed in connection with this Contract without first obtaining the written approval of I WTC. Such approval may be withheld if for any reason I WTC believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

e. Under no circumstances shall the Contractor nor any Subcontractor communicate in any way with any consultant, department, board, agency, commissioner or other organization or any person whether governmental or private in connection with the Work to be performed hereunder, unless required by Law, except upon prior written approval and instructions of I WTC, provided, however that data from manufacturers and suppliers of material may be obtained when such data is necessary to the performance of the Work.

- f. Neither the Contractor nor any Subcontractors shall provide access to the construction site to anyone other than their employees and others who are approved by 1 WTC to be directly involved in performing Work at the construction site.
- g. Neither the Contractor nor any Subcontractor is permitted to take photographs or video recordings or make sketches at the construction site, except when necessary to perform the Work under this Contract. Upon request, any photograph, video recording or sketch taken at the construction site shall be submitted to 1 WTC to ascertain compliance with this paragraph.

The Contractor shall be required to have its staff and that of its Subcontractors undergo a criminal history background check and shall furnish proof to 1 WTC, in a form acceptable to 1 WTC, that such check has been performed. No employee of the Contractor or any Subcontractor will be permitted at the construction site without proof that such check has been performed.

In addition, 1 WTC or Construction Manager may increase and/or upgrade security requirements for the Contractor, its staff and Subcontractors and their staffs during the term of this Contract to address changing security conditions and/or new governmental regulations.

Should 1 WTC or Construction Manager increase and/or upgrade security requirements after acceptance of the Contractor's Lump Sum Proposal, the Contractor will be compensated for the additional cost of such increase and/or upgrade in accordance with the clause of the Contract entitled, "Extra Work."

11A. PROTECTION OF SECURITY INFORMATION

1. The Contractor, Subcontractors and others requiring access to Confidential and Privileged (C&P) security information and Sensitive Security Information (SSI) shall also be required to implement uniform security procedures regarding the identification, handling, care and storage of C&P security information belonging to 1 WTC or Construction Manager; and SSI as defined in 49 CFR Parts 15 and 1520. 1 WTC or Construction Manager C&P security information is information that, if subject to unauthorized disclosure, access, alteration, loss or misuse would be detrimental to the public interest and/or might adversely affect, or compromise, public safety or security as it relates to Authority or 1 WTC property, facilities, systems and/or operations, or which might otherwise adversely affect homeland security.

The Authority has developed requirements and other safeguards that are necessary both to prevent unauthorized disclosure of C&P security information and to control the authorized disclosure of *this information for use internally within the Authority and when released by the Authority to outside entities for legitimate business purposes*. These requirements and safeguards may be found in the Handbook for Protecting Security Information (July 8, 2005) and the Sub-Project's Security Information Practices and procedures manual, both of which will be made available to the Contractor and each Subcontractor. Each Contractor, Subcontractor and their staffs shall follow and implement the requirements and safeguards set forth in the aforementioned Handbook. Further, the staffs of the Contractor, Subcontractors and others requiring access to C&P security information and SSI shall also be required to sign a Non-Disclosure/Confidentiality Agreement (NDA), or an Acknowledgement thereof where an executed NDA is in place, prior to performing work activities in connection with this Contract, the form of which is set forth in **Rider F** (Non-Disclosure and Confidentiality Agreement).

2. The Contractor, each Subcontractor and others requiring access to C&P security information and SSI, shall appoint a senior management level employee to be the company's Security Information Manager (SIM). The SIM is responsible for implementing and maintaining the firm's

Program For Protecting C&P security information and/or SSI. A deputy SIM (DSIM) shall also be appointed in case the SIM is unavailable for any reason.

3. The SIM shall prepare an Authorized Personnel Agreement Sub-Project List - a list of employees who are authorized to access C&P security information and the date each executed the NDA. A copy of this list shall be provided to 1 WTC and the Construction Manager and updated monthly. This list will be used to verify that individuals have been briefed into the program and are certified for access to C&P security information.

Protection of C&P security information and SSI is a material obligation of the Contractor hereunder and failure to do so is grounds for termination for cause.

In addition, an individual's access to C&P security information and SSI may be contingent upon the satisfactory completion of a security background check for such individual and proof of the implementation of satisfactory procedures for safeguarding such C&P security information and/or SSI.

Unauthorized disclosure of SSI may be grounds for a civil penalty and/or other enforcement or corrective action by the United States Department of Transportation and/or the United States Department of Homeland Security against individuals or entities they deem appropriate including but not limited to the Contractor, its Subcontractors and their staffs.

Corrective action may include issuance of an order requiring retrieval of SSI to remedy *unauthorized disclosure or an order to cease future unauthorized disclosure.*

4. The Contractor shall include and require the inclusion of this numbered provision in all subcontracts and contracts for Work, services or supplying materials required for this Contract of every tier.

11B. PREVAILING RATE OF WAGE CERTIFICATION

The bidders' attention is directed specifically to the clause of the Form of Contract entitled "Prevailing Rate of Wage" and to the fact that the Construction Manager requires a certification in writing from the successful bidder, in such form as may be required pursuant to such clause, that he has paid and caused his Subcontractors to pay at least the prevailing rate of wage and supplements required by such clause. This certification is required prior to his receipt of any payment from the Construction Manager hereunder as provided in the clauses of the Form of Contract entitled "Monthly Advances" and "Final Payment" or at any other time.

11C. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, SUSPENSION, DEBARMENT, DISQUALIFICATION, PREQUALIFICATION DENIAL OR TERMINATION, ETC; DISCLOSURE OF OTHER REQUIRED INFORMATION

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder and each parent and/or affiliate of the bidder has not (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal; (f) been denied a contract by any governmental agency for failure to provide the required security, including bid, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local environmental law, rule or regulation; and (k) shared space, staff, or equipment with any business entity.

The foregoing certification as to "(a)" through "(k)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each director and officer, as well as, to the best of the certifier's knowledge and belief, each stockholder with an ownership interest in excess of 10%; if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to complete **Rider K** (Project Corruption Prevention Program) as part of its bid, require all Subcontractors and Materialmen to complete **Rider K** (Project Corruption Prevention Program) and to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by 1 WTC. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

As used in this clause, the following terms shall mean:

Affiliate - An entity in which the parent of the bidder owns more than fifty percent (50%) of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the bidder also owns more than fifty percent (50%) of the voting stock.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, quasi-public agencies, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Employer Identification Number - The tax identification number assigned to firms by the federal government for tax purposes.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting or investigative agency, including an inspector general of a governmental agency or public authority, and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, state, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than fifty percent (50%) of the voting stock of the bidder.

Space Sharing - Space shall be considered to be shared when any part of the floor space utilized by the submitting business at any of its sites is also utilized on a regular or intermittent basis for any purpose by any other business or not-for-profit organization, and where there is no lease or sublease in effect between the submitting business and any other business or not-for-profit organization that is sharing space with the submitting business.

Staff Sharing - Staff shall be considered to be shared when any individual provides the services of an employee, whether paid or unpaid, to the bidder and also, on either a regular or irregular basis, provides the services of an employee, paid or unpaid, to one or more other business(es) and/or not-for-profit organization(s), if such services are provided during any part of the same hours the individual is providing services to the bidder or if such services are provided on an alternating or interchangeable basis between the bidder and the other business(es) or not-for-profit organization(s). "The services of an employee" should be understood to include services of any type or level, including managerial or supervisory. This type of sharing may include, but is not limited to, individuals who provide the following services: telephone answering, receptionist, delivery, custodial, and driving.

Equipment Sharing - Equipment shall be considered to be shared whenever the bidder shares the ownership and/or the use of any equipment with any other business or not-for-profit organization. Such equipment may include, but is not limited to, telephones or telephone systems, photocopiers, computers, motor vehicles, and construction equipment. Equipment shall not be considered to be shared under the following two circumstances: when, although the equipment is owned by another business or not-for-profit organization, the bidder has entered into a formal lease for the use of the equipment and exercises exclusive use of the equipment; or when the bidder owns equipment that it has formally leased to another business or not-for-profit organization, and for the duration of such lease the bidder has relinquished all right to the use of such leased equipment.

**12. NON-COLLUSIVE BIDDING AND CODE OF ETHICS CERTIFICATION;
CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION,
PERCENTAGE, BROKERAGE, CONTINGENT FEE OR OTHER FEE**

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that: (a) the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (b) the prices quoted in its bid have not been and will not be knowingly disclosed, directly or indirectly, by the bidder prior to the official opening of such bid to any other bidder or to any competitor; (c) no attempt has been made and none will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the Form of Contract entitled "No Gifts, Gratuities, Offers of Employment, etc.") or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Bidders"), nor does this organization have any knowledge of any act on the part of an Construction Manager employee or former Construction Manager employee relating either directly or indirectly to this

organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by the bidder for the purpose of securing business, has been employed or retained by the bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency; the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each parent, affiliate, director and officer of the bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the bidder with an ownership interest in excess of ten percent (10%); if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the bidder may be able to make the foregoing certification at the time the bid is submitted, the bidder shall immediately notify the Construction Manager in writing during the period of irrevocability of bids on this Contract or any extension of such period, of any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure. The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager should determine at any time prior or subsequent to the award of this Contract that the bidder has falsely certified as to any material item in the foregoing certification or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certification required to be disclosed, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids on Construction Manager or 1 WTC contracts and may, in addition to exercising any other rights or remedies it may have, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC".

In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

13. BIDDER ELIGIBILITY FOR AWARD OF CONTRACTS – DETERMINATIONS BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC CONTRACTS

Bidders are advised that the Authority has adopted a policy, which Construction Manager and 1 WTC adopt as set forth herein, to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a bidder is not eligible to bid on or be awarded public contracts because the bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The Authority policy permits a bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Authority contract and then to establish that it is eligible to be awarded the contract on which it has bid because (i) the state agency determination relied upon does not apply to the bidder, or (ii) the state agency determination relied upon was made without affording the bidder the notice and hearing to which the bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or a violation of a prevailing rate of wage law.

The full text of the resolution adopting the Authority policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

14. CONSTRUCTION SKILLS 2000 – APPRENTICESHIP PROGRAM

The Authority is a participant in Construction Skills 2000, a cooperative program among New York City schools, unions and public agencies. Construction Skills 2000 creates career opportunities in the construction industry for high school graduates by providing a systematic pathway into union-sponsored, skilled trade apprenticeship programs. The Authority encourages Contractors and their Subcontractors to maximize the use of apprentices under the applicable collective bargaining agreements or as contained in the applicable program approved by the New York State Department of Labor. The Contractor's plan for utilizing apprentices will be discussed at the pre-construction meeting.

Each Subcontractor proposed for approval under the Contract whose total amount of subcontracts under this Contract is greater than \$1 Million Dollars and each bidder (except as set forth in the certification below) will be required to certify as to their participation in a New York State-registered apprenticeship program.

15. CERTIFICATION OF PARTICIPATION IN A STATE-REGISTERED APPRENTICESHIP PROGRAM

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder participates in an apprenticeship program registered by the New York State Department of Labor. Participation in such an apprenticeship program shall mean that the bidder either (a) is a signatory to a collective bargaining agreement with a labor organization which sponsors an apprenticeship program registered with the New York State Department of Labor or (b) individually sponsors an apprenticeship program registered by the New York State Department of Labor and, in the case of both (a) and (b) above, such apprenticeship program shall be in the trade(s) in which Work is to be performed. This clause shall not apply to bidders who will perform all Work at the construction site through the use of Subcontractors.

The foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.).

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

To Tishman Construction Corporation, a Delaware corporation:
The undersigned³

BIDDERS NAME:

TYPE OF ENTITY (see Note "3" below):

(hereinafter called, "the Contractor") hereby offers to perform all the obligations and to assume all the duties and liabilities of the Contractor provided for in the annexed Contract on the terms and conditions contained therein, in all Riders referenced therein and all terms and conditions contained in these Instructions to Bidders Sections 1 through 15, at the price set forth in the attached Bid Proposal.

This offer shall be irrevocable for one hundred eighty (180) days after the date on which the Construction Manager opens this Proposal.

To induce the acceptance of this Proposal, the undersigned hereby makes each and every certification, statement, assurance, representation and warranty made by the Contractor in said Contract. Moreover as a condition to receipt and consideration by the Construction Manager of the Proposal whether or not it is accepted, the undersigned agrees that all information of any nature whatsoever, regardless of the form of the communication, received from the undersigned (including its officers, agents, or employees) by the Construction Manager and 1 WTC, its Directors, officers, agents or employees, and notwithstanding any statement therein to the contrary, has not been given in confidence and may be used or disclosed by or on behalf of the Construction Manager or 1 WTC without liability of any kind except as may arise under letters patent of the undersigned, if any.

Unless expressly stated otherwise, the Instructions for Bidders and Bid Proposal Form, all papers required by it and submitted in connection herewith at any time, said Form of Contract, and all papers made part of the Contract by the terms of the Form of Contract are made part of this Proposal

(PAGE 1 OF 6)

³ Insert bidder's name at the top of the page. After the bidder's name, insert one of the following phrases:

If a corporation, give state of incorporation, using the phrase, "a corporation organized under the laws of the State of _____"

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

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

If a joint venture, give the information required above for each participant in the joint venture.

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

In accordance with the bid documents listed below and pursuant to your letter dated _____, we submit our Proposal herewith:

1. General Form of Agreement
2. Rider "A", General Addendum, dated November 30, 2006, as modified
3. Rider "B", List of Drawings and Specifications
4. Rider "C", Alternatives & Unit Prices
5. Rider "D", Insurance Rider, dated November 30, 2006, as modified
6. Rider "DX" Owner Controlled Insurance Program (or OCIP) [Used Only If OCIP Provided]
7. Rider "E", [Intentionally Deleted]
8. Rider "F", Non-Disclosure and Confidentiality Agreement
9. Rider "G", Sustainable Construction Requirements, dated April 11, 2007, as modified
10. Rider "H", Requirements for Work in PATH Right of Way, dated June 16, 2006
11. Rider "I", Port Authority of New York & New Jersey Sales and Use Tax Requirements:
Port Authority of New York & New Jersey Sales Tax Letter, dated _____
New York State Contractor Exempt Purchase Certificate Form S120.1
New York State Certificate of Capital Improvement Form ST-124
12. Rider "J", Temporary Services, dated October 2, 2006
13. Rider "K", Project Corruption Prevention Program, dated January 8, 2007
14. Rider "L", Payment Procedures
15. Rider "M", Tishman Construction Safety Guidelines, dated November 3, 2005
16. Rider "N", Port Authority of New York & New Jersey WTC Site Rules and Regulations, dated January 1, 2006
17. Rider "O", Available Documents
18. Rider "P", [Intentionally Deleted]
19. Rider "Q", Above and Below Grade Site Logistics Plans
20. Rider "R", [Intentionally Deleted]
21. Rider "S", Site Security Requirements
22. Rider "T", Milestone Dates and Liquidated Damages
23. Rider "U", Additional Provisions [Used Only for Certain Trades]

BIDDER'S NAME: _____

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

A. BASE BID BREAKDOWN

Perform the following (INSERT TRADE NAME) work in strict accordance with the bid documents (Cost for Performance/Payment Bond not included). The amount of the "Total Base Bid", including any price adjustment resulting from Bid Addenda, shall be filled in by the Bidder in Clause 17 of the Contract entitled "General Agreement" and such amount shall be defined as the "Lump Sum" for purposes of this Contract.

1. _____ \$ _____
 2. _____ \$ _____
 3. _____ \$ _____
 TOTAL BASE BID: \$ _____

B. BIDDER'S ALTERNATES

Bidder to fully describe suggested changes to expedite Project and/or reduce costs. (Reduction on cost to be indicated and not included in Base Bid). (Attach additional sheets as required).

C. SCHEDULE

1. Time required from contract award to start of field work ____/wks.
 2. Time required from start of field work to completion ____/wks

D. WORK EXPERIENCE

1. This bidder has performed work directly for the Port Authority Of New York & New Jersey in the past ten (10) years yes no

| | |
|--|-------------------------|
| The undersigned hereby designates the following as the bidder's name and office ⁴ : | _____ _____ _____ |
| The telephone number of the bidder is: | _____ |
| The fax number of the bidder is: | _____ |
| The E-Mail address of the bidder is: | _____ |

(PAGE 3 OF 6)

⁴ Insert office address.

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

SIGNATURE AND CERTIFICATE OF AUTHORITY⁵

Dated, _____, 20

| | |
|---|-------------------------|
| (Signature of individual or name of corporation or partnership) | _____ |
| (Signature of agent, partner or corporate officer) | By ^{6 7} _____ |
| (Acknowledgment of signature to be taken on proper form on following page(s)) | _____ |

CERTIFICATE OF AUTHORITY, IF BIDDER IS A CORPORATION

I, the undersigned, as Secretary of the corporation submitting the foregoing Proposal, hereby certify that under and pursuant to the by-laws and resolutions of said corporation, each officer who has signed said Proposal on behalf of the corporation is fully and completely authorized so to do.

(Corporate Seal)

(PAGE 4 OF 6)

⁵ *If bidder is a joint venture, insert signatures as appropriate for one participant of the joint venture on this page and attach and complete an additional signature sheet in the same form as appears on this page for each other participant as required.*

⁶ *If Proposal is signed by an officer or agent, give title.*

⁷ **NOTE:** The foregoing signature shall be deemed to have been provided with full knowledge that the foregoing Proposal, the accompanying Contract booklet, as well as any certification, statement, assurance, representation, warranty, schedule or other document submitted by the bidder with the Proposal will become a part of the records of the Construction Manager and that the Construction Manager will rely in awarding the Contract on the truth and accuracy of such Proposal and each such certification, statement, assurance, representation, warranty and schedule made therein by the Contractor. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (sec. e.g., N.Y. Penal Law, Section 175.30 et seq.).

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

ACKNOWLEDGMENT⁸

ACKNOWLEDGMENT OF BIDDER, 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 BIDDER, 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)

(PAGE 5 OF 6)

⁸ If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Acknowledgment sheet in the same form as appears on this page for each other participant as required

**BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK**

DATE:

**TRADE:
BID DUE DATE:**

ACKNOWLEDGMENT OF BIDDER, 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)

STATEMENT ACCOMPANYING PROPOSAL⁹

Names and residences of officers, if bidder is a corporation:

| Name | Title | Residence ¹⁰ |
|------|-------|-------------------------|
| | | |
| | | |
| | | |
| | | |

Names and residences of partners, if bidder is a partnership:

| Name | General or Limited Partner | Residence ¹¹ |
|------|----------------------------|-------------------------|
| | | |
| | | |
| | | |
| | | |

Bidder's residence, if an individual¹²

(PAGE 6 OF 6)

⁹ If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Statement Accompanying Proposal sheet in the same form as appears on this page for each other participant as required.

¹⁰ Give street and number of residence. Do not give business address.

¹¹ Give street and number of residence. Do not give business address.

¹² Give street and number of residence. Do not give business address.

**FORM OF CONTRACT
CHAPTER I
GENERAL PROVISIONS**

16. DEFINITIONS

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

"1 WTC" shall mean 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 10003 ("1 WTC"). Any reference to 1 WTC in the context of performing any duty, conducting any action, rendering a decision, or having any discretion shall be performed by the 1 WTC Representative. 1 WTC shall have all rights and benefits of Construction Manager as set forth herein.

"1 WTC Indemnitee Group" shall mean 1 WTC, Authority, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds referred to in **Rider D** (Insurance Rider).

"1 WTC Representative" shall mean the Director of the World Trade Center Construction Department or his designee. 1 WTC Representative is the only authorized representative to act, or receive, on behalf of 1 WTC with respect to any duty, obligation, notice or other action set forth in this Contract.

"Authority" shall mean the Port Authority of New York and New Jersey.

"Construction Manager" shall mean *Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103, acting as agent for 1 WTC hereunder, and shall be generally responsible for the managing, supervision, coordination, and direction of all contractors in regards to the Work.*

"Contract" shall mean, in addition to this Form of Contract, the Instructions for Bidders and Bid Proposal Form, Sections 1-15, the Proposal, all Riders listed herein under "List of Riders," the Construction Manager's acceptance, the Specifications and the Contract Drawings (including written addenda issued over the name of the Construction Manager), 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. However, the Riders may be unilaterally amended from time to time by 1 WTC, which amendments constitute terms and conditions of the Contract. To the extent there is any conflict between documents forming the Contract, the provisions of the Riders shall control over all other provisions, followed by the terms of this Form of Contract followed by all other terms and conditions that form the Contract. All Riders that include blanks or forms shall be filled in or completed by Contractor, who shall also obligate Subcontractors and Materialmen to fill in such blanks and complete such forms.

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

"Design Team" shall mean all of the design professionals hired by 1 WTC, either directly or indirectly to provide professional services with respect to the Project including without limitation Architect of Record, Engineer of Record and Design Consultants.

The term "construction site" or words of similar import shall mean the World Trade Center, New York, New York.

"Work" shall mean all structures, equipment, plant, labor, materials (including materials and equipment, if any, furnished by the Construction Manager) and other facilities and all other things necessary or proper for or incidental to performing the construction at the World Trade Center site; and "performance of Work" and words of similar import shall mean the furnishing of such facilities and the doing of such things.

"Work required by the Contract Drawings in their present form" or words of similar import shall include all Work required by or reasonably inferable from the Specifications in their present form (whether or not shown upon the Contract Drawings), all Work shown upon or reasonably inferable from the Contract Drawings in their present form (whether or not mentioned in the Specifications), and all Work involved in or incidental to the accomplishment of the results intended by the Specifications and Contract Drawings in their present form (whether or not mentioned therein or shown thereon)."

"Equipment" and "plant" shall include construction equipment and plant rented as agent for the Construction Manager.

"Extra Work" shall mean Work required by the Construction Manager pursuant to the clause hereof entitled "Extra Work Orders" which is in addition to that required by the Contract Drawings in their present form.

"Contract Drawings" shall mean the drawings and specifications designated in **Rider B** (List of Drawings and Specifications), and, except as used in the phrase "Contract Drawings in their present form", shall include any future alterations and revisions to such drawings and specifications. Any reference herein to Specifications shall mean specifications contained within the Contract Drawings.

"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 Construction Manager 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 Construction Manager to illustrate some portion of the Work.

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

"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.

"Architect of Record" shall mean Skidmore Owings & Merrill LLP.

"Engineer(s) of Record" shall mean the engineers hired by 1 WTC to perform professional engineering services for the Project who have provided professional stamps to one or more of the Contract Drawings.

"Design Consultant" shall mean members of the Design Team who are not the Architect of Record or the Engineer of Record.

"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.

"Integrity Monitor" shall have the meaning set forth in Section 18 (Access to Records) of this Form of Contract.

The term "permanent construction" shall include all construction, installation, structures, equipment and materials (including materials and equipment, if any, furnished by the Construction Manager to be constructed, installed or left by the Contractor at or about the construction site (or elsewhere in the possession of the Construction Manager 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.

"Lump Sum" shall mean the amount stipulated in the clause hereof entitled "General Agreement".

"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 Construction Manager; and "approved", "acceptable", "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to the Construction Manager; and "necessary", "reasonable", "proper", "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of the Construction Manager.

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.

17. GENERAL AGREEMENT³

The Contractor agrees to perform the construction at the World Trade Center site and to furnish all structures, equipment, plant, labor, materials and other facilities and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the Contract Drawings designated in **Rider B** (Contract Drawings and Specifications) and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon him by this Contract. The furnishing of equipment and plant, however, shall be subject to the provisions of the clause hereof entitled "Agency for Rental of Construction Equipment".

The Construction Manager agrees to pay to the Contractor and the Contractor agrees to accept from the Construction Manager, in full consideration for the performance by the Contractor of his duties and obligations under this Contract and the whole thereof, a compensation of:

Two Hundred Fifty Six Million Dollars and Zero Cents (\$256,000,000.00) (throughout this Contract called the "Lump Sum"), and such compensation only, subject only to the express provisions of this Contract specifically setting forth actual, defined additions to or deductions from such compensation.

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 Construction Manager, 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, whatsoever Work may be required in addition to that required by the Contract Drawings in their present form, and whatsoever obstacles or unforeseen conditions may arise or be encountered.

18. ACCESS TO RECORDS

The Construction Manager and 1 WTC 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 it should be compensated, by the Construction Manager 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 Construction Manager; 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 Construction Manager and/or 1 WTC 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 (3) year period the Construction Manager or 1 WTC has notified the Contractor in writing of a pending claim by the Construction Manager or 1 WTC 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 six (6) years from the date of Final Payment with respect to the records and documents involved.

³ For sales tax exemptions, if any, see clause entitled "Exemptions from New York State and New York City Sales Taxes".

In the event that the Authority hires an integrity monitor in connection with the Project ("Integrity Monitor"), then the Contractor, and all Subcontractors and Materialmen of any tier, will cooperate fully with the Integrity Monitor, 1 WTC and the Authority, including but not limited to providing complete access to all personnel and records related to the performance of this Contract. Failure to comply with this provision shall be a material breach of this Contract.

No provision in this Contract giving the Construction Manager and/or 1 WTC a right of access to records and documents is intended to impair or affect any right of access to records and documents which the Construction Manager and/or 1 WTC and would have in the absence of such provision.

19. AGENCY FOR RENTAL OF CONSTRUCTION EQUIPMENT AND PURCHASE OF MATERIALS NOT INCORPORATED IN PERMANENT CONSTRUCTION

With respect to the performance of Work in the State of New York:

A. General Provisions

In light of the fact that the Authority has designated 1 World Trade Center LLC as its agent for certain purposes, the Contractor further agrees to act as the agent of the Authority, subject to the provisions of this numbered clause relating to such agency (i) for the rental of all construction equipment necessary or desirable for or incidental to the performance of the Contract (other than construction equipment owned and also used by the Contractor or owned and also used by any subcontractor) and (ii) for the purchase of materials not to be incorporated in the Permanent Construction but to be used or consumed in the performance of the Contract as provided in the clause in the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes" and, in the exercise of such agency, to assume all the obligations and duties imposed upon him by this Contract. The Contractor may authorize any subcontractor to act as his subagent for such rental or purchase, subject to all the provisions of this Contract. "Construction equipment" as used in this numbered clause shall include plant.

The Authority will pay the (i) rental charges for said equipment directly to the lessors thereof, and (ii) purchase prices for said materials directly to the vendors thereof, but the charges so paid shall be deducted from the compensation payable to the Contractor under the Contract; provided, however, that the Authority will pay such charges, and the Contractor is authorized by the Authority to act as such agent, to the extent only that the charges or prices payable for such rental or purchase, as the case may be, do not exceed the compensation payable to the Contractor under the Contract; and provided further that the Contractor performs all the obligations relating to said agency imposed upon him by this Contract.

The Authority will provide the Contractor with a statement or other documentation to be furnished by him and the subcontractors to such lessors and materialmen who will identify this Contract as the one under which the Contractor is authorized to rent said equipment or purchase said materials and which will identify the site to which delivery must be made. The Contractor shall arrange for delivery of said equipment or materials directly to the construction site. Payment of the rental charges or purchase prices shall be made by the Authority on the basis of invoices made out to the Authority in which is contained the place of delivery and on which the Contractor has certified by endorsement that such construction equipment or materials is or are being or has or have been used in the performance of the Contract, said invoices to be submitted through the Contractor to the Authority at the time said equipment or materials is used at the construction site. In the event said invoices are not submitted promptly, at the time stated above, but are submitted at a time when, by reason of prior advances and payments to the Contractor or for his account, the amounts still payable to the Contractor in connection with the Contract are

insufficient to pay said invoices, then the Authority shall not be liable to the lessors *or vendors* for any amounts in excess of said amounts still payable to the Contractor which remain in the possession of the Authority.

Notwithstanding the above agency arrangement, the Authority shall not be liable to lessors of construction equipment for any amounts except rental charges based on time of use of such equipment, nor shall the Authority be liable to vendors of construction materials for any amounts except the purchase price thereof, and the Contractor's agency is limited accordingly. All obligations incurred by the Contractor or subcontractors for any other expenses, including repairs and damages for breach of the rental agreement, shall be obligations incurred by the Contractor or subcontractors as principal not as agent of the Authority. Moreover, as between the Authority and the Contractor, the Contractor shall be responsible for all amounts due to lessors of construction equipment *and vendors of construction materials* notwithstanding the above agency arrangement.

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

The agency provided for under this numbered clause shall not relieve the Contractor of any of his duties and obligations elsewhere provided for under this Contract.

B. Option Not to Act as Agent

Notwithstanding the provisions of A above, the Contractor shall have the right to elect not to act as agent of the Authority for the (i) rental of any particular item or items of said construction equipment, *or (ii) purchase of any construction materials*, in which event, with regard to any such rentals *or purchases* by the Contractor as principal and not agent, the provisions of A of this numbered clause shall be inapplicable as well as those provisions of the clause of the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes", which relate to rental of construction equipment *and purchase of materials not incorporated in the Permanent Construction*.

20. EXEMPTION FROM NEW YORK STATE AND NEW YORK CITY SALES TAXES

A. Materials Incorporated in Permanent Construction

The attention of the Contractor is directed to the following provision of the New York Tax Law:

"§1115. Exemptions from sales and use taxes. (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen, * * * or (ii) adding to, altering

or improving real property, property or land (A) 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.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such tangible personal property.

If (i) any claim is made against the Contractor by the State of New York or City of New York for such sales or compensating use taxes, 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 or compensating use taxes, 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 requirements of law, provided that:

- 1.) 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 taxes and have filed all the forms and certificates required by the applicable laws, rules and regulations in connection therewith;
- 2.) 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
- 3.) 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.

B. B. Rental of Construction Equipment

The rental by the Contractor or a subcontractor of construction equipment not owned by the Contractor or a subcontractor for use in the performance of the Contract will also not be subject to New York State or New York City sales or compensating use taxes, provided that:

- 1.) the Contractor's and any subcontractor's use of construction equipment rented from others, and any agreement for such rental, is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
- 2.) delivery of said equipment is to the construction site;

- 3.) the Contractor or subcontractor has furnished to the lessor the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to rent said equipment and identifying the construction site to which delivery must be made;
- 4.) the invoice for said equipment is made out to the Authority and prescribes the place of delivery; and
- 5.) the amounts payable for rental of said equipment do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such rentals of equipment.

If (i) any claim is made against the Contractor by the State of New York or the City of New York for sales or compensating use taxes on such rental of construction equipment or (ii) any claim is made against the Contractor by a materialman, lessor or a subcontractor on account of a claim against such materialman, lessor or subcontractor by the State of New York or the City of New York for sales or compensating use taxes on rental of said equipment, 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 requirements of law, provided that the provisos listed above in this numbered clause as A.1 through A.3 and B.1 through B.5 are complied with.

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

C. Materials Not Incorporated in Permanent Construction

The *purchase* by the Contractor or a subcontractor of *materials not incorporated in the Permanent Construction, but used or consumed* in the performance of the Contract, including but not limited to, *tangible personal property for use in (i) maintaining, installing, repairing or servicing tangible personal property or (ii) the Permanent Construction, excluding tools and equipment, and construction supplies or otherwise taxable services used or consumed by the Contractor or subcontractors at the construction site, excluding tools and equipment*, will also not be subject to New York State or New York City sales or compensating use taxes provided that:

1. the Contractor's and any subcontractor's *purchase of materials* is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment And Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
2. delivery of said *materials* is to the construction site;
3. the Contractor or subcontractor has furnished to the *vendor* the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to *purchase said materials* and identifying the construction site to which delivery must be made;

4. the invoice for said *materials* is made out to the Authority and prescribes the place of delivery; and
5. the amounts payable for said purchase of *materials* do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should *not* include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such *purchases of materials*. If (i) any claim is made against the Contractor by the State or City of New York for sales or compensating use taxes on such *purchases of materials* 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 or City of New York for sales or compensating use taxes on *purchases of said materials*, 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 requirements of law, provided that the provisions listed above in this numbered clause as A.1 through A.3 and C.1 through C.5 are complied with.

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

20A. PERFORMANCE AND PAYMENT BOND

At the time of accepting a Contractor's Proposal, Construction Manager shall notify Contractor if payment and performance bonds will be required. If bonds are so required, Contractor shall furnish any required bond for the faithful performance of all obligations imposed upon Contractor by the Contract and also for the payment of all lawful claims of Subcontractors, Materialmen, and workers 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 equal to the Lump Sum and such bond shall be signed by one or more sureties⁴ satisfactory to the Construction Manager, and shall include both Construction Manager and 1 WTC as dual Obligees. 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.

If the Construction Manager elects to require the Contractor to furnish a bond, he shall deliver such bond to the Construction Manager within seven days after receipt by him of the acceptance of his Proposal, and the sureties thereon shall be as proposed by him, provided, that if the Construction Manager 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 Construction Manager.

The Construction Manager 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.

⁴ 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 Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Construction Manager 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.

In the event of a default by the Contractor in its obligation to furnish a satisfactory bond within seven (7) days after he received an acceptance of his Proposal, such default shall entitle the Construction Manager in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Proposal, without any liability on the part of the Construction Manager or I WTC. Inasmuch as the damages to the Construction Manager 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:

- A. The excess, if any, of the Lump Sum in the Proposal finally accepted over that in the Proposal of the Contractor; and
- B. The expense of such new solicitation of the Contract and related costs, e.g. costs of printing, if any, as may be deemed necessary by the Construction Manager; and
- C. The sum of Five Thousand Dollars (\$5000) for each day after the receipt by the Contractor of the acceptance of his Proposal that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

If the Contractor furnishes a bond in accordance with the requirements of the Construction Manager under this numbered clause, the Construction Manager 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 Construction Manager receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Construction Manager, the Construction Manager shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Construction Manager shall be or become dissatisfied with any surety or sureties, then, upon any bond furnished in accordance with the requirements of the Construction Manager, or if for any other reason such bond shall cease to be adequate security, the Contractor shall, within five (5) days after notice from the Construction Manager 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 Construction Manager to constitute adequate security.

CHAPTER II ADJUSTMENTS AND PAYMENTS

21. ADJUSTMENTS OF LUMP SUM

If any Work required by the Contract Drawings in their present form shall be countermanded or reduced, the Construction Manager shall have full authority on behalf of both parties to make such adjustment by way of reduction in the Lump Sum as he may in his sole discretion deem equitable and reasonable, and in making such adjustment, no allowance to the Contractor shall be made for anticipated profits.

The Construction Manager shall have authority to agree in writing with the Contractor for adjustments by way of reduction in the Lump Sum in lieu of those for which provision is heretofore made in this numbered clause.

22. COMPENSATION FOR EXTRA WORK

Contractor shall not perform or receive compensation for Extra Work without prior written authorization to perform such Extra Work from Construction Manager. The Construction Manager shall have authority to agree in writing with the Contractor upon lump sum, in accordance with **Rider C** (Alternatives and Unit Prices) or such other compensation for Extra Work in lieu of the compensation for which provision is hereinafter made in this numbered clause.

If such agreement on compensation is not made, and Extra Work be performed, the Contractor's compensation shall be increased by the following amounts and such amounts only:

In the case of Extra Work performed by the Contractor personally, or by a Subcontractor of any tier or a Materialman, an amount equal to the actual net cost in money of the labor and materials required for such Extra Work, plus fifteen percent of such net cost in the aggregate for such Extra Work, plus such rental for equipment (other than small tools) required for such Extra Work as the Construction Manager deems reasonable plus the net increase in premiums for Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance charged on the basis of the compensation for labor and materials for such Extra Work.

As used in this numbered clause (and in this clause only):

"Labor" means foremen, surveyors, laborers, mechanics and other employees below the rank of superintendent, exclusive of timekeepers, directly employed at the construction site, whether employed by the Contractor or by the Subcontractors, subject to the Construction Manager's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus a proper proportion of (a) premiums, if any, actually paid by the employer for Workers' Compensation Insurance upon the basis of such wages, (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (c) taxes actually paid by the employer pursuant to law upon the basis of such wages. "Employees" as used above means only the employees of one employer.

"Materials" means temporary and consumable materials as well as permanent materials; and "cost of materials" means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to

the construction site in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

"Work day" in reference to an item of equipment means a day other than a Saturday, Sunday or legal holiday except that if the particular item of equipment is actually utilized at the construction site by the Contractor or Subcontractors under this Contract or any other contract with the Construction Manager, I WTC or the Authority on a Saturday, Sunday or legal holiday said day shall be deemed a work day. 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 Construction Manager on the basis of the following:

A.

- 1.) 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 95131-2398), (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 Extra Work. No amount for operating cost will be allowed during periods when such equipment is not actually engaged in performing Extra 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.
- 2.) If no listing of rental rate and/or hourly operating cost for the item of equipment is in the Blue Book, the Construction Manager shall determine the reasonable rate of rental and/or hourly operating cost of the particular item of equipment by such other means as he finds appropriate.

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

- 1.) The rate to be applied for an item of equipment used on a particular Extra Work order shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of equipment or substitute item of equipment is at the construction site for use by the Contractor or Subcontractors whether under this Contract or any other contract with the Authority. Included within this period will be (i) work days of idleness of the equipment at the construction site whether such idleness results from acts or omissions of the Contractor, Construction Manager, I WTC consultants or third persons, breakdowns in the equipment or any other cause, (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of equipment from the construction site for repairs and the delivery to the construction site of the same or substitute equipment. The number of work days in the period for each rate shall be as indicated below:

| | |
|--|--------------|
| Three work days or less. | Daily Rate |
| More than three work days but not more than fifteen work days. | Weekly Rate |
| More than fifteen work days. | Monthly Rate |

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 daily rental. | 1/8 of daily rental from Blue Book |
| Hourly rate based on weekly rental. | 1/40 of weekly rental from Blue Book |
| Hourly rate based on monthly rental. | 1/176 of monthly rental from Blue Book |

- 2.) The rental rate shall be multiplied by the applicable regional adjustment factor shown for such item of equipment in the Blue Book. The adjustment factor shall not apply to the hourly operating cost.
- 3.) If the Construction Manager should determine that the nature or size of the equipment used by the Contractor in connection with Extra Work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Construction Manager to be suitable for the Extra Work, the reasonable rental will not be based upon the equipment used by the Contractor but will be based on the smallest or least elaborate equipment determined by the Construction Manager to have been suitable for the performance of the Extra Work.

- C. In the case of equipment utilized only for Extra Work: (a) in addition to amounts determined as provided in subparagraphs A and B above, there will be added to the rental as computed above the reasonable cost of transporting such equipment to and from the construction site, and (b) notwithstanding the number of hours during which such equipment is utilized, the minimum rental therefor will be for a period of eight hours.

In computing the Contractor's compensation insofar as it is based upon Extra Work, and notwithstanding any provision to the contrary appearing in the Blue Book, no consideration shall be given to any items of cost or expense not expressly set forth above, it being expressly agreed that the costs and percentage additions hereinbefore provided cover items of cost and expense to the Contractor of any type whatsoever, including administration, overhead, taxes (other than those enumerated above), clean-up, consumables including gas and oil, drafting (including printing or other reproduction), coordination, field measurements, maintenance, repairs, insurance, profit to the Contractor and small tools.

Whenever any Extra Work is performed (whether by the Contractor directly or through a Subcontractor), the Contractor shall, at the end of each day, submit to the Construction Manager (a) daily time slips showing the name and number of each workman employed on such Work, the number of hours which he is employed thereon, the character of his duties, and the wages to be paid to him, (b) a memorandum showing the rates and amounts of Workers' Compensation Insurance premiums, if any, and state and federal taxes based on such wages, and vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages (c) a memorandum showing the amount and character of the materials furnished for such Work, from whom they were purchased and the amount to be paid therefor, and (d) a memorandum of equipment used in the performance of such Work, together with the rental claimed therefor. Such memoranda and time slips are

for the purpose of enabling the Construction Manager to determine the amounts to be paid by the Construction Manager under this numbered clause; and accordingly, they shall constitute a condition precedent to such payment and the failure of the Contractor to furnish them with respect to any Work shall constitute a conclusive and binding determination on his part that such Work is not Extra Work and shall constitute a waiver by the Contractor of claims for payment for such Work. In the event that the Construction Manager and the Contractor shall agree in writing upon a lump sum or other compensation for Extra Work in lieu of compensation as provided in the second paragraph of this clause, the daily time slips and memoranda required by this paragraph shall not be required subsequent to the date on which such agreement has been reached.

23. COMPENSATION FOR EMERGENCY DELAYS

If the Contractor is specifically directed by the Construction Manager to suspend his operations as stipulated in the Specifications entitled "Conditions and Precautions" or if the Contractor is specifically directed not to start his operations at a time when operations are permitted to start as stipulated in such Section, and if solely because of such suspension or direction not to start any of the Contractor's or Subcontractor's employees or equipment then engaged in or about to start such Work are necessarily kept idle at the construction site, during the hours when they would otherwise be engaged in the performance of the Work, then the Contractor's compensation shall be increased by an amount equal to the salaries and wages in amounts approved by the Construction Manager which the employer is required to pay and actually pays to such employees for the period or periods of such idleness, plus a proper proportion of (a) taxes actually paid by the employer pursuant to law upon the basis of such salaries and wages, and (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligations upon the basis of such salaries and wages, and in addition thereto such rental as the Construction Manager deems reasonable for such equipment during the period or periods of such idleness. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Idle Salaried Men and Equipment".

In the event that the Contractor deems that any payment should be made pursuant to this numbered clause, he shall give prompt written notice to the Construction Manager stating the reasons why he believes such payments should be made and shall moreover, furnish to the Construction Manager at the end of each day, a memorandum showing the name, payroll title, salary rate and employer of each of the workingmen, and description, owner and claimed rental rate for each item of equipment claimed to have been kept idle. Said notice and memorandum are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time. Accordingly, notwithstanding any other provisions hereof, the failure of the Contractor to furnish such notice and memorandum shall constitute a conclusive binding determination on his part that he is not entitled to compensation as provided herein and shall constitute a waiver by the Contractor of all claims for such payment, such notice and memorandum being conditions precedent to payment under this numbered clause.

24. PROGRESS PAYMENTS

Payment Applications shall be on the form and provide all information and documentation as required in **Rider L** (Payment Procedures), including without limitation all necessary certifications required herein for Prevailing Rate of Wage paid by Contractor and its Subcontractors.

Using the Schedule of Values as a line-item accounting format, Payment Applications shall identify in detail the percent of Work completed less retention withheld.

The percentage completion shall be the percentage of that portion of the Work that has actually been completed, as approved by Construction Manager and 1 WTC.

Construction Manager shall retain ten percent (10%) retention from all Payment Applications, except zero percent (0%) shall be retained for payment of the actual value of mill materials, and for fabricated materials delivered to the site, and five percent (5%) shall be retained for the actual values of fabricated materials stored offsite. Payment for the offsite storage of mill and fabricated materials are contingent upon satisfying the conditions indicated in Rider "A". For all remaining work of this Lump Sum Contract, the Contractor may, upon its Work being fifty percent (50%) complete, seek Construction Manager's and 1 WTC's approval to reduce such retention. 1 WTC shall have sole discretion to approve or reject such request, regardless of Construction Manager's recommendation.

Each Payment Application period shall be one (1) calendar month ending on the last day of the month. On the 20th of each month, Contractor shall submit to Construction Manager and 1 WTC a pencil draft of the Payment Application for the current month. Contractor, Construction Manager, Design Team representatives and 1 WTC shall meet on or before the 25th to discuss the draft. By the 1st (3rd for February Payment Application) of the following month, Contractor shall submit the official Payment Application in accordance with the approved pencil draft, along with all required information and documentation as set forth in **Rider L** (Payment Procedures). Construction Manager shall have ten (10) days thereafter to review and approve all or a portion of the Payment Application that shall be based upon the information in the approved pencil draft and associated required documentation, inform Contractor of missing required documentation or information, and issue the Certificate for Payment for the approved portion of the Payment Application. Construction Manager shall provide an integrated monthly progress payment request to 1 WTC for all contractors on the Project simultaneously. The approved portion of the Payment Application, subject to Construction Manager supplying all required documentation, shall be paid by 1 WTC to Construction Manager. Construction Manager shall pay Contractor no later than three (3) business days, or later if directed by 1 WTC, after receipt of such payment.

Notwithstanding the above, 1 WTC and Construction Manager reserve the right, in their sole discretion, to directly pay Subcontractors and Materialmen.

25. 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 Construction Manager shall certify in writing to 1 WTC and to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon (i) certify to the Construction Manager in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that Contractor has paid and caused its Subcontractors of any tier to pay at least the prevailing rate of wage and supplements required by such clause and (ii) furnish to the Construction Manager a detailed sworn statement of all claims, just and unjust, of Subcontractors, Materialmen and other third persons then *outstanding and which Contractor has reason to believe may thereafter be made on account of the Work*. (iii) furnish to the Construction Manager evidence of payment of all union fringe and employee benefit obligations; and (iv) furnish to the Construction Manager Final Waivers of Lien and Release from all Subcontractors and Materialmen of any tier.

Within fifteen (15) 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 Construction Manager shall submit all required payment documents to 1 WTC. 1 WTC shall pay to Construction Manager and Construction Manager shall pay to Contractor within three (3) business days, or later if directed by 1 WTC, after the receipt from 1 WTC, 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 1 WTC Indemnitee Group 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 Construction Manager or 1 WTC 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 Construction Manager 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 six percent (6%) per annum for the period, if any, in which such interest is due.

26. WITHHOLDING OF PAYMENTS

(1) If the Contractor fails to perform any of its obligations under this Contract or under any other agreement between the Contractor and 1 WTC (including Contractor's obligation to pay in accordance with the terms of any such contract or agreement any claim lawfully made against Contractor by any Materialman, Subcontractor of any tier, worker, or other person or entity, which claim arises out of or in connection with the performance of this Contract or any other agreement as so described, or (2) if any claim (just or unjust) which arises out of or in connection with this Contract, or any other agreement between the Contractor and 1 WTC, is made against the Authority, or 1 WTC or (3) if any Subcontractor with respect to this Contract, or with respect to any other agreement between the Contractor and 1 WTC, fails to pay any claim lawfully made against such Subcontractor by any Materialman, Subcontractor, worker, or other third person that arises out of or in connection with this Contract or any other agreement so described, or if in the opinion of the Chief Engineer, any of the aforesaid contingencies is likely to arise, then the Construction Manager 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 Construction Manager 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 Construction Manager does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Construction Manager to withhold and apply moneys nor any exercise or attempted exercise of, or omission to exercise, such rights by the Construction Manager 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 Construction Manager or I WTC 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, then the Construction Manager, I WTC or 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 I WTC or Authority, so much as may be necessary to pay to union fringe benefit funds, 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 I WTC or Authority an amount equal to the Construction Manager's, I WTC's or Authority's cost of any investigation conducted by or on behalf of the I WTC or 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 Construction Manager, I WTC or Authority, the Construction Manager may deduct from any amount payable to the Contractor by the Construction Manager, under the Contract or under any other open contract between the Contractor and I WTC or 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 I WTC or the Construction Manager, then the Construction Manager 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

27. TIME FOR COMPLETION AND DAMAGES FOR DELAY

The Contractor shall complete the performance of all Work under this Contract by the date or number of calendar days after acceptance of Proposal, as listed in **Rider T (Milestone Dates and Liquidated Damages)**.

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

- A. If a Performance and Payment Bond is required, the date of receipt by it of notice from I WTC that the Performance and Payment Bond furnished by it is satisfactory;
- B. If Chapter V of the "Form of Contract" contains a clause entitled "Insurance Procured by Contractor", the date of receipt by it of notice from I WTC that the insurance procured by it pursuant to said clause is satisfactory, as evidenced by the certificate to be 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 I WTC shall give notice to the Contractor within ten days after receipt of the Performance and Payment Bond or certificate of insurance as to whether or not such bond or insurance is satisfactory.

The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. The Contractor guarantees that it can and will complete the performance of 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 I WTC which will result from delay in completing 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 parties agree that the damages to I WTC for each calendar day by which the Contractor does not complete 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 as set forth in **Rider T (Milestone Dates and Liquidated Damages)** for every calendar day of delay.

EXTENSIONS OF TIME

TIME IS OF THE ESSENCE IN REGARDS TO CONTRACTOR'S OBLIGATIONS PURSUANT TO THIS CONTRACT, including without limitation Contractor's obligation to complete its Work in by the date or number of calendar days after acceptance of Proposal, as listed in **Rider T (Milestone Dates and Liquidated Damages)**.

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 Construction Manager, the Contractor is necessarily delayed in completing such part by such time solely and directly by a cause which meets the conditions set forth in A and B below:

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

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

All variations in weather including, but not limited to, temperature, precipitation and wind shall be conclusively deemed to have been anticipated before opening of such Proposals on this Contract

In any event, even though a cause of delay meets the above conditions, in the opinion of the Construction Manager, an extension shall be granted only to the extent that (i) the performance of the Work is actually and necessarily delayed and (ii) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling), whether before or after the occurrence of the cause of delay, and an extension shall not be granted for a cause of delay which would not have affected the performance of the Contract were it not for the fault of the Contractor or for other delay for which the Contractor is not entitled to an extension of time.

Any reference herein to the Contractor shall be deemed to include Subcontractors and Materialmen, whether or not in privity of contract with the Contractor, and employees and others performing any part of the Contract and all the foregoing shall be considered as agents of the Contractor.

The period of any extension of time shall be that necessary to make up the time actually lost, subject to the provisions of this numbered clause, and shall be only for the portion of the Contract actually delayed.

As a condition precedent to an extension of time, the Contractor shall give written notice to the Construction Manager within forty-eight (48) hours after the time when he knows or should have known of any cause which might under any circumstances result in delay for which he claims or may claim an extension of time (including those causes which the Construction Manager is responsible for or has knowledge of), specifically stating that an extension is or may be claimed, identifying such cause and describing, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the various portions of the Contract. Since the possible necessity for an extension of time may materially alter the scheduling, plans and other actions of the Construction Manager, and since, with sufficient opportunity, the Construction Manager might if it so elects attempt to mitigate the effect of a delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, **the giving of written notice as above required shall be of the essence of the Contractor's obligations** and failure of the Contractor to give written notice as above required shall be a conclusive waiver of an extension of time.

It shall in all cases be presumed that no extension, or further extension, of time is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Construction Manager that it is. To this end the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, the foregoing presumption shall be deemed conclusive

28. IDLE SALARIED WORKERS AND EQUIPMENT

If any salaried workers or equipment of the Contractor or any Subcontractor are necessarily kept continuously idle and wholly unoccupied at the construction site for a full day on each of two or more full days on which they would be engaged in the performance of the Work but for causes due solely to acts or omissions of Construction Manager and 1 WTC occurring after the opening of Proposals on this Contract, and if such idleness is not due to any cause within the control of the Contractor or of any of his Subcontractors or Materialmen or its or their employees, then the Construction Manager shall pay to the Contractor and the Contractor shall accept (in addition to any sums otherwise payable under this Contract, and in full satisfaction of and in liquidation of all claims for damages because of such act or omission of the Construction Manager or 1 WTC) an amount equal to that which the employer actually pays such salaried employees during such full days of idleness, plus a proper proportion of vacation allowances and union dues and assessments actually paid by the employer pursuant to contractual obligations on the basis of such salaries, and a proper proportion of the taxes actually paid by the employer pursuant to law upon the basis of such salaries and plus such rental for such idle equipment as the Construction Manager deems reasonable. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Compensation for Extra Work"; provided, however, that the provisions of subparagraph C of said clause shall not be applicable to such idle equipment.

The Contractor shall give written notice to the Construction Manager before the end of the second of the above mentioned two (2) or more full days (whether or not the Construction Manager is aware of the existence of any circumstances which might constitute a basis for payment under this numbered clause), specifically stating that salaried men or equipment have been kept idle under circumstances which might result in payment under this numbered clause; and he shall furnish with such notice, for all the days that have occurred, and shall in addition furnish at the end of each additional day of the above mentioned two (2) or more full days, (a) a memorandum showing the name, payroll title, salary rate and employer of each of the salaried men claimed to have been kept idle at the construction site, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations based on their salaries, and (b) a memorandum of the equipment claimed to be kept idle, together with the amount claimed as rental therefor. Said notice and memoranda are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time, and of enabling him to take such steps as may be necessary to remedy the conditions upon which the claim is based. The furnishing of such notice and memoranda shall be a condition precedent to payment under this numbered clause, so that the day on which notice is given shall be counted as not later than the second of the above mentioned two (2) or more full days and no subsequent day shall be counted for which the above memoranda are not furnished at the end of such day.

29. DELAYS TO CONTRACTOR

As between the Contractor and the Construction Manager, the Contractor assumes the risk of all suspensions of or delays in performance of the Contract, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to this Contract, including wrongful acts or omissions of any member of the 1 WTC Indemnitee Group, except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this Contract for such suspension or delays and except to the extent, if any, that compensation may be agreed to by the Construction Manager in writing pursuant to the clause hereof entitled "Compensation for Extra Work" for impact costs incurred by the Contractor in connection with the performance of Extra Work. Subject only to such exceptions, the Contractor shall bear the burden of all costs, expenses and liabilities which he may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this Contract, shall conclusively be deemed to have been within the contemplation of the parties.

Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, the Construction Manager make no representation or guaranty as to when the construction site or any part thereof will be available for the performance of the Contract or as to whether conditions at the construction site will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time.

Wherever in connection with this Contract it is required, expressly or otherwise, that the Construction Manager shall perform any act relating to the Contract, including making available or furnishing any real property, materials, or other things, no guaranty is made by the Construction Manager as to the time of such performance and the delay of the Construction Manager in fulfilling such requirement shall not result in liability of any kind on the part of the 1 WTC Indemnitee Group except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for elsewhere in this Contract.

30. CANCELLATION FOR DELAY

If the performance of the Contract or any portion of it shall, in the opinion of the Construction Manager, 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 Construction Manager's own ability to perform it, either directly or through others, the Construction Manager 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 any member of the 1 WTC Indemnitee Group. In the event of such cancellation, *no allowance shall be made for anticipated profits.*

CHAPTER IV CONDUCT OF CONTRACT

31. SUSPENSION, TERMINATION AND ALTERNATIVE DISPUTE RESOLUTION OF ALL DISPUTES

If at any time it shall be, from the viewpoint of I WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of I WTC or Construction Manager, Construction Manager shall have authority to suspend performance of any part or all of the Contract until such time as Construction Manager may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of I WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of I WTC or Construction Manager, Construction Manager 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. Contractor shall be entitled to compensation only for the portion for Work performed less any damages incurred by the I WTC Indemnatee Group or reasonably foreseeable to be incurred or resulting from any breach of Contract by Contractor.

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 Proposal and claims of a type which are barred by the provisions of this Contract) or the Project 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 by the Chief Engineer, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by either party 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 Construction Manager or I WTC 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.

32. AUTHORITY AND DUTIES OF CONSTRUCTION MANAGER

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which I WTC and Construction Manager deems best, the Construction Manager, subject to I WTC's opinion, 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 shall be deemed merely his present determination on this point. In the exercise of this authority, Construction Manager shall have power to alter the Contract Drawings; 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.

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Construction Manager and shall perform the Contract to the satisfaction of the Construction Manager 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 Construction Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Contract Drawings and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or men to which the Construction Manager objects, and shall remove no materials, equipment or other facilities from the construction site without permission. Upon request, the Construction Manager shall confirm in writing any oral order, direction, requirements or determination.

The Contractor is requested to orally advise the Construction Manager 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 Construction Manager and others.

The enumeration herein or in the Specifications of particular instances in which the opinion, judgment, discretion or determination of the Construction Manager 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.

33. NOTICE REQUIREMENTS

No claim against the Construction Manager and I WTC 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 Proposal 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:

- A. In the case of any claims for Extra Work, extension of time for completion, idle salaried men and equipment, or any other matter for which requirements are set forth elsewhere in this Contract as to notice and information, such requirements shall apply.

- B. In the case of all other types of claim, notice shall have been given to the Construction Manager and 1 WTC, personally, as soon as practicable, and in any case, within forty-eight (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 Construction Manager and 1 WTC, personally.

The above requirements for notices and information are for the purpose of enabling the Construction Manager 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 Construction Manager and 1 WTC.

The above referred to notices and information are required whether or not the Construction Manager or 1 WTC are aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Construction Manager or 1 WTC have 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 Construction Manager or 1 WTC 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 officer, employee or agent of the Construction Manager or 1 WTC 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 Construction Manager to receive it may not be sufficient to come to the attention of the representative of the Construction Manager 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.

All notice requirements for Construction Manager or 1 WTC shall be deemed to be made if sent to the following: (i) Milo Rivero or his successor in duty, Project Executive of 1 WTC, 115 Broadway 10th floor, New York, NY 10006; and (ii) Mike Mennella or his successor in duty, Executive Vice President, Tishman Construction Corporation, 666 Fifth Avenue, New York, NY 10103

34. EQUAL EMPLOYMENT OPPORTUNITY

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

- A. 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.

- B. The Contractor shall send to each labor union or representative of workers with which Contractor 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 clauses A through H (hereinafter called "non-discrimination clauses"). 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 clauses 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 clauses. 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.
- C. 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 clauses A and B and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.
- D. 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.
- E. 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 clauses 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 clauses and such sections of the Executive Law and Civil Rights Law.
- F. This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Construction Manager upon the basis of a finding made by the State Commission for Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State, 1 WTC, 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 clauses. 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 clauses 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.

- G. The Contractor shall include the provisions of clauses A through F 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 Construction Manager 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 Construction Manager, the Contractor shall promptly so notify the Construction Manager, requesting him to intervene and protect the interests of the Construction Manager.
- H. 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.

35. 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.

Each bidder, Contractor or Subcontractor (hereinafter called the Contractor) must fully comply with the clause entitled "Equal Employment Opportunity" and these bid conditions. The Contractor commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of these bid conditions 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 these bid conditions.

- A. 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 Section shall be based on its 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.

B.

- 1.) The Contractor shall provide written notification to the General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, within ten (10) working days of award of any construction subcontract in excess of Ten Thousand Dollars (\$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 starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 2.) The Contractor shall submit a Workforce Projection Schedule, which shall be correlated to the progress schedule, within thirty (30) days after acceptance of the proposal, for the approval of the Construction Manager. The Contractor shall maintain and periodically update it at intervals as required by the Construction Manager. 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.

C.

- 1.) As used in these specifications:
 - a. Omitted
 - b. "Manager" means General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race);
 - (iii) 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
 - (iv) Native American 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).
- 2.) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of Ten Thousand Dollars (\$10,000) such provisions as are necessary for the Contractor to achieve the aggregate goals set forth above.

- 3.) Omitted.
- 4.) The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a 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 its 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.
- 5.) 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.
- 6.) 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.
- 7.) 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 its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. 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 its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - b. 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 7a above.
 - c. 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.

- d. Provide immediate written notification to the Manager 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 its obligations.
- e. 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.
- f. 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 its 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.
- g. 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.
- h. 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.
- i. Direct its 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.
- j. 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.
- k. Tests and other selection requirements shall comply with 41 CFR Part 60-3.

- l. 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.
 - m. 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.
 - n. 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.
 - o. 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.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8.) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a 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 its obligations under 7a 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 its 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.
- 9.) 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 its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).
- 10.) 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.
- 11.) The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

- 12.) 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 Construction Manager. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.
- 13.) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Construction Manager shall proceed accordingly.
- 14.) 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.
- 15.) 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).

36. 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 Construction Manager and notwithstanding that such rate may be higher than the rate in effect on the date of opening of Proposals.

For purposes of this Contract, the Construction Manager 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 Construction Manager; 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. Neither the Construction Manager nor I WTC shall 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.

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 "Construction Manager Access to Records" for all employees employed in the Work. Such records shall contain the name, address and social security number of each such employee, 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 Construction Manager (on forms furnished by the Construction Manager) of all his payroll records and those of each of his Subcontractors as the Construction Manager 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 Construction Manager (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 Construction Manager may at any time request the Contractor to prepare a daily report on the Construction Manager form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained from the Construction Manager, The *Contractor Daily Sign-In Sheet* shall be completed as follows:

- 1.) At the beginning of each workday the Contractor shall:
 - a. fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/Subcontractor name and contract number;
 - b. 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;

- 2.) At the end of each workday, the Contractor shall:
 - a. ensure that each employee, including those of Subcontractors, has signed out and indicated his or her ending time;
 - b. 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
 - c. submit the original completed form to the Construction Manager.

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 Construction Manager 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.

37. EXTRA WORK ORDERS

No Extra Work of any amount shall be performed except pursuant to written orders of the Construction Manager expressly and unmistakably indicating his intention to treat the Work described therein as Extra Work.

In the absence of such an order signed by the Construction Manager, if the Construction Manager shall direct, order or require any Work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within twenty-four (24) hours give written notice thereof to the Construction Manager, stating why he deems it to be Extra Work, and shall moreover furnish to the Construction Manager time slips and memoranda as required by the clause hereof entitled "Compensation for Extra Work". Said notice, time slips and memoranda are for the purpose of affording to the Construction Manager an opportunity to verify the Contractor's claim at the time and (if he desires so to do) to cancel promptly such order, direction or requirement of the Construction Manager, of affording to the Construction Manager an opportunity of keeping an accurate record of the materials, labor and other items involved, and generally of affording to the Construction Manager an opportunity to take such action as it may deem desirable in light of the Contractor's claims. Accordingly, the failure of the Contractor to serve such notice or to furnish such time slips and memoranda shall be deemed to be a conclusive and binding determination on his part that the direction, order or requirement of the Construction Manager does not involve the performance of Extra Work, and shall be deemed to be a waiver by the Contractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips and memoranda being a condition precedent to such claims.

38. PERFORMANCE OF EXTRA WORK

The provisions of this Form of Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise. Extra Work performed other than in accordance with Article 37 ("Extra Work Orders") shall be deemed performed at Contractor's own risk and expense and without any compensation.

39. TITLE TO MATERIALS

All materials to become part of the permanent construction and those other materials purchased under the clause of the Contract entitled, "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction", shall be and become the property of *the Authority* (a) 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 in the case of materials to become part of the permanent construction and (b) in the case of those other materials purchased under the clause of the Contract entitled, "Agency For Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" at the time of purchase, 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 Construction Manager such bills of sale and other instruments as may be required by it properly executed, acknowledged and delivered, assuring to the Authority title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of *the Authority*.

40. 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 moneys due or to become due hereunder and any delegation of any of his duties hereunder without the express consent in writing of the Construction Manager shall be void and of no effect as to the Construction Manager, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Construction Manager 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 Construction Manager 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 "Instructions for Bidders and Bid Proposal Form" 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 Dollars. For each agreement in an amount greater than \$100,000 entered into by Contractor with a Subcontractor or Materialman, or for each agreement greater than \$100,000 with a Subcontractor or Materialman of any tier, the Contractor shall obtain the certifications and all necessary disclosure forms from each such Subcontractor or Materialman of any tier, all as set forth in **Rider K** (Project Corruption Prevention Program) to this Contract. All further subcontracting by any Subcontractor shall also be subject to such approval of the Construction Manager. Approval of a Subcontractor may be conditioned on (among other things) the furnishing, without expense to the Construction Manager, 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. 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 Construction Manager shall create any rights in favor of such Subcontractor and against the Construction Manager; and as between the Construction Manager 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 Construction Manager, the Construction Manager 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.

In the event I WTC terminates Construction Manager or enters into agreement with a third party or third parties, for such party or parties to assume management and operation of some or all of the World Trade Center, I WTC shall have the right to assign this Contract in whole or in part to such third party or parties following advance written notice to the Contractor, or, to substitute such third party as Construction Manager in this Contract.

41. 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.

42. 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 Construction Manager 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 Construction Manager for other purposes, the Construction Manager may render to the Construction Manager 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 Construction Manager 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 Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

43. 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 Construction Manager 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, including Extra Work, has been completed in accordance with the Contract Drawings 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 Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

44. 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 Construction Manager, any 1 WTC or Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing such entities, 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, consultant, or other person or firm representing such entities of duties involving transactions with the Contractor on behalf of such entities, 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 Construction Manager 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 1 WTC, 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

45. CONTRACTOR'S WARRANTIES

The Contractor represents and warrants:

- A. 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 Proposal are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- B. 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;
- C. 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;
- D. That no Commissioner, Director, officer, agent or employee of the Construction Manager, the Authority or I WTC is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder; and
- E. 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 Construction Manager, I WTC or the Authority, its Commissioners, Directors, 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, anything in this Contract to the contrary notwithstanding.

Nothing in the Contract Drawings or any other part of the Contract is intended as or shall constitute a representation by the Construction Manager or 1 WTC as to the feasibility of performance of this Contract or any part thereof. Moreover, the Construction Manager or 1 WTC does not warrant or represent either by issuance of the Contract Drawings 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 Construction Manager to review thoroughly all documents forming this Contract prior to opening of Proposals 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 1 WTC's consent to enter into this Contract and that without such provisions, the Construction Manager would not have entered into this Contract as agent for 1 WTC.

46. 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 Construction Manager, 1 WTC, 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 Construction Manager and 1 WTC subsequent to the opening of Proposals on this Contract with actual and willful intent to cause the loss, damage and injuries describe in subparagraphs A through D below:

- A. 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 Construction Manager or 1 WTC;
- B. The risk of loss, damage to or alterations of the structures to be demolished occurring prior to completion of demolition by the Contractor (such structures being still included, however, in the term "Work"). In the event of such loss, damage or alterations, the Contractor shall nevertheless complete the performance of the Work, including the demolition, without additional cost to the Construction Manager or 1 WTC and without compensation for lost salvage value;

- C. 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 Construction Manager or 1 WTC 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 1 WTC premises, including claims against the Contractor or the Construction Manager or 1 WTC 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;
- D. The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Construction Manager or 1 WTC 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 1 WTC premises or the vicinity thereof.

The Contractor shall, indemnify the 1 WTC Indemnitee Group against all claims described in subparagraphs C and D 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 C and D 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 or 1 WTC 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.

47. NO THIRD PARTY RIGHTS

Except with respect to the Authority as set forth below, nothing contained in this Contract is intended for the benefit of other third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action," or except to the extent indemnitee or insurance obligations provide for third party rights in this Contract.

For the avoidance of doubt, the relationship of the Authority to this Contract and the Project is set forth below in this Section.

- A. The Authority is hereby deemed an intended third-party beneficiary of this Contract. Contractor acknowledges and agrees that the performance of the Work is for the benefit of the Authority, and that the Authority shall have the right to enforce the obligations of Contractor under this Contract against Contractor directly and enjoy the benefits and rights in the entire Contract including, without limitation, Sections 26, 28, 29, and 46.
- B. The Authority, from time to time and on behalf of 1 WTC, either (i) may perform certain obligations of 1 WTC, or (ii) may supply or loan to 1 WTC employees of the Authority for the performance of the obligations of 1 WTC.
- C. Contractor shall have no direct claim, right, or cause of action against Authority (i) by virtue of Authority's rights under this Section 47 (ii) for any acts, errors or omissions of its employees when engaged or acting on behalf of 1 WTC, or (iii) otherwise in connection with this Contract.
- D. Contractor shall look solely to 1 WTC for payment of any amount due and owing Contractor under this Contract or for any claim, cause of action or damages in connection with the Project. Notwithstanding anything to the contrary, Contractor shall have no recourse in connection with this Contract or the Project against (i) the Authority, or (ii) any present or future Commissioner, officer, director, trustee, employee, agent or volunteer of the Authority. Such exculpation of liability is absolute and without any exception, and shall survive any termination, expiration or assignment of this Contract.
- E. From time to time, direct references to the Authority are made in this Contract. Such references are for emphasis only, and no negative inference should be drawn from any omission or absence of a reference to the Authority in a specific provision.

48. INSURANCE PROCURED BY CONTRACTOR

Contractor is obligated to provide coverage as in the attached Insurance Specifications, **Rider D** (Insurance Rider).

The liability policies shall name the entities listed in **Rider D** (Insurance Rider) as Additional Insureds.

In the event, however, that 1 WTC, in its sole discretion, elects at any time to provide an owner-controlled insurance program, such program shall be described more specifically in **Rider DX** ("Owner Controlled Insurance Program" or "OCIP").

If 1 WTC implements an OCIP, Contractor shall take all steps necessary: (i) to conform its insurance program to the OCIP, (ii) to exclude from calculation of the Lump Sum or the cost of any Extra Work, including the compensation of any Subcontractor of any tier, or any other person or entity performing any portion of the Work or Extra Work, any insurance premiums or other charges for any insurance to the extent such coverage is provided under the OCIP, (iii) to comply with the requirements of Rider DX and the OCIP and, in turn, cause all Subcontractors of any tier to conform their insurance programs to the OCIP, (iv) to avoid any duplication of coverage provided by, under or through the OCIP, and any other savings of any other costs associated with such insurance, and (v) to assist in the orderly transition of insurance programs.

If requested by 1 WTC, Contractor shall furnish reasonable evidence confirming the amount of any exclusion or reduction in premiums and the total credit received by Contractor, Subcontractors of any tier, or any other person or entity performing any portion of the Work or Extra Work, and any other costs associated with such insurance.

CHAPTER VI RIGHTS AND REMEDIES

49. RIGHTS AND REMEDIES OF 1 WTC

1 WTC shall have the following rights in the event the Construction Manager shall deem the Contractor guilty of a breach of any term whatsoever of this Contract:

- A. 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.
- B. The right to cancel this Contract as to any or all of the Work yet to be performed.
- C. The right to specific performance, an injunction or any other appropriate equitable remedy.
- D. 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 Construction Manager within the time limit specified in the Clause hereof entitled "Insurance Procured By The 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 Construction Manager 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 Instructions for Bidders and Bid Proposal Form 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 Instructions for Bidders and Bid Proposal Form, 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 Construction Manager shall not be deemed to limit any other rights or remedies which the Construction Manager would have in the absence of such enumeration; and no exercise by the Construction Manager 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.

50. 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 Construction Manager, the Contractor expressly agrees that no default, act or omission of any member of the 1 WTC Indemnitee Group shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Construction Manager shall so direct) to suspend or abandon performance. Contractor agrees that under no circumstances shall it have any recourse against the Authority, its Commissioners, directors, employees, agents, successors and assigns for any claim, right or demand arising out of or related to the Contract or performance herein.

51. 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 1 WTC", the Construction Manager 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 Construction Manager.

In the certificate of total compensation earned, for which provision is made in the clause hereof entitled "Final Payment", the Construction Manager will separately state the amount of Work performed by the Construction Manager as agent for the Contractor, credit to the Construction Manager 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 Construction Manager, or vice versa as the case may be. If such difference is in its favor, the Construction Manager 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 Construction Manager 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.

52. NO ESTOPPEL OR WAIVER

1 WTC or the Construction Manager 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 either of them, or any Director, officer, agent or employee of either of them, 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 1 WTC or the Construction Manager 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, approval or certificate issued under this Contract or otherwise issued by the Construction Manager, I WTC or any Director, officer, agent or employee of either of them, nor any permission or direction to continue with the performance of Work, nor any inspection or approval of any portion of the Work, nor any performance by the Construction Manager or I WTC of any of the Contractor's duties or obligations, nor any aid lent to the Contractor by the Construction Manager in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Construction Manager or I WTC or their Directors, 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 Construction Manager or I WTC may be entitled because of any breach thereof. 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 Construction Manager or I WTC may be entitled because of such breach. Moreover, no waiver by the Construction Manager or I WTC of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

CHAPTER VII MISCELLANEOUS

53. 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 Proposal 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 Construction Manager, 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.

54. 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.

55. 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.

56. NON-LIABILITY OF THE CONSTRUCTION MANAGER OR 1 WTC REPRESENTATIVES

Neither the Construction Manager, 1 WTC, nor any Director, 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.

57. 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 Construction Manager the Contractor's office will be that stated in his Proposal. 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.

58. 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 Extra Work or to alter the Contract Drawings 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 Construction Manager shall have the power so to do.

59. 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 any member of the Construction Manager, I WTC or the Authority or the services performed in connection with this Contract, without first obtaining the written approval of the Construction Manager. Such approval may be withheld if for any reason the Construction Manager 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

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned⁵ Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

Contractor

Surety

⁵ 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 _____".

are hereby held and firmly bound unto Tishman Construction Corporation, a Delaware corporation, and 1 WTC, LLC ("Obligees") in the penal sum of

_____ Dollars

and _____ Cents (\$ _____), 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 Obligees, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract WTC-XXX.XXX - "World Trade Center - Lump Sum Sample Contract", and

WHEREAS, the Construction Manager and 1 WTC have 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;

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 the Obligees 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 Obligees) 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 1 WTC Indemnitee Group.

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 Construction Manager the following notices:

- A. Written notice of an intent to pay any claim of a Subcontractor, Materialman or workman hereunder;
- B. Written notice within five (5) 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 (30) days after receipt by said Construction Manager 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)

Principal
By ⁶ _____

Surety

By ⁷ _____

APPROVED AS TO ACCEPTABILITY OF SURETIES:

Credit Manager

_____ 20

⁶ If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

⁷ 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

**SPECIFICATIONS
DIVISION 1
GENERAL PROVISIONS**

60. CONSTRUCTION REQUIRED BY THE SPECIFICATIONS

These Specifications relate generally to performing the construction at the World Trade Center site.

These Specifications require the doing of all things necessary or proper for or incidental to the matter referred to in the immediately preceding paragraph, as shown on the Contract Drawings in their present form. In addition, all things shown on the Contract Drawings even though not expressly mentioned in these Specifications, all things mentioned in these Specifications even though not shown on the Contract Drawings, and all things not specified either on the Contract Drawings, or in the Specifications but involved in carrying out their intent and in the complete and proper execution of the matter referred to in the immediately preceding paragraph are required by these Specifications; and the Contractor shall perform the same as though they were specifically delineated, described and mentioned.

In case of a conflict between a requirement of the Contract Drawings and a requirement in Division 1 of the Specifications, the requirement of Division 1 shall control. In case of a conflict between a requirement contained in other Divisions of the Specifications and a requirement of the Contract Drawings, the more stringent requirement shall apply.

Some Sections of the Specifications make cross references to construction specified in other Sections of the Specifications, including cross references intended to avoid duplication by the bidders in quoting prices and to point out some of the necessity for coordination. Such cross references are not intended to be complete or all inclusive, and the Contractor shall ascertain for himself both the nature and the extent of all construction which may be related to that under each Section of the Specifications whether or not expressly referred to.

Some Sections of the Specifications contain a general description of the construction under such Sections. Such description is merely a very general one and is not intended to outline the construction required by the Specifications and Contract Drawings. Accordingly, such description shall be construed as in aid of and supplemental to, but in no case limiting, impairing or decreasing, the requirements elsewhere set forth with respect to the construction to be performed.

The Contractor's compensation for all construction whatsoever referred to in the Specifications and Contract Drawings in their present form, even though the need for certain items of such construction may be contingent upon future occurrences or determinations or upon other circumstances, shall be deemed to be included in the price(s) quoted by the Contractor in the Form of Contract unless the Specifications or Contract Drawings expressly state that compensation in addition to such price shall be payable for such items of construction. The express statement in some cases to the effect that certain construction shall be without additional cost to the Construction Manager shall not impair the application of this paragraph in other cases.

The distribution of various parts of the construction among the Divisions and Sections of the Specifications or among the Contract Drawings is not intended as a representation of the most effective or logical method of organizing, scheduling, or subcontracting the construction, and the Contractor shall ascertain for himself how to do so unless otherwise expressly prescribed in this Contract.

In all cases the provisions of the second paragraph of this numbered Section shall control.

61. 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, together with an area shown cross-hatched on Contract Drawing No. G003 and designated "Area Available For Contractor's Use".

Any additional property which the Contractor desires for his operations shall be obtained by him at his own expense.

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 Construction Manager 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 Construction Manager, 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.

62. 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 the work of other Authority contracts 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 1 WTC, the Authority and the public and as may be directed by the Construction Manager.

63. 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 Construction Manager, 1 WTC, Authority or PATH contracts, or the operation of any 1 WTC, Authority or PATH facility, or any operations at the World Trade Center site occurs at the World Trade Center site or at any other 1 WTC, 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.

64. CONTRACTOR'S MEETINGS

The Contractor shall conduct job progress and coordination meetings with Subcontractors in his field office every week, or as frequently as job conditions require or the Construction Manager may request. The Construction Manager shall be notified and, at his option, may attend these meetings. The Contractor shall prepare and distribute minutes to the Construction Manager 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 Construction Manager every week, or at times otherwise requested by the Construction Manager.

65. CONTRACT DRAWINGS

The Contract Drawings, referenced in **Rider B** (List of Drawings and Specifications), do 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 Construction Manager or by the Contractor subject to the approval of the Construction Manager, to the extent necessary to further illustrate the Work.

An indication on the Contract Drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials does 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.

After the Contract has been executed, the Contractor will be furnished two (2) copies of the Specifications and Contract Drawings without charge.

66. INTENTIONALLY DELETED

67. SHOP DRAWINGS, CATALOG CUTS AND SAMPLES

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 Design Team or Construction Manager may issue in supplementing the Contract Drawings.

The specific requirements elsewhere set forth in the Specifications for furnishing Shop Drawings, Catalog Cuts and samples for any particular portion of the Contract shall not limit the obligation of the Contractor to furnish Shop Drawings, Catalog Cuts and samples for any other portion when so required by the Construction Manager.

The Contractor shall submit a general "Submittal Schedule" for the Construction Manager's review, and for approval by the appropriate member of the Design Team, listing the planned transmittal date and estimated number in each specification section category of Shop Drawings, Catalog Cuts, pages of calculations and samples within thirty (30) days after receipt by the Contractor of the acceptance of the Proposal. A more detailed schedule shall be submitted no less than thirty (30) calendar days prior to the actual date of any submittal.

After checking and verifying all field measurements and after complying with applicable procedures specified hereunder, the Contractor shall submit to the Construction Manager for review, and for approval by the appropriate member of the Design Team, in accordance with the approved schedule of Shop Drawing submissions, or for other action if so indicated by the Construction Manager, four (4) copies and two (2) reproducibles, unless otherwise requested, of all Shop Drawings which will bear a specific written indication that the Contractor has reviewed the submission for conformance to the requirements of the Contract Drawings.

All submissions shall be identified as the Construction Manager may require. 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 Construction Manager to review the submittal as required.

The Contractor shall also submit nine (9) copies to the Construction Manager for review, and for approval by the appropriate member of the Design Team, pursuant to the approved Submittal Schedule, of all Catalog Cuts and samples for conformance to the requirements of the Contract Drawings. 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 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 Construction Manager 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 Construction Manager, for review by Construction Manager and approval by the appropriate member of the Design Team of each such variation.

The Construction Manager's review and the Design Team's 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 Construction Manager's attention to each such variation at the time of submission as required hereunder and the Design Team 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 shall not be deemed to waive or change such requirements or to relieve the Contractor of its obligations to perform such requirements unless the Construction Manager shall expressly and specifically state that it 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 Construction Manager's review and Design Team's approval of the submission.

In preparing the Shop Drawings, the Contractor may adopt a sheet of any reasonable size which best suits its needs, but having adopted such size, all sheets thereafter of a similar nature shall be of the same size as that adopted. Each drawing shall have a margin on the top, bottom and right-hand side of one-half inch and on the left hand side a margin of one and one-half inches. Upon receipt of the submittal, the Construction Manager 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. Review by the Construction Manager and approval by the Design Team 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, its Subcontractors, *their detailers, or their professional engineers is the complete responsibility of the Contractor.*

Within the number of working days hereinafter specified after receipt of the Shop Drawing prints, the appropriate member of the Design Team shall approve or not approve the same or require corrections or additions to be made thereon. When a Shop Drawing is not approved or if additions or corrections are required, the Construction Manager shall return within this period one (1) of the four (4) copies submitted and the Contractor shall make the revisions, corrections or additions shown thereon to be made. Contractor shall resubmit four (4) prints and one (1) brownline (reproducible) showing the drawing corrected as required. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Design Team on the previous submittal. Each drawing shall be corrected as required until the approval of the Design Team is obtained. After each resubmission, the Construction Manager shall have the number of working days hereinafter specified in which to approve revisions or corrections. If the Design Team rejects any Shop Drawing, Catalog Cut, or sample three (3) times, then Contractor shall be backcharged for all costs incurred by I WTC and/or Construction Manager as a result of such rejections.

The number of working days within which the Construction Manager shall advise the Contractor as to whether the Shop Drawings are approved, not approved, or require corrections or additions to be made thereto shall be as follows, except that twenty (20) working days shall be required for the Construction Manager to review Shop Drawings submitted with design calculations.

| No. of Drawings Submitted Within 5 Consecutive Working Days for Each Discipline(*) | No. of Working Days for Construction Manager and Appropriate Member of Design Team to Review Shop Drawings |
|---|--|
| Up to 50 | 12 |
| 51 to 75 | 17 |
| More than 75 | 22 |
| * Disciplines shall be defined as follows: Structural, Architectural, Civil, Geotechnical, Mechanical, Electrical, Traffic and Environmental. | |

Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of working days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this section relieve the Contractor from its duty to meet all contractual Milestone Dates.

As soon as approval has been given to any Shop Drawing or Catalog Cut, the Contractor shall within five (5) days send to the Construction Manager six (6) prints, except that when the Construction Manager specifically so directs, nine (9) prints shall be sent. After approval thereof, no change will be permitted thereon unless approved in writing by the Construction Manager. Before Final Payment for the Work is made, the Contractor shall furnish to the Construction Manager one (1) set of Shop Drawings, which have previously been prepared by the Contractor in accordance with requirements elsewhere specified in these Specifications, all clearly revised, completed and brought up to date showing the permanent construction as actually made. These drawings shall be in the form of mylar reproducible, from which clear prints can be made.

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 and 1 WTC shall become the property of 1 WTC. 1 WTC 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.

68. SUBSTITUTION

Where a proprietary item or make is specified or mentioned herein or called for or mentioned on the Contract Drawings and the phrases "similar and equal to" or "approved equal" are used in connection therewith, the utilization of any other item or make will be deemed a substitution. Substitution for the proprietary item or make specifically named may be made only in accordance with the Section hereof entitled "Workmanship and Materials" and in accordance with the following.

Whenever materials or equipment are specified or described in the Contract Drawings or Specifications by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of another supplier or manufacturer may be accepted by the Construction Manager if sufficient information and proof is submitted by the Contractor to permit the Construction Manager to determine that the material or equipment proposed is equivalent or equal to that named and the Construction Manager approves the substitution. The procedure for review by the Construction Manager will include the following. Requests for review of substitute items of material and equipment will not be accepted by the Construction Manager from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, *the Contractor shall make a timely written application to the Construction Manager for approval thereof*, certifying that the proposed substitution will perform at least the identical functions and achieve at least the identical results called for by the specified product and otherwise be equal to the specified product with regard to, but not limited to, durability, maintenance, strength, energy costs and record of proven performance. The application shall state that the evaluation and approval of the proposed substitution shall not delay the Contractor's completion of the Work as required by the Contract, whether or not approval of the substitution will require a change in the construction and, in no event will the Contractor be granted an extension of time for completion of any portion of the Work for reasons related directly or indirectly to the evaluation of the proposed substitution or to the proposed substitution itself. Any variations of the proposed substitution from that specified shall be identified in the application, and maintenance, repair and replacement services for the substitution shall be indicated. The Construction Manager may require the Contractor to furnish at the Contractor's expense additional laboratory test data concerning the proposed substitution.

Such submission to the Construction Manager shall be made only by including the requested substitution in the list of materials required to be submitted to the Construction Manager in accordance with the Section hereof entitled "Inspections and Rejections" within forty-five (45) calendar days after the receipt of the acceptance of the Contractor's Proposal. After the approval of said list, no substitutions will be permitted, except that a brand or make named in the Specifications may be submitted for approval in lieu of a brand or make on said list. Any such submission shall not imply, or impose on the Construction Manager, any obligation whatsoever to discuss, disclose or justify the reasons for his opinion, approval, acceptance or rejection.

The Construction Manager shall be the sole judge of as to whether a proposed substitution will be approved, and no substitution shall be ordered or utilized without the Construction Manager's prior written approval. The Construction Manager may require Contractor to furnish at Contractor's expense a special performance guarantee or other assurance with respect to any approved substitution. Furthermore, the approval of any substitute proprietary item or make shall not in any way entitle the Contractor to additional compensation therefor.

Notwithstanding such approval, however, the Contractor assumes the risk that such approved substitute item or make is not equal to that shown or specified and if at any time the substitution shall appear not to be so equal he shall replace the substitution with that originally shown on the Contract Drawings or called for in the Specifications at his own cost and reimburse the Construction Manager for any loss occurring on account of the substitution failing to be equal, notwithstanding that it had been previously approved for use by the Construction Manager.

The construction called for by the Contract Drawings may be adapted for a particular proprietary item or make of material or equipment. Therefore, if any construction not required by the Contract Drawings or Specifications in their present form is necessary or desirable because of the use of substitute item or make of material or equipment (even though such other item or make is approved by the Construction Manager), such construction shall be furnished or performed by the Contractor at his expense and subject to the approval of the Construction Manager.

69. 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 Construction Manager 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 I GENERAL PROVISIONS entitled "Inspections and Rejections".

All items provided in this Contract that use dates in the recording, storing or processing of information shall use such dates correctly at all times including using such dates correctly in the recording, storing or processing of information after January 1, 2000 (Year 2000 Compliant).

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 Construction Manager in accordance with the Section of Division I 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 Proposals upon the present Contract unless specifically stated otherwise.

If required by the Construction Manager, 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 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.

In various paragraphs of these Specifications, references may be made 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.

All inventions, ideas, designs and methods contained in the Specifications and Contract Drawings in which 1 WTC has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority and/or 1 WTC. 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 1 WTC and must not be produced or copied in whole or in part or used for furnishing information to others without the written consent of 1 WTC, 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, 1 WTC and/or 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 1 WTC and/or the Authority. Promptly upon request by the Construction Manager or 1 WTC, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to 1 WTC, but as between the Contractor and 1 WTC the license herein provided for shall nevertheless arise for the benefit of 1 WTC 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 1 WTC to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by 1 WTC, 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 defend, indemnify the 1 WTC Indemnitee Group against and save them harmless from all loss and expense, including, without limitation, attorneys' fees and costs, 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 1 WTC or 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 Construction Manager or 1 WTC 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 1 WTC or the Authority. If 1 WTC or 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 1 WTC Indemnitee Group against patent, copyright or other intellectual property right claims, 1 WTC 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 1 WTC or to take such steps as may be necessary to ensure compliance by 1 WTC with such injunction, all to the satisfaction of 1 WTC and all without cost or expense to any member of the 1 WTC Indemnitee Group.

70. 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 Construction Manager and/or Design Team, 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 Construction Manager and/or Design Team 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 Construction Manager and/or Design Team 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 the approval of the Construction Manager and Design Team, the Work, construction, processes of manufacture and methods of construction shall be forthwith reconstructed, made good, replaced or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall be removed immediately from the site. The fact that the Construction Manager and/or Design Team have approved the materials and workmanship shall not relieve the Contractor from its obligation to supply other material and workmanship when so ordered by the Construction Manager.

The Contractor, at its own expense, shall furnish such facilities and give such assistance for inspection as the Construction Manager and/or Design Team may direct. 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 Construction Manager may designate, the Contractor shall secure for the Construction Manager and/or Engineer, and their Inspectors, free access to all parts of such factories or plants and shall furnish to the Construction Manager and/or Design Team three (3) copies of purchase orders, two (2) copies of mill shipping statements and four (4) copies of shipping statements. Moreover, in the case of such materials to be factory or plant inspected, the Contractor shall give at least ten (10) days' notice to the Construction Manager 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 Construction Manager and/or Design Team 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.

In the case of materials to be inspected at the construction site, the Contractor shall submit a list of all such materials in triplicate to the Construction Manager for transmittal to the Design Team for its approval prior to ordering same. The list shall be submitted within forty-five (45) calendar days after receipt of the notice of acceptance and shall contain the following information:

- A. Classification of submittal in accordance with the following:
 - Class I - A submittal for record of an expressly specified item.
 - Class II - A submittal of an item which conforms to an express generic specification or a submittal which is deemed by the Contractor to be identical to an expressly specified item.
 - Class III - A submittal which is deemed by the Contractor to be functionally equivalent but not identical to a specified item.
- B. In the case of Class II and Class III, the Contractor shall supply adequate information to the Construction Manager to enable the Construction Manager to compare the specified item and the proposed substitution. Information shall include, but need not be limited to, technical specifications, Catalog Cuts, drawings, references to existing installations and test data, or any other data required by the Construction Manager.
- C. In the case of fabricated materials for which Shop Drawings are to be prepared, a brief description of the material and the statement "see Shop Drawings".
- D. In the case of materials or equipment listed in manufacturer's catalogs, the list shall contain the vendor's name, the manufacturer's name, brand name, style designation, catalog number and, where the Specifications require Catalog Cuts, the statement "see Catalog Cut".
- E. In the case of materials or equipment for which Shop Drawings are not to be prepared, and which are not listed in any catalog, the list shall contain a complete description of the material or equipment, which shall be in sufficient detail to describe completely the materials or equipment and quality therefor.

The Construction Manager shall advise the Contractor whether said list is approved or requires corrections or additions within the number of working days indicated in the chart below:

| Type of Submittal | No. of Working Days for Construction Manager to Approve/Disapprove Items |
|--|--|
| Class I Material submittals | 10 |
| Portland Cement mix designs that require confirmation of the 28-day properties | 35 |
| Changes in asphalt mix designs that need to be confirmed with a batch mix at the plant | 35 |
| Class II Material submittals | 20 |
| Class III Material submittals | 30 |

Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this Section relieve the Contractor from its duty to meet all contractual Milestone Dates.

Within ten (10) working days after receipt of said list, the Construction Manager shall notify the Contractor of which items are approved and which disapproved. Within two (2) working days thereafter, the Contractor shall resubmit a new list covering those items which were disapproved. After each such re-submission the Construction Manager shall have a similar period of ten (10) days in which to approve or disapprove.

Should materials or equipment be delivered to the construction site without having been placed on the aforementioned list and approved, it shall be immediately removed from the construction site by the Contractor at his own expense.

Contractor may appeal to I WTC Construction Manager's rejection of any portion of the Work within five (5) days of such rejection. I WTC's decision of such appeal shall be final.

I WTC reserves the right to reject Work regardless of Construction Manager's approval.

71. 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 Construction Manager 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 Construction Manager prior to installation of the materials to which it refers. Such certifications shall not be binding or conclusive on the Construction Manager and may be rejected at any time by the Construction Manager if incorrect, improper or otherwise unsatisfactory in his opinion.

72. 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 Construction Manager, not the Contractor. Any approval of such things shall be construed merely to mean that at that time the Construction Manager 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 or from any duty, obligation or liability imposed upon him by the Contract or from responsibility for injuries to persons or damage to property.

73. 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 Construction Manager in the construction undertaken and executed by him, he shall immediately notify the Construction Manager and the Construction Manager 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.

74. ACCIDENTS AND FIRST AID PROVISIONS

The Contractor shall promptly report in writing to the Construction Manager 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 the Construction Manager.

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 Construction Manager, giving full details of the claim.

75. SAFETY PROVISIONS

In the performance of the Contract, the Contractor shall exercise every precaution to prevent injury to workers and the public or damage to property, follow the health and safety requirements set forth herein. Contractor shall comply with The Port Authority of New York and New Jersey "World Trade Center Site Rules and Regulations" (**Rider N**) and Construction Manager's "Safety Guidelines" (**Rider M**) and complete all forms set forth therein.

He shall, at his own expense, provide temporary structures, place such watchmen, design and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precaution against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed.

The Contractor shall employ for Work of the Contract a competent person conforming to the requirements of the Code of Federal Regulations 29 CFR 1926.32(f) who shall be designated by the Contractor as authorized to perform the duties required by 29 CFR 1926 et seq. as applicable for Work of this Contract.

Obtain and submit to the Construction Manager one copy of material safety data sheet (MSDS) conforming to the requirements of 29 CFR 1910.1200(g) for each hazardous chemical utilized for permanent and consumable materials employed for Work of this Contract.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss, including but not limited to:

- A. All employees on the Work, the public, and other persons and entities who may be affected thereby;
- B. All the Work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

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, material and equipment from the construction site, or the issuance of the Certificate of Final Completion, whichever shall occur last.

Until fire protection needs are supplied by permanent facilities under this Contract, install and maintain temporary fire protection facilities. Comply with requirements of National Fire Protection Association NFPA 10 "Standard for Portable Fire Extinguishers" and NFPA 241 "Standard for Safeguarding Construction, Alteration and Demolition Operations".

The Contractor shall employ only such men as are physically fit and are free from contagious or communicable diseases.

He shall use only machinery and equipment adapted to operate with the least possible noise, and shall so conduct his operations that annoyance to occupants of nearby property and the general public will be reduced to a minimum.

The bringing of intoxicating substances onto the construction site and the use or consumption of intoxicating substances at the construction site are prohibited. It shall be the responsibility of the Contractor to insure that all employees of the Contractor and of all Subcontractors, Materialmen and any other persons under contract to or under the control of the Contractor shall comply with the provisions of this paragraph.

The Contractor shall daily clean up all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the construction site shall present a neat, orderly and workmanlike appearance. Before the Certificate of Final Completion of Work will be issued, the Contractor shall remove all surplus materials, falsework, temporary fences and other temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and shall put the construction site in a neat, orderly condition.

In the event 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 Construction Manager. 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 Construction Manager.

Within fifteen (15) days of the acceptance of his Proposal, the Contractor shall submit to the Construction Manager, for Construction Manager's 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.

76. DAILY PROGRESS, EQUIPMENT AND LABOR REPORTS

The Contractor shall furnish to the Construction Manager 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 Extra Work.

77. LAWS AND ORDINANCES

Contractor shall apply for and obtain all required permits to perform its Work. In order to effectuate the policy of the Authority, which the Construction Manager and 1 WTC adopt as set forth herein, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, permit requirements, 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 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 Construction Manager and 1 WTC, but shall do so in Contractor's own name, unless otherwise prohibited by law. Contractor shall not apply for any variance without first obtaining the approval of the Construction Manager and 1 WTC.

78. IDENTIFICATION

No person will be permitted on or about the construction site without a pass, permit or identification badge approved by the Construction Manager. The Contractor shall provide such passes, permits or identification badges for his employees, Subcontractors and Materialmen whenever necessary. Identification badges shall be worn in a conspicuous and clearly visible position by all employees of the Contractor whenever they are working at the construction site.

79. 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 Construction Manager. In any event, the advertisement shall not exceed six feet by eight feet (6' x 8') in overall dimensions.

80. CONTRACTOR'S FIELD OFFICE AND REPRESENTATIVE

At a readily accessible point on or near the construction site, the Contractor shall maintain a field office provided with a telephone.

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 Construction Manager. The Contractor's representative shall be provided, at all times, with a conformed copy of this Contract and a set of the Contract Drawings.

Orders and directions may be given orally by the Construction Manager 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 Construction Manager when so requested by the Contractor.

81. SURVEYS

The Construction Manager will establish a bench mark and a base line based on information provided by Engineer 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 Construction Manager.

The Contractor shall, in addition, furnish to the Construction Manager, 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 Construction Manager, at the Construction Manager's option. Computations of quantities for payment shall be made by the Contractor and shall be subject to the approval of the Construction Manager.

82. 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 are to be prepared by the Contractor, and when requested by the Construction Manager they shall be submitted for Construction Manager's review before being used. Neither such approval, however, nor any requirements of the Engineer, Construction Manager or 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.

83. PERMIT AND REQUIREMENTS FOR WELDING

Prior to the commencement of any cutting or welding operations at the construction site, the Contractor shall notify the Construction Manager and obtain a I WTC cutting and welding permit. I WTC will issue this permit without payment of a fee, and application forms may be obtained from Construction Manager. Unless otherwise approved by I WTC, 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 Construction Manager at least forty-eight (48) hours prior to commencing welding or cutting operations at the construction site.

84. FINAL INSPECTION

When, in the opinion of the Contractor, the construction is completed and ready for final inspection, he shall so notify the Construction Manager in writing, who 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.

85. WARRANTIES

The Specifications may provide for certain warranties of portions of the permanent construction. These warranties are intended for the greater assurance of I WTC and not as a substitute for rights which I WTC 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 I WTC by any manufacturer shall be deemed to be a limitation upon any rights which I WTC would have, either expressed or implied, in the absence of such guarantees or warranties.

86. UTILITY RECORD DRAWINGS

Prepare, on mylar sheets 22" x 34" or other size approved by the Engineer, drawings showing the exact locations and elevations of underground utility construction including manholes, catch basins, inlets, pipe lines and structures for carrying gases (including air) and fluids including water, storm drainage, sewage, oil, chemicals, electrical duct runs, cables and conduits, for new construction or extension of existing utilities installed underground under this Contract.

Submit to the Construction Manager for transmittal to the Engineer, for verification and approval, tabulation of the data to be used in the preparation of the utility record drawings. Do not build-in, backfill or fill over or around or in any way cover underground structures, piping, conduit, cable or duct banks until such submitted data has been verified and approved by the Engineer.

Indicate the exact locations, including changes of direction and curves, by the use of offset distances from nearby permanent structures and, in addition, by the use of coordinates which shall be based on the system of coordinates used at the construction site, the origin of which is shown on the Contract Drawings. Base elevations on the datum used at the construction site as is shown on the Contract Drawings.

Submit prints of these drawings to the Construction Manager for transmittal to the Engineer for verification, check of the accuracy, and for approval. Make indicated corrections and additions to the drawings, until the approval of the Engineer has been obtained. After these drawings have been approved by the Engineer, the original corrected mylar sheets shall be turned over to the Engineer before issuance of the Certificate of Final Completion, and such original drawings shall become the property of I WTC.

- 87. **TEMPORARY UTILITY SERVICES [SEE ATTACHED RIDERS]**
- 88. **TEMPORARY SANITARY FACILITIES [SEE ATTACHED RIDERS]**
- 89. **PROGRESS SCHEDULE [SEE ATTACHED RIDERS]**
- 90. **ANALYSIS OF BID**

Within fifteen (15) calendar days after acceptance of the Proposal, the Contractor shall prepare a detailed analysis of bid on forms furnished by the Construction Manager with all of the spaces filled in without exception, and containing such information as the Construction Manager may require for each of the items enumerated in such form.

- 91. **CONDITIONS AND PRECAUTIONS [SEE ATTACHED RIDERS]**
- 92. **HOURS OF WORK AND CONSTRUCTION STAGING [SEE ATTACHED RIDERS]**
- 93. **MAINTENANCE OF TRAFFIC AND WORK AREA PROTECTION [SEE ATTACHED RIDERS]**



Ex. 4

RIDER "A"
GENERAL ADDENDUM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

July 09, 2007
(Revision #3)

TRADE: STRUCTURAL STEEL AND METAL DECK (TOWER)

RIDER "A-2"
EQUIPMENT LEASE ADDENDUM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

June 16, 2006
(Revision #5)

TRADE: TOWER CRANES #1 & #2

Notwithstanding anything in the other Contract Documents to the contrary, all provisions of this addendum shall supersede any conflicting provisions of other Documents. All other provisions of the Contract shall remain in full force and effect.

A. GENERAL CONDITIONS

1. **General.** The Vendor represents that it is familiar with, and has expertise in the Work of this Scope. The Vendor further agrees that it will provide all Work for the Scope as may be required to make a complete job of that which may not be fully defined in the Contract documents.
2. **General.** The Vendor has visited and carefully examined the premises upon which the Work is being performed and has familiarized itself with the existing conditions and difficulties that may affect the execution of its Work. The Vendor is aware that its Work is being performed next to the operational PATH train station, the 1 Subway, the haul road, and West and Vesey Streets. The roadways and adjacent occupied buildings are under repair. The Vendor agrees that it will take all necessary steps to avoid damage to new and existing construction, sidewalk shed and signage. This Vendor, at no additional cost, will repair any damage it causes. The Vendor is cautioned that due to the location of this job it may encounter certain areas of special coordination involving traffic congestion, building access, material delivery, etc, all of which may change from time to time. Vendor understands that delivery routes and times will be dictated and controlled by various government agencies and that all adjacent streets, the 1 Subway Line, N & R Subway Line, NYS Route 9A (West Street), WTC Path Station, MTA Transit Center, and other structures in the WTC site are under construction and has considered these restrictions with respect to delivering, loading materials and equipment, and hauling of demolition and excavation debris. In addition to the work above, NYS DOT will be removing a portion of Vesey Street pedestrian bridge (scheduled for 2006) and will be using Vesey Street for staging. The Vendor is aware of these conditions and will not attempt to seek and shall not be entitled to additional time or monies for hardships that may arise due to its having to take special measures and precautions regarding same.
3. **General.** The Vendor has visited the site and the Contract documents and reviewed with the Construction Manager the designated areas of access, delivery, and storage for the Vendor's use. The Vendor agrees that such areas are satisfactory and sufficient for its needs in the prosecution of its Work. Changes in such areas shall not be permitted without the approval of the Construction Manager, which if approved, shall be at no additional cost. Site Logistics Plan(s) are general in nature, and may change from time to time, and do not exactly indicate all aspects of the site logistics which may arise out of Adjacent Construction Sites (Route 9A, Site 26, WTC Memorial, Transit Center, Performing Arts Center, etc.) or the Authority restrictions PATH railroad operations and maintenance schedules, and/or other governing agencies causing unforeseen revisions to the site logistics. There shall be no additional cost for modifications to Site Logistics Plans.
4. ***Paragraph Intentionally Deleted**
5. **RESERVED.**
6. **Building regulations.** It is understood that all Work of the Vendor shall be in strict accordance with the rules and regulations of the Authority. Where the rules and regulations of the Authority do not address a specific condition, the Building Code of the City of New York, 2003 year edition, and any rules and regulations of the Building Department of the City of New York, and any other governmental or quasi-governmental agencies or regulatory bodies having jurisdiction shall govern. The Work of the Vendor shall also comply with The Port of New York & New Jersey "Tenant Construction Review Manual," dated March 2003, and "World Trade Center Site Rules and Regulations," effective January 1, 2006, as may be amended from time to time, a copy of which is attached as Rider "N." Where there is any conflict in any provisions, the most stringent shall apply.



RIDER "A-2"
EQUIPMENT LEASE ADDENDUM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

June 16, 2006
(Revision #5)

TRADE: TOWER CRANES #1 & #2

A. GENERAL CONDITIONS - continued

7. **Building regulations.** The Vendor shall comply with all of the legal regulations, including OSHA safety regulations and regulations of municipal, city, local, The Authority, and other government agencies having jurisdiction concerning the Work of this Vendor. The Vendor shall give all notices and comply with all laws, ordinances, codes, rules and regulations bearing on the conduct of the Work. If the Vendor performs any Work which is contrary to such laws, ordinances, codes, rules, and regulations, it shall make all changes to comply therewith and bear all costs arising therefrom.
8. **Building regulations.** The Vendor is aware of the requirements of the Department of Transportation's Bureau of Traffic, the Authority, New York State Department of Transportation, and any other agency having jurisdiction over regulating restricted vehicle lengths and times of operation in the geographical area in which the Project is situated. In addition, the Vendor's logistics plan must be in conformance with the Construction Manager's requirements and as approved by the Mayor's Office of Construction, Mitigation, and Coordination (OCMC). The Vendor agrees there shall be no additional costs as a result of these restrictions.
9. **Coordination/building regulations.** For purposes of complying with the requirements of the Building Code of the City of New York and the Authority, which calls for a Certificate of On-Site Inspection, the Vendor shall furnish to the Construction Manager information on the position of cranes, derricks, guy lines, etc., along with pertinent loads from the operation of such equipment certified as to accuracy and location by a Professional Engineer licensed to practice in the State of New York, engaged by the Vendor. The New York City Department of Cranes and Derricks on this site will not perform inspections. The Vendor shall retain and pay for a third party Professional Engineer licensed to practice in the State of New York to certify the assembly and operation of any equipment. The Vendor is aware of the limited structural capacities of existing slab areas to be used for its equipment and material storage and shall not exceed rated capacities without taking appropriate steps to compensate for the imposition of any construction loads which may exceed the design criteria of the new structure or the capacity of the existing roadways, sidewalks and curbs. Any modification to the building structure required to support the Vendor's equipment will be made by the Vendor at its cost and reviewed and approved by the third party Professional Engineer. All costs incurred by the third party Professional Engineer to review the Vendor's proposed modifications shall be reimbursed to Construction Manager by the Vendor. Any permanent modifications will be made only with the Construction Manager's written approval. The Vendor shall furnish, place and remove any temporary foundations, supports, and bracing required to stabilize the structure or existing conditions due solely to its Work. All costs associated with the above requirements are included in the Contract Price. Submittals for cranes provided by the Concrete Vendor shall be by the Concrete Vendor.
10. **Load Constraints.**
Loads imposed onto existing structures by Vendor's equipment, staging or any other means and methods shall be submitted for review by the Engineer of Record. Submission shall be signed and sealed by Vendor's Professional Engineer. In particular, the following rated capacities shall not be exceeded:

Existing Level B4 slab: maximum allowable live load capacity is 50 psf.
West street: maximum allowable surcharge is 400 psf next to slurry wall.
Vesey street: maximum allowable surcharge is 600 psf next to slurry wall.
Vesey Street elevated steel framing (beams and deck): 600 psf
Vesey Street support columns: See Contract documents
11. **Building regulations/environmental.** The Vendor shall comply with all federal and local laws regarding noise control. Mufflers, whisperized compressors, and other noise abatement and protection devices shall be used throughout the Vendor's Work. Vendor will adhere to noise restrictions, with specific attention to Work performed prior to 8:00 AM, after 4:00 PM and on weekends.
12. **Environmental.** Vendor shall meet the Sustainable Construction Requirements and Environmental Performance Commitments (EPC's) as described in Rider G.

RIDER "A-2"
EQUIPMENT LEASE ADDENDUM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

June 16, 2006
(Revision #5)

TRADE: TOWER CRANES #1 & #2

A. GENERAL CONDITIONS - continued

13. *General/environmental.* All vehicles shall pass through a wheel wash to remove debris from tires and vehicle bodies prior to leaving the site.

14. *Coordination:*

Synchronization of Activities

- a. Vendor acknowledges that Construction Manager shall award contracts to other Contractors, including, without limitation, trade contracts to other Contractors, to perform construction or operations related to the Project ("Other Contractors"). Vendor further acknowledges that the Other Contractors may perform their work on the Project site during the same time that Vendor performs its Work on the Project site; or that Vendor's Work and the work of Other Contractors, though provided for under separate contracts, may be interconnected in some manner or interdependent, one depending upon timely or proper performance of the other.
- b. This Vendor shall cooperate, as directed by the Construction Manager, with Other Contractors at the site, including, but not limited to, Foundation Contractor, Superstructure Concrete Contractor and Above Grade Superstructure Steel Contractor.
- c. This Vendor shall cooperate with the Authority, 1 WTC, all Public Transit Companies and any other government authorities having jurisdiction.
- d. In order to synchronize all of the activities described in Section A above and have such activities occur in a harmonious and proper manner, Vendor agrees that it shall (i) cooperate with Construction Manager in coordinating Vendor's Work and labor force with the Other Contractors' work and labor forces, and (ii) provide for coordination of Vendor's Work and labor force with those of the Other Contractors.
- e. In order to maintain synchronization and harmony with respect to all of the construction and operations on the Project site, Vendor agrees to do the following when so requested: (i) review the construction schedules of Other Contractors in order to make internal revisions to Vendor's own schedule such that Vendor's schedule will coordinate with the schedules of others, or (ii) participate in a joint review among relevant parties of the schedules of Vendor and the Other Contractors, each schedule being reviewed in terms of the others, in order to coordinate all such schedules; and, after such joint review, revise Vendor's schedule as mutually agreed upon and to the extent necessary in order to coordinate Vendor's activities with those of the Other Contractors.
- f. The Vendor understands that it is essential that many of its activities be performed in close coordination with, at the same time as, or in close sequence with the work of Other Contractors. If Construction Manager directs that certain parts of the Work be performed following a specific sequence or on certain days or times of the day, Vendor shall perform such Work accordingly. The Vendor understands that the work of this Other Contractor will not be continuous and that work will be required to be performed out of sequence. Any changes in sequence and out of sequence work will be performed at no additional cost to Construction Manager and 1 WTC.
- g. Vendor acknowledges that the Other Contractors are subject to certain of the same types of obligations and have certain of the same rights as Vendor. Vendor agrees to coordinate its Work and to cooperate with the Other Contractors in order that all parties may perform their respective obligations and exercise the rights to which they are entitled.
- h. Vendor shall (i) afford the Other Contractors reasonable opportunity for introduction, storage, and access to their materials and work; and (ii) accommodate the Other Contractors to the extent Construction Manager so directs with respect to such endeavors.
- i. Vendor shall inspect portions of Work already performed to determine that such portions are in proper condition to receive subsequent work, if any, by the Other Contractors.

RIDER "A-2"
EQUIPMENT LEASE ADDENDUM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

June 16, 2006
(Revision #6)

TRADE: TOWER CRANES #1 & #2

A. GENERAL CONDITIONS - continued

- j. The Vendor shall cooperate with the testing and inspection agencies hired by the Construction Manager or 1 WTC. Vendor shall provide to the testing agencies, at no additional cost, all manpower, facilities, scaffolds, calibrated torque wrenches, etc., to assist the testing agency personnel in their testing and inspection duties. It shall be the responsibility of Vendor to notify the testing agencies prior to commencement of the Vendor's Work. The Vendor shall also notify the Construction Manager that inspection services have been requested. Vendor shall not perform any Work requiring testing, unless such testing agency personnel are present. It shall be the responsibility of the Vendor to notify the testing agencies in sufficient time to allow for travel arrangements prior to commencement of the Vendor's Work. The Vendor shall perform any corrective work recommended by the inspection firms. The corrective work shall be included in the Contract Price. Costs incurred for re-inspections for rejected materials or failed inspections will be born solely by the Vendor.
- k. "Paragraph intentionally deleted"
- l. "Paragraph intentionally deleted"
- m. The Vendor shall have the capability to send and receive electronic mail (e-mail) to and from the Construction Manager. Vendor shall provide to the Construction Manager the e-mail addresses of their Project team.
- n. "Paragraph intentionally deleted".

Claims Involving Construction or Operations of Other Vendors

- a. If performance of Vendor's Work, or a portion thereof, depends upon the construction or operations of any of the Other Vendors for proper execution of such Work in accordance with the Contract documents, then prior to proceeding with that portion of the Work and within forty-eight (48) hours of such discovery by Vendor, Vendor shall provide notice to Construction Manager of any apparent discrepancy or defect in the Other Contractor's work that would render such work unsuitable for the proper execution of or would result in a defect in Vendor's Work.
- b. Failure of Vendor to provide notice as provided for and within the timeframe set forth in the Section above shall constitute an acknowledgment by Vendor that the Other Contractor's work, whether partially or wholly completed, is fit and proper to receive the Vendor's Work, except as to defects not then reasonably discoverable.
- c. "Paragraph intentionally deleted"
- d. "Paragraph intentionally deleted".
15. *Paragraph Intentionally Deleted
16. **Temporary services.** Temporary light, power and water will be provided during normal working hours as defined as from 7:00 AM to 5:00 PM, Monday through Friday and from 7:00 AM to 3:00 PM on Saturdays, excluding holidays (as defined in Rider "J") at no cost to the Vendor. Should the Vendor work prior to or later than normal working hours, it shall pay all costs including the cost of standby trades, provided such overtime is required due to the Vendor's failure to maintain schedule. Utility consumption charge will be paid by others. Vendor to be provided all power and utility requirements at no cost.
17. **Permits.** All permits required for any part of the Vendor's Work shall be procured and paid for by the Vendor.

18. **RESERVED.**

A. GENERAL CONDITIONS - continued

19. **Manpower.** Sufficient manpower shall be provided at all times to maintain progress of the

RIDER "A-2"
EQUIPMENT LEASE ADDENDUM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

June 16, 2006
(Revision #5)

TRADE: TOWER CRANES #1 & #2

Work. A labor shortage within the industry shall not be accepted as an excuse for not manning the job.

20. *Paragraph Intentionally Deleted

21. *Paragraph Intentionally Deleted

22. **Manpower/trades.** Should any questions of union jurisdiction arise, the Vendor shall immediately take steps to settle such disputes and will use such labor as may be determined to have jurisdiction, at no additional cost. The Vendor agrees that it shall participate and be bound by decisions of "The New York Plan for the Settlement of Jurisdictional Disputes" as administered by the BTEA. Should this Vendor fail to take expeditious action, it will be responsible for any time lost because of delays arising from such a dispute.

23. *Rigging, Hoisting, Storage and Site Deliveries*

On-Site Storage of Equipment and Materials

- a. The Vendor must take special care in stocking its material on floors to allow Other Contractors free access to their work and not to overload the slabs. The Vendor will refer to the Contract Drawings as they pertain to permissible slab loads and shoring requirements, submit detailed floor loading plans indicating material loading layouts, weights, stacking heights, and other pertinent information for review by the Design Team's Structural Engineer. Construction Manager shall approve all of the Vendor's storage/stocking placement locations. Vendor will deliver amounts of material to the site that will not exceed the loading capacities of the floors or cause unnecessary stockpiling of material on the site. Because of the limited site access, the Vendor will be responsible for any and all off-site storage or staging areas that may be required.
- b. No material shall be stored outside of the construction fence without the Construction Manager's approval.
- c. The Vendor shall place its equipment, additional bracing, shoring, and other appurtenances, in locations approved by Construction Manager. Vendor utilizing equipment shall provide design drawings and calculations required to support Vendor's equipment, additional bracing, shoring, and other appurtenances, signed and sealed by a professional engineer licensed in the State of New York and reviewed by the Engineers of Record for structure for effects on the permanent structure. Any bracing, shoring, and other appurtenances, shall be relocated as required as the Project progresses if required by the Construction Manager so as to avoid interference with work of Other Contractors. Any modification to the existing structure required to support the Vendor's equipment shall be made by the Vendor at its cost and approved by the Engineer of Record for structure. All fees and costs invoiced by the Engineers of Record to review the Vendor's proposed modifications shall be reimbursed to 1 WTC by the Vendor.

Deliveries

- a. The Vendor is aware of the requirements of the Department of Transportation Bureau of Traffic regulations regarding restricted vehicle lengths and times of operation in the geographical area in which the Project is situated. In addition, the Vendor must submit a logistics plan. The plan must be in conformance with the Construction Manager's requirements. The Vendor agrees that there shall be no additional costs as a result of these restrictions.
- b. The Vendor is cautioned that due to the location of this job it may encounter certain areas of special coordination involving traffic congestion, building access, material delivery, special security measures, etc. It is understood that the Vendor is aware of these conditions and the Vendor will not attempt to seek and shall not be entitled to additional monies for hardships that may arise due to its having to take special measures and precautions regarding same.

A. GENERAL CONDITIONS - continued

RIDER "A-2"
EQUIPMENT LEASE ADDENDUM
WORLD TRADE CENTER - TOWER ONE
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TRADE: TOWER CRANES #1 & #2

- c. "Paragraph intentionally deleted".
 - d. The Contract Price includes all off-hours deliveries, if required. Vendor shall schedule all off-hours deliveries with the Construction Manager. If Vendor makes off-hours deliveries the Vendor shall pay for all Standby costs due to off-hours deliveries.
 - e. The Vendor shall place its hoisting equipment in locations approved by Construction Manager. Any separate hoist engines shall be relocated as required as the Project progresses if required by the Construction Manager so as to avoid interference with work of Other Contractors.
24. **Submittal procedure.** In the event that the Contract documents are revised, the Vendor must notify the Construction Manager in writing of any proposed change to Contract Price within ten (10) calendar days from receipt of said documents. If said notification of proposed change is not made within the above-stated time period, then said revised Documents will become part of contractual obligations with no change in Contract Price.
25. **Submittal procedure.** Unless stated specifically elsewhere, only the members of Construction Manager's staff with the title "Construction Manager's Project Director" or "Senior Project Manager" are authorized to approve additional work or time and material work prior to the commencement of such work. All time and material work tickets verifying performance of changes and extras must be countersigned and coded for cost control purposes by the Construction Manager's Project Director or Senior Project Manager. The Vendor agrees that any time and material work tickets signed by an employee of the Construction Manager, not authorized to countersign time and material work tickets, have a value of (\$0) zero dollars. It is the Vendor's responsibility to obtain proper authorization for time and material and additional work in accordance with the Contract.
26. **Submittal procedure.** Unit prices defined in Rider C shall apply to additional work which is not included in the Contract and to deductions to work included in the contract and not performed by this Vendor. Modification of Work scope shall be only as requested and approved in writing by Construction Manager.
27. "Paragraph intentionally deleted".
28. **Protection.** The Vendor shall provide and maintain all protection specific to its Work above and beyond that shown, which is required by the New York City Building Code, the Authority, 1 WTC, Transit Authority, Department of Highways, OSHA and all governing authorities for persons, adjacent properties and the Work. Such protection shall be maintained during day and night periods, including weekends, holidays and bad weather shutdowns.
29. **Protection.** The Vendor will provide protection necessary to safeguard its own Work, as well as the work of Other Contractors, from damage by its own operations.
30. **Protection.** The Vendor is aware that some perimeter protection has been installed by others within or bounding the work area. Should the Vendor, if required for installation of its Work, remove protection, Vendor shall replace such protection or provide a suitable substitute in accordance with OSHA or other jurisdictional requirements at the end of the workday or immediately after working in the area. Should the Vendor fail to replace the protection as stated, the Vendor shall be charged for the replacement work as well as all associated costs, including violations, penalties and legal costs.

31. **Security and Site Access:**

- a. The truck ramp currently located on Liberty Street is projected to be removed in April 2007. Maximum allowable load on the ramp is for AASHTO HS25-44 truck (35 to 45 Tons; refer to AASHTO wheel loading).
- b. RESERVED.

A. **GENERAL CONDITIONS - continued**

- c. Construction workers will not be allowed to park on the site or on streets in the adjacent

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neighborhood. These areas will be spot checked to ensure workers are complying with this policy. Violators may be discharged from employment on the site at the discretion of the Construction Manager. This Vendor shall provide a Plan for Parking and transportation of its personnel. The plan will include the following at a minimum:

- (i) Require workers to utilize public mass transit or Vendor provided shuttle bus service.
- (ii) RESERVED.
- (iii) No Vendor vehicles will be allowed to park on-site. This requirement shall not extend to material delivery vehicles, and this Vendor's vehicles which are required to perform the Work of this Contract, which shall be permitted to park in designated loading and unloading areas only at specific pre-arranged times.

d. Prior to working in or around the PATH track area, Vendor's workforce shall be required to attend a three-hour safety course provided by the Authority. In addition, a competent individual from the Vendor's workforce shall undergo instructor-level training to train other workers regarding track safety. These courses are only offered at the Authority facilities in Jersey City, New Jersey. The cost of time, travel, and transportation expended attending the course shall be the responsibility of the Vendor.

- 32. **Security procedure.** Vendor shall comply with the Project's confidentiality requirements in accordance with Rider F. Vendor's employees shall sign individual acknowledgements of confidentiality and security procedures pertaining to handling the Contract documents. Vendor shall have these files available upon request.
- 33. **General/advertising.** Vendor, its SubVendors, suppliers, etc. shall not use the site, the Project name or their affiliation with Construction Manager or 1 WTC for publicity or advertisement of any kind whatsoever without first obtaining the written approval of 1 WTC. Signs will not be permitted on the site without the prior written consent of 1 WTC.
- 34. **General/housekeeping.** The Vendor shall provide its own labor to clean all debris from its work areas on a daily basis and to pile such debris in one location as directed by the Construction Manager. The Vendor shall also keep all street loading/staging areas, shanty areas etc., clean on a daily basis. All debris created by lunch, mid-morning, mid-afternoon breaks, etc. must be discarded in the waste receptacles provided, especially at the shanty areas, work areas, where breaks are occurring and at the street-level perimeter of the building.

Each Vendor should be aware that this Project has a zero tolerance policy with respect to these requirements for the handling of one's own debris.

Failure to comply with this provision will result in back-charges for labor costs incurred to clean up related debris, including all overtime required (at the discretion of the Construction Manager) and associated exterminating costs.

- 35. **General.** Workers shall not use loud and/or abusive language and offenders shall be dismissed. Workers shall not deface any portion of the site or any temporary facilities and offenders will be dismissed. Smoking is prohibited at the site.

B. SCOPE OF WORK

THE WORK AND COSTS HEREIN ARE BASED UPON MATERIALS FURNISHED F.O.B. JOBSITE, AND DOES NOT INCLUDE INSTALLATION. ALL STATEMENTS IN THE CONTRACT DOCUMENTS DEALING WITH ON-SITE INSTALLATION LABOR AND ASSOCIATED ON-SITE INSTALLATION (EXCEPT SUPERVISION OBLIGATIONS WHICH IS EXPRESSLY RETAINED AS VENDOR'S OBLIGATION) CONDITIONS ARE HEREBY DELETED FROM THESE CONTRACT DOCUMENTS.

Without restricting the generality of work which shall be performed within the Contract Price, it is clearly understood and agreed that this Vendor shall provide all material, labor, trucking, engineering, protection, shop drawings, approvals, applicable taxes, permits, layout, equipment, technical supervision, applicable insurances, etc., necessary for the furnishing of all specified and related equipment & appurtenances contained herein in accordance with the Contract Drawings, Specifications, Addenda and Riders, all of which become part of this Contract.

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B. SCOPE OF WORK - continued

This Vendor shall be responsible for examining all of the Documents listed on the "List of Drawings and Specifications" and all items related to this Vendor's work, and called for in these Documents, shall be included in this Contract.

This Vendor's work shall include, but not be limited to the following items, clarifications, and/or modifications:

1. The Vendor shall lease the following equipment as specified:
 - a. Crane 1: (1) One interior freestanding tower crane Favco model M760DII, diesel engine operation, fly winch and 10 ft. of jib, 108 ft. of tower, 180 ft. of modular boom, (4) four starter legs and pads, and freestanding package. Cranes to be converted to basket interior climbing cranes by the Tower Structural Steel Vendor. Cranes to be located at building core.
 - b. Crane 2: (1) One interior freestanding tower crane Favco model M760DII, diesel engine operation, fly winch and 10 ft. of jib, 108 ft. of tower, 226 ft. of modular boom, (4) four starter legs and pads, and freestanding package. Cranes to be converted to basket interior climbing cranes by the Tower Structural Steel Vendor. Cranes to be located at building core.
2. Rental Payments and Transportation Costs
 - a. Rental Payments included in the Below Grade Steel Contract:

It is acknowledged that the scope of the first 12 months, (starting in December 2006 for Crane 1, January 2007 for Crane 2) of the work is integrally related to the terms and conditions of the Below Grade Structural Steel and Metal Deck Contract issued to Banker Steel Company, LLC. The rental period under this agreement immediately follows the completion and expiration of the rental period for Banker Steel Company, LLC. Reference Section C Work Not In Contract for the specific terms of Banker Steel's rental.
 - b. Lease Term commences on December 1, 2007 for Crane 1 and January 1, 2008 for Crane 2. The rental period for Banker Steel Company, LLC pursuant to the terms and conditions of the Below Grade Structural Steel and Metal Deck Contract, shall terminate on November 30, 2007 for Crane 1 and December 31, 2007 for Crane 2. The rental period under this agreement shall commence on December 1, 2007 for Crane 1 and January 1, 2008 for Crane 2. End of term shall be the day the equipment is removed from the site. Equipment taken out of service prior to end of lease term shall be credited full rental value provided equipment has been in service for a minimum of 24 Calendar Months.
 1. Crane #1: 36 Calendar Months
 2. Crane #2: 26 Calendar Months
 - c. Rental payments, applicable taxes, and transportation costs from the jobsite of **\$3,146,663.00 Three Million One Hundred Forty Six Thousand Six Hundred Sixty Three Dollars** will be assigned to a Contractor selected by the Construction Manager for the remaining lease term and any additional full calendar months thereafter in accordance with the following schedule:
 1. Crane #1 Rental Payments of \$1,620,000.00 plus \$135,675.00 sales taxes for a total payment of **\$1,755,675.00** to be requisitioned in accordance with the following schedule:
 - a. Month 1 to 36: \$45,000.00 plus \$3,768.75 sales tax for a total payment of \$48,768.75 per calendar month.

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B. SCOPE OF WORK - continued

- b. Additional Months: \$45,000.00 plus \$3,768.75 sales tax for a total payment of \$48,768.75 per calendar month.
 - c. Additional Hours: Crane hours of use are 180 hours per calendar month. Steel Contractor is responsible for the cost of hours above 180 at a rate of \$225/hr.
2. Crane #2 Rental Payments of \$1,170,000.00 plus \$97,987.50 sales taxes for a total payment of \$1,267,987.50 to be requisitioned in accordance with the following schedule:
 - a. Month 1 to 26: \$45,000.00 plus \$3,768.75 sales tax for a total payment of \$48,768.75 per calendar month.
 - b. Additional Months: \$45,000.00 plus \$3,768.75 sales tax for a total payment of \$48,768.75 per calendar month.
 - c. Additional Hours: Crane hours of use are 180 hours per calendar month. Steel Contractor is responsible for the cost of hours above 180 at a rate of \$225/hr.
 3. Crane #1 transportation cost from the project of \$60,000.00 to be requisitioned in accordance with the following schedule:
 - a. Last Month: Crane Freight out: \$45,000.00
 - b. Last Month: Tower Sections Freight out: \$12,000.00
 - c. When Required: Starter Sections Freight out: \$ 3,000.00
 4. Crane #2 transportation cost from the project of \$63,000.50 to be requisitioned in accordance with the following schedule:
 - a. Last Month: Crane Freight Out: \$48,000.00
 - b. Last Month: Tower Sections Freight Out: \$12,000.00
 - c. When Required: Starter Sections Freight Out: \$ 3,000.50
3. Each crane shall have the following capability, equipment and devices:
 - a. The crane system (crane, tower, boom, and jumping system) will be capable of providing the full capacity of the crane for all loads at all radii in accordance with Favco's published capacity charts. The crane system will specifically be able to lift 21.9 tons at a radius of 140 ft as well as 54.4 tons at a radius of 60 ft (utilizing a 2 part line) with the 180 ft boom, including the weight of the line and block.
 - b. All state of the art electronic safety systems, engine management systems, and safe load indicator systems.
 - c. Any component of this Vendor's equipment requiring replaceable batteries for control systems back-up power, logic circuits, or programmed memory storage etc. shall be specifically identified in shop drawing material lists submittal(s). The Vendor shall furnish with the equipment upon delivery, and prior to start-up and commissioning operations, a complete set of "new" replacement batteries (for each machine) for turnover to the Owner's operating personnel.
 - d. Each crane shall be equipped with approved FAA warning lights, control circuitry, and wiring. Vendor to provide a FAA warning light on top of boom, unless a greater quantity is required by the FAA.
 - e. Paragraph intentionally deleted.
 - f. Tower sections to be assembled with tower bolts or pins
 - g. Intentionally deleted.

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B. SCOPE OF WORK - continued

- h. Minimum equipment requirements:
1. 1200 ft. of 1 5/8" non-spin cable main hoist drum.
 2. 1 1/4" non-spin auxiliary hoist.
 3. Main hoist line speed of 20 tons at 250 fpm.
 4. (1) One 55-ton single fall hook.
 5. (1) auxiliary hoist hook.
 6. (1) single shive block.
 7. Engines shall be manufactured by Caterpillar that meet or exceed the most stringent Federal EPA emission requirements.
 8. Machinery house to have split deck.
 9. Minimum luff speed of 90 seconds from maximum to minimum radius.
 10. All bolts and fitting empirical measuring system, if possible.
 11. Gear boxes to have gears and bearing that are shelf items located in the United States.
 12. Pumps and motors to be manufactured by RexRoth.
 13. Load sensing system to be manufactured by FAVCO or Robway.
 14. All platforms, handrails, and ladders to be OSHA compliant.
 15. Valves, filters, and gauges to be shelf items located in the United States.
 16. Wind speed indicators.
 17. Drum indicators.
 18. Anti two-block devices.
- i. Provide Internal Jumping System (Baskets) for each crane at a cost of One Million Two Hundred Ten Thousand Dollars (\$1,210,000.00) plus tax
1. Engineering, shop drawings, and fabrication \$82,500 each crane (Added by change order to the Below Grade Steel Contract – Banker Steel, LLC).
 2. Lower basket, only: \$10,000 per month each crane (Added by change order to the Below Grade Steel Contract – Banker Steel, LLC).
 3. Upper and lower basket including all appurtenances required for a complete jumping system: \$21,041 per month each crane.
 4. Rental as stated in item 2 and 3 above will be capped at \$850,000 per basket system (one system per crane, excluding engineering, shop drawings and fabrication stated in Item 1 above).
- to
4. Tower cranes shall satisfy the following logistic requirements as detailed in the attached documents:
- a. Proposed 1 WTC – Freedom Tower Logistics report dated November 16, 2005
 - b. Site Logistics Plan – Foundation and Below Grade, dated November 29, 2005.
 - c. Site Logistics Plan – Superstructure Phase, dated November 29, 2005.
5. For purposes of complying with the requirements of the Building Code of the City of New York and the Port Authority of New York & New Jersey, which calls for a Certificate of On-Site Inspection, the Vendor shall furnish the following:
- a. Prepare, file, and obtain prototype approval of tower cranes from NYC DOB, Cranes and Derricks Division.
 - b. Prepare, file, and obtain in the name of the User from NYC DOB, Cranes and Derricks Division or the Port Authority, C/D registrations for each tower crane and assemblies.
 - c. Provide all paperwork and supporting documentation for the purpose of on-site filing of tower crane installation with NYC DOB, Cranes and Derricks Division to the Superstructure Concrete Vendor and/or Structural Steel Vendor. Filing for on-site inspection shall be by the Vendor erecting the tower cranes.

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B. SCOPE OF WORK - continued

All required calculation, drawings, and forms required by NYC DOB to be prepared by a Professional Engineer licensed to practice in the State of New York, engaged by the Vendor, are included in the Contract Price. In addition to the foregoing, the Vendor shall make a complete engineered submission to 1 WTC, LLC for review, including a peer review. The Vendor shall completely satisfy any and all comments from 1 WTC, LLC.

6. The Vendor shall provide (4) four bound sets and (1) one unbound set of complete technical data and submittals to the Construction Manager. Data shall include, but not be limited to: complete physical dimensions, weights and moments, materials, lifting capacity data, governing code/regulatory body classification, electrical characteristics, engine performance, recommended maintenance, and other appurtenances for a complete submission.
7. The Vendor shall furnish to the Construction Manager a list of recommended spares/replacement parts for each piece of equipment including delivery cost thereof.

8. Testing, Commissioning, and Field Operations

- a. The Vendor shall furnish to the Construction Manager separate written certifications (on the Vendor's corporate letterhead) that each major piece of equipment furnished by this Vendor has: a) been thoroughly inspected upon delivery for any missing items, components or damages, b) the subsequent on-site installation complies with the Vendor's OEM factory pre-operational installation criteria, and c) is ready for start-up. Contained in these certifications shall be the specific nameplate data of each piece of equipment, and unit serial number(s).
- b. All equipment shall be factory assembled and tested prior to shipment to the project site. Vendor shall develop testing procedures and performing the testing to verify equipment performance. Test reports shall be prepared and signed off by the vendors QC/QA personnel present during the test and forwarded within (2) weeks of satisfactorily completing such test. The Construction Manager, its consultants, and Vendors are to be notified (2) two weeks in advance of such test. Vendor shall not perform these tests unless the Construction Manager or its agents are present.
- c. DELETED.
- d. Vendor shall provide all required on site technical supervision for assembly, start-up, commissioning, operator training, jumping, and removal of all equipment provided under this Contract.
- e. "Paragraph intentionally deleted".
- f. The Vendor is responsible to coordinate with the Construction Manager to provide technical field supervision, support, and expertise for the following:
 1. Delivery to site as specified by Construction Manager.
 2. Rigging.
 3. Installation, Certification (see paragraph B-8e above) and Start-up.
 4. Commissioning.
 5. Training at manufacturer's plant of the Superstructure Concrete Vendor and the Superstructure Steel Vendor's Operating Personnel.
 6. Limiting of shipped components to 45,000lbs increments.
- g. All deliveries shall be made by Teamster Drivers, no exceptions.

9. Warranty and Preventative Maintenance

- a. Vendor Price shall include a (2) Two Year Warranty from field commissioning of equipment and includes all vendor required service in the field by factory certified union mechanics during the warranty period. Maintenance shall be performed on overtime and weekends so as to not interfere with construction operations. It is noted that the first year is included in the Below Grade Structural Steel Contract.

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B. SCOPE OF WORK - continued

- b. Vendor shall establish a repair service located not greater than 50 miles from the site to provide (2) two hour response to service calls placed 24 hours per day, 7 days per week including holidays.
- c. Repairs that are not covered under the warranty and maintenance agreement shall be billed at actual verifiable cost for labor and materials plus 15% for overhead and profit. Labor shall be billable for time on the project. Travel time to and from the project site is not billable.
- d. Scheduled and preventative maintenance indicated in vendor provided operations and maintenance manuals shall be performed by the Contractor(s) operating the equipment.

10. Green Building Requirements

The Owner is committed to utilizing recycled and environmentally friendly materials in all construction components. The following items shall be incorporated into the work of the Contract at no additional cost.

- a. All steel shall have a minimum of 50% recycled content.
- b. The Vendor's operating equipment shall only use low sulfur diesel fuel on this project. Sulfur content shall not be greater than 30 ppm.
- c. All diesel burning equipment shall comply with U.S. EPA tier III emission standards.
- d. Provide all reports and documents as required to assist the Construction Manager with all reporting requirements.

11. Title

Vendor retains title to the equipment. Superstructure Concrete Trade Vendor and the Superstructure Steel Trade Vendors (prime responsibility assigned to the Vendor operating the equipment) agree to keep the equipment free from all liens or other encumbrances.

12. Insurance

At the Owners' Cost, the Construction Manager will provide for the duration that the Trade Vendor is operating the equipment, All Risk Physical Damage Insurance to cover the full insurable value of the equipment for its loss or damage from any cause, as well as coverage for all other incurred costs due to the loss or damage to the equipment including, but not limited to, fire, theft, flood, explosion, overturning, accident, acts of terrorism, and Acts of God occurring during the lease term. Any insurance deductibles that result from covered claims will be the responsibility of the Trade Contractor operating the equipment.

- a. Equipment Insurable Value
 - 1. Crane #1 and tower sections: \$4,000,000.00
 - 2. Crane #2 and tower sections: \$4,000,000.00
- b. The Trade Contractor operating the equipment includes all the insurance coverages and requirements in Rider "D", Insurance Rider, including the Subrogation Waivers noted in Item "K" of the Rider.
- c. The Vendor shall include Banker Steel Company, LLC and SOLERA/DCM Joint Venture as additional insured covered by any insurance policy offering coverage for liability, property damage, personal injury, wrongful death, and/or other damages occurring during the rental period of this agreement concerning the use, operation, maintenance or inspection of the Tower Cranes during either the rental period of Banker Steel Company, LLC or the rental period under this agreement.
- d. To the fullest extent permitted by law, Vender shall indemnify and hold harmless Banker Steel Company, LLC, its officers, directors, partners, members, employees and insurers, and Solera/DCM Joint Venture, its officers directors, partners,

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B. SCOPE OF WORK - continued

members, employees and insurers, from and against any and all costs, losses, and damages (including but not limited to all fees and charges of engineers, architects, attorneys, and other professionals, and all court or arbitration or other dispute resolution costs) occurring after the commencement of this lease period specified in this agreement, and caused by or in any way related to the operation or maintenance of either or both of the two Favco 760 tower cranes which are the subject of this agreement. Vendor's obligation to indemnify and hold harmless Banker Steel Company, LLC shall commence on December 1, 2007 for Crane 1 and January 1, 2008 for Crane 2.

C. WORK NOT IN CONTRACT

1. 100% Performance and 100% Labor and Material Payment Bonds. (See Rider "C" Alternate No. 1).
2. The following rental terms are included in the Below Grade Steel Contract issued to Banker Steel: Rental payments, applicable taxes, and transportation cost to the jobsite of **\$1,293,450.00 One Million Two Hundred Ninety Three Thousand Four Hundred Fifty Dollars** for first (12) twelve calendar months has been included in the Contract Price for Below Grade Structural Steel issued to Banker Steel Company LLC. Payment schedule for first (12) twelve months is as follows:
 1. Prepayment deposit of rental charges of \$216,000.00 plus \$18,090.00 sales taxes for a total payment of **\$234,090.00** to be included in first Banker Steel Requisition.
 2. Crane #1 Rental Payments of \$432,000.00 plus \$36,180.00 sales taxes for a total payment of **\$468,180.00** to be requisitioned in accordance with the following schedule:
 - a. Month 1 and 2: No payment. Included in prepayment deposit.
 - b. Month 3: \$27,000.00 plus \$2,261.25 sales tax for a total payment of \$29,261.25 per calendar month.
 - c. Month 4 to 12: \$45,000.00 plus \$3,768.75 sales tax for a total payment of \$48,768.75 per calendar month
 3. Crane #2 Rental Payments of \$432,000.00 plus \$36,180.00 sales taxes for a total payment of **\$468,180.00** to be requisitioned in accordance with the following schedule:
 - a. Month 1 and 2: No payment. Included in prepayment deposit.
 - b. Month 3: \$27,000.00 plus \$2,261.25 sales tax for a total payment of \$29,261.25 per calendar month.
 - c. Month 4 to 12: \$45,000.00 plus \$3,768.75 sales tax for a total payment of \$48,768.75 per calendar month.
 4. Crane #1 transportation cost to the project of **\$60,000.00** to be requisitioned in accordance with the following schedule:
 - a. Month 1: Crane Freight In: \$45,000.00
 - b. Month 1: Tower Sections Freight In: \$12,000.00
 - c. Month 1: Starter Sections Freight In: \$ 3,000.00
 5. Crane #2 transportation cost to the project of **\$63,000.00** to be requisitioned in accordance with the following schedule:
 - a. Month 1: Crane Freight In: \$48,000.00
 - b. Month 1: Tower Sections Freight In: \$12,000.00
 - c. Month 1: Starter Sections Freight In: \$ 3,000.00
3. Receipt and unloading of equipment from truck (s) at the designated site.

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C. WORK NOT IN CONTRACT - continued

4. Installation, dismantling, rigging and hoisting of leased machinery or equipment. (Technical supervision for the preparation, planning, and onsite observation during these events however, is included.)
5. Engineering, shop drawings, and fabrication of the Internal Climbing System (Baskets) for cranes at a cost of \$62,500 per crane and the rental of the lower basket at a cost of \$10,000 per month for each crane is included in the Below Grade Steel Contract - Banker Steel Company, LLC .
6. Scheduled and preventative maintenance. This work will be performed by the contractor operating the equipment.
7. Upper Crane basket and manpower associated with jumping of cranes.
8. All manning and auxiliary equipment required for the removal of the Tower Cranes at the end of the job.

D. SHOP DRAWINGS AND SUBMITTALS

This Vendor shall immediately expedite the submission of shop drawings and ordering of materials and equipment so that work of this Contract shall be delivered and installed in sufficient time to comply with the Project Construction Schedule. This Vendor agrees that the following specific scheduling intervals shall be maintained by it and coordinated with other trades provided that the work of others has advanced sufficiently to permit the sequencing as called for:

1. Work under this Contract shall commence immediately upon receipt of instructions from the Construction Manager and shall proceed when and where directed, with sufficient labor and material, to allow the entire project to be completed in accordance with the Project Construction Schedule. The work under this Contract shall be coordinated with the work of other trades in order not to delay the progress of the job. The Vendor shall follow all interim schedules that may be issued by the Construction Manager as the job conditions require.
2. A submittal schedule log indicating a description and submission dates of all drawings, schedules, literature, samples, certifications, etc., as required by the specifications and terms of this Contract shall be completed and submitted for approval within two (2) weeks of Contract award.
3. All required shop drawings and submittals shall be submitted in a uniform flow as drawings for each area of the building are completed, and not accumulated for a single submission.
4. This Vendor shall submit and maintain record documents (shop drawings, as-built, etc.) per - "Submittals".
5. All submissions will be submitted with a stamp indicating that the submittal has been reviewed by the Vendor for conformance with the Contract Documents, coordinated with the work of other trades, and approved by the Vendor.
6. All shop drawings shall be prepared using latest version of AutoCAD and record as-builts shall be provided to Owner at Substantial Completion in both disk format and hard copy prints.
7. Vendor shall utilize the Construction Manager's electronic documents control system if so directed.

E. SCHEDULE-TIME OF PERFORMANCE

1. This Vendor is to submit the following to the Construction Manager:
 - a. intentionally deleted
 - b. intentionally deleted.

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E. SCHEDULE-TIME OF PERFORMANCE - continued

- c. Name and resume of trade Vendor's project manager to be assigned to this project, for review and approval by Construction Manager.
 - d. List of self-performed and subcontracted work items.
 - e. M/WBE plan and names of proposed suppliers, vendors and sub-Vendors.
2. Within two weeks of contract award, this Vendor is to submit the following to the Construction Manager:
 - a. Trade payment breakdown
 - b. Certificate of insurance
 - c. Material procurement logs.
 - d. Cash flow schedule.
 3. "Paragraph intentionally deleted".
 4. Paragraph intentionally deleted.
 5. "Paragraph intentionally deleted"
 6. Paragraph intentionally deleted.
 7. It is agreed that for purposes of scheduling the various operations of the Vendor's work, provided Vendor's submittals are reasonably complete and accurate, the Owner's Crane Consultant shall be allowed ten (10) working days, or fourteen (14) calendar days, whichever is longer, for the approval of shop drawings, from time of Owner's Crane Consultant receipt to time of Owner's Crane Consultant return to Construction Manager. The Vendor shall establish a steady flow of shop drawings for approval and avoid the accumulation of an excessive quantity of shop drawings in a single submission.
 8. The Vendor shall furnish to the Construction Manager copies of all material orders (without pricing), cutting lists, shop tickets and acknowledgments of such orders.
 9. The Vendor shall furnish to the Construction Manager transparencies and/or prints of shop drawings in such quantities as determined by the Architect, which shall be used for approval of the Vendor's work.
 10. Paragraph Intentionally deleted.
 11. Vendor will submit the following on a weekly basis. Failure to do so is grounds for withholding payment:
 - a. Detailed reports regarding status of engineering submissions, procurement, and fabrication operations.
 12. Paragraph intentionally deleted.
 13. Paragraph intentionally deleted.
 14. Paragraph intentionally deleted.

F. SAFETY

1. The Vendor must submit its own Site Specific Health and Safety Plan (HASP) prior to commencing work on the site or initial progress payment will be withheld. The Vendor shall revise the HASP as many times as project conditions change and as required at not

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TRADE: TOWER CRANES #1 & #2

F. SAFETY - continued

additional cost. HASP shall include a detailed fall protection plan for all working/walking surfaces @ a height of 6'-0" or greater. Vendor must demonstrate on site use of fall protection and provide written documentation of workers trained on fall protection use.

2. Manufacturers, suppliers, vendors, Vendors, or sub-Vendors are required to comply with the OSHA Hazard Communication Standard 29 CFR 1910.1200 and 29 CFR 1926.59 and supply Construction Manager with the appropriate Material Safety Data Sheet, including updates, at the time of initial shipment of the hazardous material to the project. Each Vendor is responsible for ensuring any sub Vendor they use comply with their respected HASP and applicable site safety standards.
3. Vendor is aware of the requirements of the Site Safety Plan on file with the Building Department and that there is a Site Safety Management Vendor employed by the Construction Manager, for the project and shall fully cooperate with same, and comply with the Site Safety Manager's direction. Vendor to comply with the requirements of the Owner's Safety Plan. The Vendor shall closely adhere to the Construction Manager's Site Safety Requirements during all phases of its operations. All costs associated with the foregoing are included in the Contract Price.
4. Paragraph intentionally deleted.
5. Drug and Alcohol (including beer) use on the site will not be tolerated. Any on site employee who is found to be under the influence of or ingesting drugs or alcohol (including beer) must be immediately removed from the site.
6. Paragraph intentionally deleted.
7. Vendor's safety program shall be subject to audit and review by the Construction Manager's Site Safety Manager. Failure to comply with the safety requirements of the project may result, at the discretion of the Construction Manager, in the following amounts being deducted from the Contract Price for an infraction of the Safety Program:
 - a. First Offense: Warning - no monetary deduct.
 - b. Second Offense: \$500.00
 - c. Third Offense: \$1,000.00
 - d. Further Offenses: \$2,000.00 for each additional offense

Deductions shall be non-cumulative for violation of multiple provisions of the site safety program. Orientation on fall protection, electrical, and struck by hazard shall serve as the 1st warning under the violation policy. Workers may be permanently removed from site on the 1st serious offence e.g. violation of fall protection standard, fighting, use of alcohol or drugs on site, etc.).

G. QUALITY ASSURANCE

1. Reference Standards: All work of this Contract shall be performed in strict accordance with the Codes and Standards noted below and with the Contract Documents. When more than one of the Reference Standards and/or the Contract Documents applies to a particular portion of the work, the most stringent shall govern.
 - a. "Building Code of the City of New York" - with all amendments to date.
 - b. Rules and regulations of the Port Authority of New York & New Jersey
 - c. "29 CFR Part 1926 OSHA Standards, Latest edition"

The requirements of any additional Reference Standards cited by the Documents noted above shall be considered as being mandatory for this project.

RIDER "A-2"
EQUIPMENT LEASE ADDENDUM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

June 16, 2006
(Revision #5)

TRADE: TOWER CRANES #1 & #2

2. Work that is out of specified tolerance and/or does not meet other project requirements under this Contract shall be corrected, repaired or replaced immediately so as not to delay project construction schedules or else at a later time as directed by the Vendor, at no additional cost. Fall protection removed for the installation of contractual work must be reinstalled prior to leaving the work area.
3. Shop drawings and detail drawings shall be provided by this Vendor, utilizing the most modern detailing practices applicable to this Project, incorporating speed and economy in fabrication and erection methods, and shall be submitted expeditiously as further elaborated on in Section "E" of this Rider.
4. Paragraph intentionally deleted.
5. Vendor must meet all Port Authority of New York and New Jersey quality and acceptance requirements.

Group\purch\pre-purch tower cranes\la.2.con rev 7



Ex. 4

July 2, 2007
TOWER 1 WTC
RIDER "B"
LIST OF DRAWINGS AND SPECIFICATIONS
ISSUED FOR ADDENDUM No. 37

RIDER "C"
ALTERNATES AND UNIT PRICES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

July 9, 2007
(Revision #3)

TRADE: STRUCTURAL STEEL AND METAL DECK (TOWER)

ALTERNATES - continued

ALTERNATE NO. 8

In the event that the first splice above the First Floor is based on the 30 June 2006 version of drawings S3.10 to S3.20 in lieu of the splice elevation indicated in the Contract Documents.

DEDUCT \$ _____

ALTERNATE NO. 9

Intentionally deleted.

ALTERNATE NO. 10

Intentionally deleted.

ALTERNATE NO 11

In the event that this Contractor is directed to shop install the following steel assemblies for the attachment of the exterior building façade panels at the lower and upper two mechanical plenums. The steel assemblies will be engineered, fabricated and delivered to this Contractor's fabrication facility accompanied with layout drawings, locating each assembly by others for this Contractor to weld onto the primary structural steel members.

- a. Weld a total of 5,250 dual steel angle assemblies to structural steel perimeter beams at the three mechanical plenums as shown in the attached Benson Industries details 106 and 112.

ADD \$ _____

- b. Weld a total of 750 steel brackets to structural steel beams framing perpendicular to the louver wall and curtain wall at the three mechanical plenums as shown in the attached Benson Industries detail 120.

ADD \$ _____

- c. Weld a total of 1500 steel brackets to the structural steel perimeter columns at the three mechanical plenums as shown in the attached Benson Industries detail 145.

ADD \$ _____

- d. Weld a total of 3200 steel plate assemblies to the structural steel perimeter columns at the three mechanical plenums as shown in the attached Benson Industries detail 108.

ADD \$ _____

- e. Weld a total of 1000 steel brackets to the structural steel perimeter corner columns in the three mechanical plenums as shown in the attached Benson Industries detail 108.

ADD \$ _____

- f. Weld a total of 2500 steel tube brackets to the structural steel perimeter beams and columns in the lower mechanical plenum as shown in the attached Benson Industries detail 106.

ADD \$ _____

July 9, 2007
(Revision #3)

RIDER "C"
ALTERNATES AND UNIT PRICES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

TRADE: STRUCTURAL STEEL AND METAL DECK (TOWER)

ALTERNATES - continued

ALTERNATE NO. 12A

In the event that the Owner does not process payments (by two party check) with zero percent retainage for mill material as invoiced by the Mill.

ADD \$ _____

ALTERNATE NO. 12B

In the event that the Owner provides a mobilization payment of Five Million Dollars (\$5,000,000.00) 60 days after contract signing and Fifteen Million Dollars (\$15,000,000.00) upon mobilizing on site.

DEDUCT \$ _____

ALTERNATE NO. 13

Intentionally deleted.

ALTERNATE NO. 14

In the event that this Contract is not accepted and not executed by the Owner forty-five (45) days from July 13, 2007 which is August 27, 2007.

ADD \$ _____

RIDER "C"
ALTERNATES AND UNIT PRICES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

July 9, 2007
 (Revision #3)

TRADE: STRUCTURAL STEEL AND METAL DECK (TOWER)

UNIT PRICES

1. For addition or deletion of members greater than 1,600 pounds. Unit prices based on mill ordered materials and include all bolted connections parts, detailing material, waste, erection, and trucking. Detailing costs are not included in unit prices. Member lengths measured from centerline of connecting members or splice locations as applicable plus 5% for shear connections.
 - a. Wide flange members \$ 4000 /ton
 - b. Built-up plate members \$ 4945 /ton
 - c. Add to unit prices 1a to 1b for warehouse materials \$ 544 /ton
 - d. Add to unit price 1a for tailor made sections \$ 628 /ton
 - e. Add to unit prices 1a to 1b for detailing and engineering cost (use hourly rates)
 - f. Add to unit prices 1a to 1b for out of sequence detailing cost (use hourly rates)
 - g. Add to unit prices 1a to 1b for out of sequence fabrication cost (rehandling cost only) \$ 500 /ton
 - h. Add to unit prices 1a to 1b for out of sequence erection cost (Crane set only. Includes all hardship cost prior to demobilization of crane) \$ 250 /ton
 - i. Subtraction to unit prices 1a to 1b for member deletions where the Contractor has received material. Unit price includes all salvage value, rehandling, restocking, and all other related cost. \$ 900 /ton

2. For increase or decrease in the weights of members that are part of the base contract made prior to fabrication. Unit prices based on mill ordered materials, and include all bolted connections parts, detailing material, waste, erection, and trucking. Detailing costs are not included in unit prices. Member lengths measured from centerline of connecting members or splice locations as applicable plus 5% for shear connections.
 - a. Wide flange or rolled members \$ 1407 /ton
 - b. Built-up plate members \$ 1717 /ton
 - c. Add to unit prices 2a to 2b for warehouse materials \$ 450 /ton
 - d. Add to unit price 2a for tailor made sections \$ 616 /ton
 - e. Add to unit prices 2a to 2b for redetailing for adjustments to member weight up or down after initial shop drawing submission (use hourly rates)

3. For addition or deletion of wide flange members. Unit prices based on mill ordered materials, and include all bolted connections parts, detailing material, waste, erection, and trucking. Detailing costs are not included in unit prices. Member lengths measured from centerline of connecting members or splice locations as applicable plus 5% for shear connections.
 - a. Between 1,600 lbs and 1,200 lbs member weight \$ 4119 /ton
 - b. Between 1,200 lbs and 800 lbs member weight \$ 4469 /ton
 - c. Between 800 lbs and 200 lbs member weight \$ 5386 /ton
 - d. Below 200 lbs member weight \$ 6263 /ton
 - e. Add to unit prices 3a to 3d for channels, angles, tee, and other rolled shapes \$ 1157 /ton
 - f. Add to unit prices 3a to 3d for structural pipe and tubes \$ 1173 /ton
 - g. Add to unit prices 3a to 3d for warehouse materials \$ 292 /ton
 - h. Add to unit prices 3a to 3d for detailing & engineering cost (use hourly rates)
 - i. Add to unit prices 3a to 3d for out of sequence detailing cost (use hourly rates)
 - j. Add to unit prices 3a to 3d for out of sequence fabrication cost (Rehandling cost only) \$ 500 /ton
 - k. Add to unit prices 3a to 3d for out of sequence erection cost (Crane set only. Includes all hardship cost prior to demobilization of crane) \$ 400 /ton
 - l. Subtraction to unit prices 3a to 3d for member deletions where the Contractor has received material. Unit price includes all salvage value, rehandling, restocking, and all other related cost. \$ 880 /ton

RIDER "C"
ALTERNATES AND UNIT PRICES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

July 9, 2007
 (Revision #3)

TRADE: STRUCTURAL STEEL AND METAL DECK (TOWER)

UNIT PRICES-continued

| | | | |
|-----|---|----------------------|------|
| 4. | For additions, deletions and changes to connections from specified connections | | |
| a. | High strength bolts - Shop | \$ 9 | /ea |
| b. | High strength bolts - Field | \$ 22.50 | /ea |
| c. | Welds - Shop | \$ 67.50 | /lbs |
| d. | Welds - Field | \$ 225 | /lbs |
| e. | Plate, angle, or channel materials (Shop only) | \$ 8.10 | /lbs |
| f. | Drilled in expansion anchors into concrete | \$ 90 | /ea |
| 5. | Change in weld size for built-up members - factory only | \$ TBD | /lbs |
| 6. | Web penetrations, includes detailing and engineering costs - Maximum size indicated | | |
| a. | 4" Diameter - Unreinforced | Field \$ 750 | /ea |
| | | Shop \$ 119 | /ea |
| b. | 9" Diameter - Reinforced (1 sided plate) | Field \$ 1303 | /ea |
| | | Shop \$ 500 | /ea |
| c. | 11" Diameter - Reinforced (1 sided plate) | Field \$ 1514 | /ea |
| | | Shop \$ 611 | /ea |
| c. | 36" x 15" - Reinforced Hole | Field \$ 4818 | /ea |
| | | Shop \$ 2003 | /ea |
| g. | 40" x 15" - Reinforced Hole | Field \$ 5355 | /ea |
| | | Shop \$ 2226 | /ea |
| h. | 36" x 12" Reinforced Notch | Field \$ 4142 | /ea |
| | | Shop \$ 937 | /ea |
| i. | 72" x 19" - Reinforced Notch | Field \$ 5512 | /ea |
| | | Shop \$ 1568 | /ea |
| 7. | Galvanized finish to structural steel | \$ 725 | /ton |
| 8. | Prime paint | \$ 300 | /ton |
| 9. | Finish Paint System | \$ N/A | /ton |
| 10. | Material salvage value | DEDUCT \$ 100 | /ton |
| 11. | For addition or deletion of net metal deck. | | |
| a. | 3" 16 Gauge Floor Deck | \$ 4.65 | /SF |
| b. | 3" 18 Gauge Floor Deck | \$ 3.75 | /SF |
| c. | 3" 19 Gauge Floor Deck | \$ 3.38 | /SF |
| d. | 3" 20 Gauge Floor Deck | \$ 2.75 | /SF |
| 12. | For addition or deletion of metal pour stop | | |
| a. | 20 Gauge | \$ 7.88 | /LF |
| b. | 18 Gauge | \$ 8.50 | /LF |
| c. | 16 Gauge | \$ 9.19 | /LF |
| d. | 14 Gauge | \$ 9.56 | /LF |
| e. | 12 Gauge | \$ 10.06 | /LF |
| f. | 10 Gauge | \$ 10.50 | /LF |
| g. | 1/4" Bent Plate | \$ 19.38 | /LF |
| h. | 3/8" Bent Plate | \$ 52.50 | /LF |
| i. | Cell Closure | \$ 2.75 | /LF |
| j. | For addition or deletion of 3/8" plate on beams to | \$ 18.75 | /LF |
| 13. | For addition or deletion of stud shear connectors, vertical or horizontal | | |
| a. | Field | \$ 4.31 | /ea |
| b. | Shop | \$ 1.94 | /ea |

July 9, 2007
(Revision #3)**RIDER "C"**
ALTERNATES AND UNIT PRICES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK**TRADE: STRUCTURAL STEEL AND METAL DECK (TOWER)****UNIT PRICES-continued**

14. To cut out and reinforce (unframed) deck openings for mechanical trades including reinforcing material in accordance with detail S-9/S-0.22. Layout of unframed openings shall be performed by others at no cost to Construction Manager.
- | | | |
|----|--|---------------|
| a. | up to a 12" by 12" opening | \$ 190.00 /ea |
| b. | greater than 12" by 12" up to a 2' by 2' opening | \$ 222.50 /ea |
| c. | greater than a 2' x 2' opening | \$ 20.50 /LF |
15. Hoisting of material for other trades per 1/4 hour of crane time per pick including crew
- | | | |
|----|----------------------|---------------|
| a. | @ Straight time rate | \$ 1750 /pick |
| b. | @ Overtime rate | \$ 2500 /pick |
16. Rental of crane used for main member erection
- | | | |
|----|---|----------------------------------|
| a. | Equipment rental including upper and lower baskets; excluding maintenance | \$ 15,240 /wk (Per Rider A-2) |
| b. | Operating engineers | \$ 20,000 /wk |
| c. | Ironworker raising gang | \$ 12,500 /day |
17. Shop labor rates \$ 87.50 /hour
18. Shipping rates \$ 150 /ton
19. For additional detailing costs (Rate shall be good for any additional detailing charges regardless of lead time given or quantities of drawings required) \$ 75 /hour
20. For additional engineering costs (Rate shall be good for any additional detailing charges regardless of lead time given or quantities of drawings required) \$ 150 /hour
21. Rental of welding machine including operator \$ 300 /hour
22. Rebar couplers attached to steel members in the field
- | | | |
|----|-----|---------------|
| a. | #5 | \$ 100.00 /ea |
| b. | #6 | \$ 112.50 /ea |
| c. | #8 | \$ 125.00 /ea |
| d. | #10 | \$ 150.00 /ea |



RIDER "D"
INSURANCE RIDER - LABOR AND MATERIAL
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

November 30, 2006

INSURANCE

The parties agree that the Project shall be insured as set forth in A - M below. Notwithstanding the insurance to be provided in accordance with this article, 1 WTC may elect to provide an Owner Controlled Insurance Program (OCIP). The parties agree that if and when an OCIP is put in place by 1 WTC, the requirement of Contractor to provide "A" and "B" below shall no longer be in effect for on-site Work, however "A" and "B" shall continue to be provided for off-site activities. The Contractor agrees to fully cooperate with 1 WTC and the Construction Manager in the development of the OCIP, and the terms of the OCIP, including, but not limited to:

- a) Cooperation with the OCIP Safety Program as developed in conjunction with the Construction Manager, 1 WTC, 1 WTC's Consultants and Insurance Carrier.
- b) Completing the required documentation, and causing all of Contractor's eligible Subcontractors to complete the required documentation including, but not limited to:
 - i) Enrollment Information
 - ii) Payroll Information
 - iii) Safety Program Information
- c) Cooperating with any potential accident or claim investigations and any specific reporting requirements superseding those identified in A - M below
- d) Provide 1 WTC and Construction Manager in Contractor's bid a deduct alternative for deduction coverages A and B below, and indicate the pro rata amount on a percent of completed work basis
- e) Provide 1 WTC, Construction Manager or designated OCIP administrator with appropriate credits for the cost of insurance that will not be required to be provided as a result of coverage afforded under the OCIP by completing a Bid Deduction Worksheet specifically identifying the costs associated with Workers' Compensation, Commercial General Liability, Excess Liability and other coverages to be identified.
- f) Allowing 1 WTC, Construction Manager and OCIP administrator to audit Contractor's records to determine appropriate charges and credits for all insurance costs.

Prior to commencement of any Work under this Contract and until all obligations under this Contract are fulfilled, the Contractor, and each and every Subcontractor of the Contractor, shall, each at its sole expense, maintain the following insurance on its own behalf, and furnish to 1 WTC and Construction Manager, Certificates of Insurance evidencing same and reflecting the effective date of such coverage as follows:

The term "Contractor" and/or "Subcontractor" as used in this insurance rider, shall mean and include Contractors and Subcontractors of every tier.

- A. Worker's Compensation and Occupational Disease Insurance in accordance with the applicable law or laws; Employer's Liability Insurance with Limit of Liability as required by New York State.

The Contractor shall provide a copy of the "Employer's First Report of Injury" or its equivalent to Tishman Construction Corporation, 666 Fifth Avenue, New York, New York 10103, Attn: Risk Management Department, within thirty (30) days of any injury or illness to any employee of the Contractor arising out of, or alleged to have arisen out of or during the course of Work performed on this Project. Contractor shall cooperate by providing all reports mandated by the State of New York upon request.

- B. Commercial General Liability (together with any excess liability or umbrella liability insurance coverage) with a combined Bodily Injury and Property Damage limit of not less than Twenty Five Million Dollars (\$25,000,000) per occurrence and in the aggregate. The general aggregate must be applicable on a per project basis. Coverage must include the following:

1. Contractual Liability for liability assumed under this Contract and all other contracts relative to the Project.
 - a. Delete contractual exclusion, or any other policy exclusions, for Work done within 50 Feet of a Railroad, Lightrail, subway or similar tracked conveyance.
 - b. Should Contractor be unable to obtain endorsement deleting Contractual (or other) exclusion pertaining to work within 50 Feet of a Railroad, then Contractor shall be required to provide Railroad Protective Liability Insurance (RPLI) as follows:
 - 1) Named Insured: The Port Authority of New York & New Jersey and Port Authority Trans Hudson (PATH).
 - 2) Limits of Liability: At least Two Million (\$2,000,000) Dollars per occurrence, with an aggregate of at least Six Million (\$6,000,000) Dollars.



RIDER "D"
INSURANCE RIDER - LABOR AND MATERIAL
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

November 30, 2006

- 3) Policy to include all Work performed by the Contractor and their subcontractors of any and all tiers.
2. Completed Operations/Products Liability with three (3) year extension beyond completion and acceptance of the Project.
3. Broad Form Property Damage.
4. "XC&U" Perils Covered, where applicable
5. Personal Injury Liability (A, B & C) and Advertising Injury Coverage
6. Independent Contractors.
7. Additional Interest/Insured Endorsement (CG2010 November 1985 version, or its equivalent) must be furnished reflecting the inclusion of the interests of those parties listed on Schedule 1 hereto, together with their respective parent companies, corporations and/or partnerships and their owned, controlled, affiliated, associated and subsidiary companies, corporations, and/or partnerships and the respective agents, consultants, principals, partners, servants, officers, stockholders, directors and employees of each and all other indemnities named in the Contract as Additional Insureds. The endorsement must specifically include Completed Operations coverage for the Additional Insureds.
8. Unless otherwise agreed by 1 WTC, the liability policy(ies) shall be specifically endorsed "The insurer(s) shall not, without obtaining the express advance written 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 Authority, the immunity of the Authority, its Commissioners, officers, agents or employees, the governmental nature of the Authority or the provisions of any statutes respecting suits against the Authority."
[CONFIRM]
9. Coverage is to be endorsed to reflect that the insurance provided is to be primary and non-contributory for the Contractor, WTC Redevelopment LLC, 1 WTC, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds named in Schedule 1.
10. 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 1 WTC and Construction Manager, and shall have an A.M. Best Rating of A - X or better.
11. A copy of the policy and/or endorsement(s) and any other documents required to verify such insurance are to be submitted with the appropriate certificate(s), or upon the request of Construction Manager.
- C. 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 Umbrella policy.
 - a. Coverage is to be endorsed to reflect that the insurance provided is to be primary and non-contributory for the Contractor, WTC Redevelopment LLC, Tishman Construction Corporation and all other Additional Insureds and indemnities named in the Contract.
- D. Commercial Professional Liability Insurance (CPLI) covering the design and engineering services required by Contract of at least Five Million (\$5,000,000) Dollars.
- E. Where an Off Project Site property exposure exists, the Contractor at its sole expense shall furnish to 1 WTC and Construction Manager, 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

RIDER "D"
INSURANCE RIDER - LABOR AND MATERIAL
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

November 30, 2006

provision requiring the insurance carriers to waive their rights of subrogation against all Additional Insureds and indemnities named in the Contract.

- F. The above insurance shall each contain the following wording verbatim and provide an endorsement on the insurance certificate:

"1 WTC and Construction Manager are interested in the maintenance of this insurance and it is agreed that this insurance will not be canceled, materially changed or not renewed without at least thirty (30) days' advance written notice to 1 World Trade Center, LLC, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 12th Floor, 10003, Attn: Winson Fung, and Tishman Construction Corporation, 666 Fifth Avenue, New York, New York 10103, Attn: Risk Management Department, by certified mail-retuned receipt requested."

- 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 Contractor of any responsibility of liability under the Contract.

- H. The Contractors shall file certificates of insurance prior to the commencement of Work and with 1 WTC and Construction Manager which shall be subject to 1 WTC's and Construction Manager'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, 1 WTC and/or Construction Manager 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 1 WTC and/or Construction Manager immediately upon presentation of a bill.

- I. The Contractors 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. Subrogation.

a. 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 WTC Redevelopment LLC, World Trade Center Properties, LLC., the Authority, 1 WTC, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds and indemnities named in the Contract.

b. Workers' Compensation policy and all liability policies except Commercial Professional Liability Insurance (D) shall contain a provision requiring the insurance carriers to waive their rights of subrogation against WTC Redevelopment LLC, World Trade Center Properties, LLC., the Authority, 1 WTC, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds and indemnities named in the Contract.

- L. 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.

- M. 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 Authority, 1 WTC and the

RIDER "D"
INSURANCE RIDER - LABOR AND MATERIAL
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

November 30, 2006

Construction Manager 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 Authority, 1 WTC or the Construction Manager the Contractor shall furnish to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

Schedule 1 - 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
- 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

RIDER "D"
INSURANCE RIDER - LABOR AND MATERIAL
WORLD TRADE CENTER - TOWER ONE
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November 30, 2006

- ff) Silverstein WTC Management and Development LLC
- gg) WTC Investors Management and Development LLC
- hh) Larry A. Silverstein



RIDER "DX"
OWNER CONTROLLED INSURANCE PROGRAM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

May 18, 2007

1. Owner Controlled Insurance Program.

1.1 Overview. 1 WTC has arranged an Owner Controlled Insurance Program ("OCIP") with Aon Risk Services, Inc. of New York ("Aon"), effective as of March 31, 2007. The OCIP is more fully described in the Insurance Guide for Contractors ("Insurance Guide"). The Insurance Guide, which shall be furnished upon request to all Enrolled Parties (defined below), is not a Contract document. Contractors performing Work at the Project site are eligible to and shall apply for enrollment in the OCIP unless they are an Excluded Party (defined below). The OCIP will provide to Enrolled Parties (as defined below) the following insurance coverage: Workers' Compensation, Commercial General Liability Insurance, Builders' Risk, Contractors Pollution Liability, and Terrorism/Excess Liability Insurance as summarily described in the Insurance Guide, in connection with the performance of the Work ("OCIP Coverages").

1.2 Enrolled Parties and Their Insurance Obligations.

(a) OCIP Coverages shall cover Enrolled Parties (defined below).
Enrolled Parties are:

- (i) 1 WTC, the Authority, and other affiliated entities;
- (ii) Construction Manager;
- (iii) eligible Contractors, eligible Subcontractors of any tier, and eligible Subconsultants of any tier, who are approved by 1 WTC, Construction Manager, and Aon for purposes of inclusion in the OCIP; and
- (iv) such other persons or entities as 1 WTC, Construction Manager, and Aon may designate.

Each such party in items (i) through (iv) above who is actually enrolled in and insured under the OCIP is referred to individually as an "Enrolled Party" and collectively as "Enrolled Parties."



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OWNER CONTROLLED INSURANCE PROGRAM
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(b) Enrolled Parties, excluding those entities listed in Section 1.2(a)(i) above, shall obtain and maintain, at their own expense, and shall require each of their Subcontractors of any tier to obtain and maintain at each such Subcontractor's own expense, the insurance coverages specified in (i) Rider D, items C, D, and E thereof, and (ii) Rider D, items A and B thereof, for off-site activities and for operations and risks not otherwise provided by the OCIP (collectively, items (i) and (ii) are referred to as "Supplemental Insurance Policies").

1.3 Excluded Parties and Their Insurance Obligations.

(a) The OCIP does not cover those parties who are not Enrolled Parties ("Excluded Parties").

(b) Excluded Parties shall obtain and maintain, and shall require each of their Subcontractors of any tier to obtain and maintain, insurance coverages as specified in Rider D, including Paragraphs A and B thereof, and as set forth in the Insurance Guide with respect to non-Enrolled Parties.

1.4 OCIP Insurance Policies Establish OCIP Coverages. The OCIP Coverages and exclusions summarized in the Insurance Guide and in the Contract documents are set forth in full in the respective insurance policy forms with respect to the OCIP Coverages. The summary descriptions of the OCIP Coverages in this Exhibit DX or the Insurance Guide are not intended to be complete or to alter or amend any provision of the actual OCIP Coverages. In the event any provision of this Exhibit DX, other Contract documents, or the Insurance Guide conflicts with the OCIP insurance policies, the provisions of the actual OCIP insurance policies shall govern. The OCIP insurance policies may be reviewed by Construction Manager or any Contractor at the office of 1 World Trade Center LLC, c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York.

1.5 Summary of OCIP Coverages. OCIP Coverages shall apply only to those operations of each Enrolled Party performed at the Project site in connection with the Work and only to Enrolled Parties that are eligible for the OCIP. OCIP Coverages shall not apply to ineligible parties, even if erroneously enrolled in the OCIP (such parties shall be deemed Excluded Parties). An Enrolled Party's operations away from or off of the Project site, including its regularly established main or branch office, factory, warehouse, or other property, or product manufacturing, assembling, or otherwise, shall not be covered. A summary of OCIP Coverages is attached hereto and incorporated herein as Attachment DX-1.

1.6 Evidence of Coverages.

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(a) Contractor shall furnish evidence satisfactory to 1 WTC of all insurance coverages required of Contractor pursuant to this Rider DX.

(b) The obligation to procure and maintain any insurance required by the Contract documents is a separate responsibility of Contractor and independent of the duty to furnish evidence of insurance. By furnishing evidence of insurance, Contractor represents and warrants to 1 WTC that the limits and scope of coverage of such insurance comply in all respects with the requirements of the Contract documents and that the required limits, as of the date that such evidence of insurance is delivered to the 1 WTC, are unimpaired: (i) by any payments made, or reasonably expected to be made, by the insurer, or (ii) by any amounts reserved for pending claims or anticipated expenses.

(c) Receipt or review by 1 WTC or Aon of any copies of insurance policies or insurance certificates, or failure to request such evidence of insurance or to object to any portion of such insurance that does not comply with the requirements of this Exhibit DX, other Contract documents, or the Insurance Guide, shall not be deemed a waiver by 1 WTC or Aon of any such requirements and shall not relieve Contractor of any obligation to comply with the insurance provisions of the Contract documents.

1.7 1 WTC's Insurance Obligations. 1 WTC shall pay the premiums for the OCIP Coverages. 1 WTC will receive or pay, as the case may be, all adjustments to such costs, whether by way of dividends, retroactive adjustments, return premiums, other moneys due, audits or otherwise. Contractor, and each of their Subcontractors, hereby assign to 1 WTC the right to receive all such adjustments. 1 WTC assumes no obligation to provide insurance other than that provided in the OCIP. 1 WTC's furnishing of OCIP Coverages shall in no way relieve or limit, or be construed to relieve or limit, Construction Manager or Contractor, or any of their Subcontractors of any tier, from any responsibility, liability, or obligation imposed by Riders D and DX, other Contract documents, the Insurance Guide, the OCIP insurance policies, or by law, including, without limitation, any indemnification obligation that Construction Manager or Contractor, or any of their Subcontractors of any tier, has to 1 WTC thereunder. 1 WTC reserves the right at its option, without obligation to do so, to modify terms and conditions of insurance policies, change insurers, or make other changes in the OCIP, provided that the limits and scope of coverage provided is not materially and adversely affected.

1.8 Enrolled Parties Responsibilities – Insurance Costs.

(a) Each Enrolled Party shall identify to 1 WTC the amount of the credit that resulted from excluding coverage provided by the OCIP when calculating the Lump Sum or contract price for such Enrolled Party's Work.

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(b) Each Enrolled Party is responsible to enroll all of its eligible Subcontractors of any tier in the OCIP. If an Enrolled Party fails to enforce the enrollment of any of its eligible Subcontractors of any tier, then the Enrolled Party shall be financially responsible to 1 WTC for the amount of the credit that would have resulted had any such Subcontractor been enrolled in the OCIP and for any liability arising out of or resulting from the acts or omissions of any such Subcontractor not enrolled in the OCIP. Construction Manager will not permit any Contractor or Subcontractor of any tier to access, or perform Work on, the construction site unless such Contractor or Subcontractor provides Construction Manager with the proper Certificates of Insurance evidencing the required insurance and effective date of coverage in accordance with Exhibit D and, to the extent such Contractor or Subcontractor is to be enrolled into the OCIP, until such time as enrollment is effective.

(c) If the Enrolled Party carries a deductible, or self-insured retention, under any of its Supplemental Insurance Policies, then the following information may be required:

- (1) Three (3) years of currently valued loss history for all entities that retain losses. Paid, outstanding, and total incurred losses must be evidenced by policy period;
- (2) Three (3) years of payroll history for all entities; and
- (3) Any other information required by 1 WTC or Aon.

(d) Costs for insurance coverage maintained by the Enrolled Parties that are redundant of the OCIP shall not be reimbursable. All change orders or Extra Work Orders will be submitted net of insurance, and labor rates will be reduced to reflect the insurance reduction.

(e) If any Enrolled Party does not provide Aon with information sufficient to allow verification of the applicable insurance cost, Aon may independently calculate enrollment insurance costs based on undiscounted, manual, or program rates at its sole discretion.

1.9 Contractor's OCIP Obligations.

(a) Contractor shall:

- (1) Incorporate the terms of this Exhibit DX and Exhibit D in all contracts and subcontracts of any tier with respect to the Project.
- (2) Enroll itself (unless 1 WTC or Aon directs otherwise), in the OCIP within five (5) days of execution of the Contract and maintain enrollment in the

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OCIP until a notice of final completion of Work has been issued by 1 WTC, and (i) ensure that all of its eligible Subcontractors of any tier enroll in the OCIP within five (5) days of subcontracting and prior to the commencement of any Work at the Project site by each such Subcontractor, and maintain enrollment in the OCIP until a notice of final completion of work has been issued by 1 WTC.

(3) Comply with all of the administrative, safety, insurance, and other requirements outlined in this Exhibit DX, elsewhere in the Contract documents, the Insurance Guide, or the OCIP insurance policies.

(4) Provide each of its Subcontractors of any tier with a copy of the Insurance Guide and ensure the compliance of each such Subcontractor with the provisions of Exhibits D and DX, the other Contract documents, the OCIP insurance policies, and the Insurance Guide. The failure of (a) 1 WTC to include the Insurance Guide in the Bid Proposal documents or (b) Construction Manager or Contractor to provide each of their eligible Subcontractors of any tier with a copy of same, shall not relieve Construction Manager or Contractor, or any of their Subcontractors of any tier, from any of the obligations contained therein.

(5) Acknowledge, and require all of its Subcontractors of any tier to acknowledge, in writing, that 1 WTC and Aon are not agents, partners, or guarantors of the insurance companies providing coverage under the OCIP (each such insurer, an "OCIP Insurer") and that 1 WTC is not responsible for any claim or dispute between or among Contractor, its Subcontractors of any tier, and any OCIP Insurer. Any type of insurance coverage or limits of liability in addition to the OCIP Coverages that Contractor or any Subcontractor of any tier requires for its or their own protection, or that is required by applicable laws, statutes, ordinances, codes, rules or regulations, or by any public authority, shall be Contractor's or its Subcontractor's sole responsibility and expense and shall not be billed to 1 WTC.

(6) Cooperate fully with Aon and the OCIP Insurers, as applicable, in its or their administration of the OCIP.

(7) Provide all documents or information within five (5) business days of 1 WTC's or Aon's request. Such information may include, but not be limited to, written and/or electronic payroll records as required by the Workers' Compensation insurance carrier, certified copies of insurance coverages, declaration pages of coverages, certificates of insurance, underwriting data, prior loss history information, safety records or history, OSHA citations, or such other data or information as 1 WTC, Aon, or OCIP Insurers may request in the administration of the OCIP, or as required by the Insurance Guide.

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(b) Contractor's failure to procure or maintain the insurance required by Rider D, or, if an Enrolled Party, the Supplemental Insurance Policies, and to assure that all of its Subcontractors of any tier procure and maintain such required insurance during the entire term of the Agreement, and as otherwise required, shall constitute a material breach of this Agreement for which 1 WTC immediately may suspend or terminate this Contract or, at its discretion, procure or renew such insurance to protect 1 WTC's interests and pay any and all premiums in connection therewith, and withhold or recover all monies so paid together with interest thereon from the date paid by 1 WTC until the date paid by Contractor or Subcontractors of every tier.

1.10 Contractor's and Construction Manager's Representations and Warranties to 1 WTC. Contractor represents and warrants to 1 WTC on behalf of itself and its Subcontractors of any tier with respect to items (a), (b), (c), and (e); and Construction Manager represents and warrants to 1 WTC on behalf of itself and its Subconsultants of any tier with respect to items (a), (b), and (e) below; and Construction Manager represents and warrants to 1 WTC with respect to item (d) below:

That all information it submits to 1 WTC, Aon, or (in the case of the Contractor) the Construction Manager shall be accurate and complete.

(a) That Contractor or Construction Manager, as the case may be, on behalf of itself and its Subcontractors or Subconsultants of any tier, has had the opportunity to read and analyze copies of the OCIP binders and specimen policies, which are available for review in accordance with Section 10.4 of this Exhibit DX. Any reference or summary in the Contract or Agreement, in this Exhibit DX, in any other Contract document or Contract Document, or in the Insurance Guide as to amount, nature, type, or extent of OCIP Coverages and/or potential applicability to any potential claim or loss is for reference only. Contractor and its Subcontractors of any tier or, in the case of Construction Manager, Construction Manager and its Subconsultants of any tier, have not relied upon said reference or summary but solely upon their own independent review and analysis of the OCIP Coverages in formulating any understanding and/or belief as to amount, nature, type, or extent of the OCIP Coverages and/or the potential applicability of the OCIP Coverages to any potential claim or loss.

(b) That Contractor identified in its Bid Proposal the amount of the credit that resulted from excluding insurance coverage provided by the OCIP when calculating the Lump Sum or contract price for such Contractor's Work; and that such amount was not included in its Bid Proposal for the Work, or the applicable Lump Sum or contract price, and will not be included in any change order, Extra Work Order, or any request for payment for the Work or Extra Work.

(c) That Construction Manager shall confirm with respect to each Contract awarded, that prior to the effective date of the respective Contract the alternate deduct amount for any credit resulting from excluding insurance coverage provided by

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the OCIP is provided to 1 WTC; provided, however, if a Contract was or is awarded without OCIP coverage, then no credit results and confirmation is not required.

(d) That 1 WTC shall not pay or compensate, and shall have no obligation to pay or compensate, Contractor or any Subcontractor of any tier, or Construction Manager or any Subconsultant of any tier, in any manner, for Costs of OCIP Coverages. The "Costs of OCIP Coverages" is defined as the amount of Contractor's and its Subcontractors' of any tier, or, in the case of Construction Manager, Construction Manager's and its Subconsultants' of any tier, reduction in insurance costs due to eligibility for OCIP Coverages as determined by information available to 1 WTC and/or Aon regarding the costs of similar coverages taking into account limits of liability, coverages, and rating of the insurer.

1.11 Audits. Contractor agrees that for a period of seven (7) years following Substantial Completion of the entire Work, 1 WTC, Aon, and/or any OCIP Insurer may audit Contractor's or any of its Subcontractor's (of any tier) payroll records, books, and records, insurance coverages, insurance cost information, or any other information that Contractor provides to 1 WTC, Aon, or the OCIP Insurers to confirm their accuracy and to assure that Costs of OCIP Coverages are not included in any payment for the Work.

1.12 1 WTC's Election to Modify or Discontinue OCIP. 1 WTC, for any reason, may modify the OCIP Coverages, discontinue the OCIP, or request that Contractor or any of its Subcontractors of any tier withdraw from the OCIP, upon thirty (30) days' written notice. Upon such notice, Contractor and/or one or more of its Subcontractors of any tier, as specified by 1 WTC in such notice, shall obtain and thereafter maintain at 1 WTC's expense, not to exceed the applicable Costs of OCIP Coverages as determined by 1 WTC (or a portion thereof as specified by 1 WTC), all (or a portion thereof as specified by 1 WTC) of the OCIP Coverages. The form, content, limits of liability, cost, and the insurer issuing such replacement insurance shall be subject to 1 WTC's approval to the extent such cost does not exceed the applicable Enrolled Party's credit for the OCIP coverage. If the cost does exceed such Enrolled Party's credit for the OCIP coverage, then 1 WTC and the Enrolled Party shall jointly approve the form, content, insurer, limits of liability, and such excess cost.

1.13 Withhold of Payments. To the fullest extent permitted by law, 1 WTC may withhold from any payment owing to Contractor the Costs of OCIP Coverages if included in a request for payment from Contractor. In the event a 1 WTC audit of Contractor's (or a Subcontractor's of any tier) records and information reveals a discrepancy in the insurance, payroll, safety, or any other information required by the Contract documents to be provided by Contractor to 1 WTC, Aon, or Construction Manager, or reveals the inclusion of Costs of OCIP Coverages in any payment for the Work, 1 WTC shall have the right to full deduction from the contract price of all such Costs of OCIP Coverages. In the event Contractor (or a Subcontractor of any tier)

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underreports, misclassifies, or misrepresents in any requisition for funds or in other reports, any labor cost incurred, then the Contractor and Subcontractor of any tier shall be liable for the costs of the audit, which shall include but not be limited to the fees of Aon, and of the attorneys and accountants conducting the audit and review. If the Contractor, or its Subcontractors of any tier, fail to timely comply with the provisions of this Exhibit DX or the requirements of the Insurance Guide, 1 WTC may withhold any payment due such party until such time as they have performed the requirements of this Exhibit DX. Such withholding by 1 WTC shall not be deemed to be a default hereunder.

1.14 Safety. Contractor shall be solely responsible for safety pertaining to its Work. Contractor shall comply with the written program referred to in the Insurance Guide as well as all local, state and federal safety standards.

2. Commencing Work. Contractor and its Subcontractors of any tier cannot commence performance of the Work until all of the insurance requirements have been met.

3. Compliance by Construction Manager. Unless directed or excepted otherwise by 1 WTC, Construction Manager shall comply, and shall cause its Subconsultants of any tier to comply, with all of the provisions set forth in this Rider DX in the same manner as Contractor, and its Subcontractors of any tier, are obligated to comply; and 1 WTC shall have the same rights with respect to Construction Manager and its Subconsultants of any tier as 1 WTC has with respect to Contractor and its Subcontractors of any tier.

4. Definitions. Each initial-capped term used but not defined in this Exhibit DX shall have the meaning set forth in the Contract. Such terms include, without limitation, 1 WTC, Authority, Bid Proposal, Construction Manager, Contractor, Contract, Extra Work, Extra Work Order, Project, Subconsultant, Subcontractor, and Work.

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Attachment DX-1

Summary of OCIP Coverages

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ATTACHMENT DX-1

SUMMARY OF OCIP COVERAGES

Below is a summary of the OCIP Coverages. The OCIP Coverages apply ONLY to the operations of each Enrolled Party at the Project construction site as provided for in the Contract. It does NOT apply to the off-site operations of any Contractor or Subcontractor of any tier, including but not limited to, operations at their regularly established main or branch office, factory, warehouse or other property.

The limits stated below constitute the combined limits for both the Project and a second project referred to as the "Memorial Complex"; the Memorial Complex generally consists of the construction of two reflecting pools, a museum referred to as the Memorial Museum, a facility referred to as the Visitors Orientation and Education Center (VOEC), and a plaza and the redevelopment of approximately eight acres of land, referred to as the Memorial Plaza and Redevelopment (collectively, the term "Combined Project" shall mean the Project and the Memorial Complex project).

Neither the Contractor nor a Subcontractor of any tier shall be responsible for the payment of any deductible under the OCIP.

A. Workers' Compensation

A separate standard NYS Workers' Compensation policy will be issued to each Contractor or Subcontractor of any tier performing work at the Project construction site. Coverage will include:

1. Workers' Compensation, 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 and Subcontractor of any tier to comply with NYS Workers' Compensation law by providing their own coverage for their workers. Please contact the Construction Manager for clarification.

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES - continued

B. Commercial General Liability Insurance

The OCIP will provide Commercial General Liability Insurance to each Contractor and Subcontractor of any tier, as follows:

1. Primary \$2,000,000 Combined Single Limit (CGL) each one occurrence.
2. \$498,000,000 each occurrence in excess of the \$2,000,000 primary limit.
3. Losses insured under the Commercial General Liability and Excess Liability policies may be subject to certain annual, or period, aggregation of limits of liability as more fully described in the insurance policy documents.
4. 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
 - EXCLUSIONS include, but are not limited to:
 - Aircraft Liability
 - Asbestos/Environmental
 - Automobile Liability and Physical Damage
 - Intentional acts
 - Pollution
 - Professional Liability

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued

- Property in Insured's Care, Custody and Control
- Radioactive Contamination, Chemical, Biological, Bio-Chemical, Electro-magnetic Weapons
- Watercraft Liability
- War

C. Builder's Risk Insurance

Builder's Risk Insurance coverages are as follows for the period April 30, 2007 to December 31, 2011.

1. Limits - \$1,000,000,000 per occurrence for the Combined Project (subject to a \$50,000,000 annual aggregate for Flood and Earthquake damage and \$250,000,000 per occurrence as respects Windstorm). The following sublimits of coverage also apply:
 - a. \$10,000,000 per any one location as respects Offsite Storage
 - b. \$10,000,000 per any one conveyance as respects Property in Transit
 - c. \$10,000,000 per any one occurrence as respects Expediting Expense
 - d. \$5,000,000 per any one occurrence as respects Contractors Extra Expense
 - e. \$1,000,000 per any one occurrence as respects Trees, Shrubs, Plants and Landscaping
 - f. \$5,000,000 per any one occurrence and in the annual aggregate as respects Pollution Cleanup and Removal.
 - g. \$1,000,000 per any one occurrence as respects Plans, Blueprints, and Drawings.
 - h. \$5,000,000 per any one occurrence as respects Fire Brigade Charges/Extinguishing Expenses.
 - i. 25% of the amount of loss or damage as respects Debris Removal not more than \$50,000,000.
 - j. \$50,000,000 per any one occurrence as respects Law or Ordinance, Demolition and Increased Cost of Construction.

2. OCIP Coverages include, but are not limited to:

All property to be used in or incidental to the Project, including property in the Enrolled Party's custody, property in which the Enrolled Party has an insurable interest, property for which the Enrolled Party is liable, including but not limited to:

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued

- Builders Risk
- Debris removal
- Demolition and increased cost of construction
- EDP equipment and media and extra expense
- Expediting expense
- Extra expense
- Fire brigade charges and extinguishing expenses
- Materials
- Off-site
- Partial payment of loss
- Permission to occupy
- Plans, blueprints, drawing, renderings, etc.
- Pollutant clean-up (covered perils)
- Professional fees
- Removal charges
- Resulting damage from error in design, faulty workmanship, or faulty material recovered
- Temporary works
- Testing
- Transit including shipments on inland or coastal waters, excluding ocean
- Valuable papers and records
- Waiver of Subrogation, if in writing

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

3. The policies contain various EXCLUSIONS, including but not limited to:
- Aircraft
 - Automobiles
 - Contents/Personal Property
 - Contractor's (or Subcontractor's of any tier) Equipment
 - Cranes (not to become permanently fixed, but used as a part of contract)
 - Machinery, Contractor's (or Subcontractor's of any tier) machinery, tools, temporary structures, and equipment not destined to become a permanent part of a building or structure
 - Soft Costs
 - Watercraft

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ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES - continued

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 loss for the Combined Project, with a \$100,000,000 policy aggregate.
2. Sub-limit - \$10,000,000 Microbial Matter.
3. 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.
4. 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.



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RIDER "F"
NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT
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May 11, 2007

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT ("Confidentiality Agreement") is made as of this 25 day of May, 2007, by and between THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY ("Authority") a body corporate and politic created by Compact between the States of New York and New Jersey, with the consent of the Congress of the United States, and having an office and place of business at 225 Park Avenue South, New York, New York, 10003; 1 WORLD TRADE CENTER LLC, a Delaware Limited Liability Company, with offices c/o the Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York 10003 ("1 WTC"), (collectively, the "Port Authority Parties"); and DCM BRISTOL, INC. having an office and place of business at 110 EAST 42 ST - 1724; N.Y. NY 10017 ("Recipient").

WHEREAS, the Recipient has advised the Port Authority Parties that it is interested in submitting a Bid Proposal or other request to perform work or services ("**Proposal**") for the Port Authority Parties' consideration under which the Recipient would be performing work or services in regard to the design or construction of Tower I, commonly known as the Freedom Tower ("**Freedom Tower Project**"), being constructed at the World Trade Center site in New York, New York (such site, together with any improvements thereon and therein, the World Trade Center site or "**WTC Site**"); and

WHEREAS, each of the parties to this Confidentiality Agreement desires to pursue discussions and negotiations concerning such a Proposal; and

WHEREAS, the Recipient has also advised the Port Authority Parties that in order to formulate and pursue a Proposal it will require certain information in the possession of the Port Authority Parties with respect to the WTC Site and Freedom Tower Project; and

WHEREAS, the Recipient acknowledges that the Port Authority Parties have existing and significant interests and obligations in establishing, maintaining and protecting the security and safety of the Freedom Tower Project and surrounding areas and related public welfare matters; and

WHEREAS, in furtherance of critical governmental interests regarding public welfare, safety and security at the WTC Site, the Port Authority Parties have collected information and undertaken the development of certain plans and recommendations regarding the security, safety and protection of the WTC Site and Freedom Tower Project, including the physical construction and current and future operations of the WTC Site and Freedom Tower Project; and

WHEREAS, to enable the Recipient's formulation of a Proposal, the Port Authority Parties are willing, subject to the terms and conditions set forth below, to provide limited access and disclose to the Recipient or certain of its Related Parties (as defined below) certain information in the possession of the Port Authority Parties with respect to the WTC Site and



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Freedom Tower Project, which may contain or include confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, relating to the WTC Site, the Freedom Tower Project or its occupants or other matters, the disclosure of which could result in significant public safety, financial and other damages to the Port Authority Parties, the WTC Site, the Freedom Tower Project, its occupants, and the City of New York and surrounding communities; and

WHEREAS, in order to protect and preserve the privilege attaching to and the confidentiality of the aforementioned information as well as to limit access to certain of such information to a strict need to know basis, the Port Authority Parties have requested, as a condition of their sharing or providing access to such confidential, privileged, classified, commercial, proprietary or sensitive information, documents and plans, that the Recipient enter into this Confidentiality Agreement and that its Related Parties thereafter acknowledge and agree that that they will be required to treat as strictly confidential and privileged any of such information so provided, as well as the work product and conclusions of any assessments and evaluations or any recommendations relating thereto, and to also fully comply with applicable federal rules and regulations with respect thereto.

WHEREAS, as a condition to the provision of such information to Recipient and certain Related Parties, the Recipient has agreed to enter into this Confidentiality Agreement with respect to the handling and use of such information and to cause Related Parties to join in and be bound by the terms and conditions of this Confidentiality Agreement.

NOW, THEREFORE, in consideration of the provision by the Port Authority Parties of Information for Evaluation Purposes (as each such term is defined below) and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by the Recipient and each Related Party that receives such Information, the Recipient and each such Related Party agrees, as follows:

1. **Defined Terms.** In addition to the terms defined in the Recitals above, the following terms shall have the meanings set forth below:

(a) **"Authorized Disclosure"** means the disclosure of Confidential Information strictly in accordance with the Confidentiality Control Procedures applicable thereto: (i) as to Confidential Proprietary Information, strictly for Evaluation Purposes; and (ii) as to Confidential Privileged Information, only to the extent expressly approved in writing and in advance by the Port Authority Parties and then only the particular Confidential Privileged Information that is required to accomplish an essential element of the Proposal (iii) as to all Confidential Information, only to a Related Party that has a need to know such Confidential Information strictly for the purposes set forth in this Subsection 1(a) and that has agreed in writing to be bound by the terms of this Confidentiality Agreement and has executed a form of Acknowledgement as set forth in Exhibit A.

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(b) **"Confidential Information"** means, collectively, Confidential Proprietary Information, Confidential Privileged Information and Information which is labeled, marked or otherwise identified by or on behalf of the Port Authority Parties so as to reasonably connote that such Information is confidential, privileged, sensitive or proprietary in nature. The term Confidential Information shall also include all work product that contains or is derived from any of the forgoing, whether in whole or in part, regardless whether prepared by the Recipient, the Port Authority Parties or others, Sensitive Security Information and Critical Infrastructure Information. The following Information shall not constitute Confidential Information for the purpose of this Confidentiality Agreement:

- (i) Particular Information, other than Confidential Privileged Information, that is provided to the Recipient by a source other than the Port Authority Parties, provided that such source is not subject to a confidentiality agreement or similar obligation or understanding with or for the benefit of the Port Authority Parties, with respect to such Information and that the identity of such source is not itself part of such Confidential Information.
- (ii) Information that is or becomes generally available to the public other than as a result of a disclosure by the Recipient or a Related Party, or any other person to whom the Recipient or a Related Party provides such Confidential Information.

(c) **"Confidential Privileged Information"** means and includes collectively, (i) any and all Information, documents and materials entitled to protection as a public interest privilege under New York State law and as may be deemed to be afforded or entitled to the protection of any other privilege recognized under state or federal laws, (ii) Critical Infrastructure Information (iii) Sensitive Security Information and (iii) Safety and Security Information.

(d) **"Confidential Proprietary Information"** means and includes Information which contains financial, commercial or other proprietary, business Information concerning the Proposal, the Port Authority Parties, the Freedom Tower Project or the WTC Site, including, without limitation, the terms of or negotiation positions concerning the Proposal.

(e) **"Confidentiality Control Procedures"** means procedures, safeguards and requirements for the identification, processing, protection, handling, care, tracking and storage of Confidential Information that are required under applicable federal or state law or by the terms of this Confidentiality Agreement, including, without limitation, the procedures, safeguards and requirements are contained in the Port Authority Handbook, the rules, requirements and procedures of the Port Authority Parties of which the Recipient has notice and such procedures, safeguards and requirements that the Recipient would customary impose in connection with corresponding categories of such Recipient's own confidential information, all of the foregoing to be implemented with the highest standard of care.

(f) **"Critical Infrastructure Information"** has the meaning set forth in the Homeland Security Act of 2002 (42 U.S.C. §5195c(e)) and any rules or regulations enacted

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pursuant thereto, including, without limitation, the Office of the Secretary, Department of Homeland Security Rules and Regulations, 6 C.F.R. Part 29 (6 U.S.C. §131-134).

(g) **"Evaluation Purposes"** means the use of Confidential Information strictly and only for the purposes of development, preparation, negotiation and evaluation of the financial, commercial and other terms of the Proposal and only for such period of time during which a Proposal by the Recipient is under consideration by the Port Authority Parties.

(h) **"Information"** means, collectively, all information, documents, data, reports, notes, studies, projections, records, manuals, graphs, electronic files, computer generated data or information, drawings, charts, tables, photographs, and other media containing or otherwise incorporating information that may be provided or made accessible at any time, whether orally, visually, in writing, photographically, electronically or any other form, including, without limitation, any and all copies of the foregoing.

(i) **"Port Authority Handbook"** means, collectively, the "Port Authority of NY & NJ Handbook for Protecting Security Information" and the "Security Information Practices and Procedures Annex," copies of each of which are attached hereto as Exhibit B.

(j) **"Related Party"** and **"Related Parties"** mean the employees, officers, partners or members of the Recipient, as applicable, and the Recipient's outside consultants, advisors, accountants, architects, engineers or Subcontractors or Subconsultants, as those terms are defined in the Recipient's Agreement to perform work or services for the Freedom Tower Project, (and their respective employees, officers, partners or members) to whom any Confidential Information is disclosed or made available.

(k) **"Safety and Security Information"** means and includes Information: (a) the access to or disclosure of which to unauthorized third parties could (i) adversely affect in any way the security, safety or protection of the Freedom Tower Project or the WTC Site, (ii) reveal guidelines, techniques and procedures for protection against terrorist acts, for law enforcement, investigations and prosecutions, (iii) endanger the life and physical safety of individuals or (iv) result in other harm and injury to the protection security and safety of the WTC Site, the Freedom Tower Project, its occupants and others, or to the general public welfare; (b) which concerns in whole or in part the operations of the Freedom Tower Project or the WTC Site, the disclosure of any of which would not customarily be made public by the Port Authority Parties; or (c) which contains information concerning any of the following in connection with the Freedom Tower Project or the WTC Site: plans and specifications, contingency plans, points of contact, safety, security and other operating procedures, vehicular criteria, operations, operational requirements and operational strategies, screening procedures, detention procedures, security protocols and assessments, defensibility information, perimeter security, building systems or construction activities.

(l) **"Sensitive Security Information"** has the meaning set forth in the Transportation Security Administrative Rules & Regulations, 49 CFR 1520, (49 U.S.C. §114) and in the Office of the Secretary of Transportation Rules & Regulations, 49 CFR 15, (49 U.S.C. §40119).

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2. **Use of Confidential Information.** All Confidential Information shall be used by the Recipient in accordance with the following requirements:

(a) All Confidential Information shall be held in confidence and shall be processed, treated, disclosed and used by the Recipient only for Evaluation Purposes and in accordance with the Port Authority's Confidentiality Control Procedures (including, without limitation the Port Authority Handbook, receipt of which is acknowledged by the Recipient and shall be acknowledged in writing by each of Recipient's Related Parties) and applicable legal requirements. Confidential Information may be disclosed only if, and to the extent that, such disclosure is an Authorized Disclosure.

(b) Recipient and its Related Parties acknowledge and agree that (i) any violation by the Recipient or any of its Related Parties of the terms, conditions or restrictions of this Confidentiality Agreement relating to Confidential Information may result in penalties and other enforcement or corrective action as set forth in such statutes and regulations, including, without limitation, the issuance of orders requiring retrieval of Sensitive Security Information and Critical Infrastructure Information to remedy unauthorized disclosure and to cease future unauthorized disclosure and (ii) pursuant to the aforementioned Federal Regulations, including, without limitation, 49 C.F.R. §§ 15.17 and 1520.17, any such violation thereof or mishandling of information therein defined may constitute grounds for a civil penalty and other enforcement or corrective action by the United States Department of Transportation and the United States Department of Homeland Security, and appropriate personnel actions for federal employees.

(c) Recipient (and each Related Party) covenants to the Port Authority Parties that it (and each Related Party to which Confidential Information may be disclosed in accordance with this Confidentiality Agreement) has established, promulgated and implemented Confidentiality Control Procedures for identification, handling, receipt, care, and storage of Confidential Information to control and safeguard against any violation of the requirements of this Confidentiality Agreement and against any unauthorized access, disclosure, modification, loss or misuse of Confidential Information. Recipient (and each Related Party) shall undertake reasonable steps consistent with such Confidentiality Control Procedures to assure that disclosure of Confidential Information is compartmentalized, such that Confidential Privileged Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Confidentiality Agreement and applicable Confidentiality Control Procedures, and such that Confidential Proprietary Information shall be disclosed only to those persons and entities authorized to receive such Information as an Authorized Disclosure under this Confidentiality Agreement and applicable Confidentiality Control Procedures.

(d) The Port Authority Parties may request in writing that the Recipient or any Related Parties apply different or more stringent controls on the handling, care, storage and disclosure of particular items of Confidential Information as a precondition for its disclosure. The Port Authority Parties may decline any request by the Recipient or any of its Related Parties

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to provide such item of Confidential Information, if the Recipient or any of the Related Parties do not agree in writing to apply such controls.

(e) Nothing in this Confidentiality Agreement shall require the Port Authority Parties to tender or provide access to or possession of any Confidential Information to the Recipient or its Related Parties, whether or not the requirements of this Confidentiality Agreement are otherwise satisfied. However, if such Confidential Information is provided and accepted, the Recipient and its Related Parties shall abide by the terms, conditions and requirements of this Confidentiality Agreement.

(f) The Recipient (and each Related Party) agrees to be responsible for enforcing the provisions of this Confidentiality Agreement with respect to its Related Parties, in accordance with the Confidentiality Control Procedures. Except as required by law pursuant to written advice of competent legal counsel, or with the Port Authority Parties' prior written consent, neither the Recipient, nor any of the Related Parties, shall disclose to any third party, person or entity: (i) any Confidential Information under circumstances where the Recipient is not fully satisfied that the person or entity to whom such disclosure is about to be made shall act in accordance with the Confidentiality Control Procedures whether or not such person or entity has agreed in writing to be bound by the terms of this Confidentiality Agreement or any "Acknowledgement" of its terms or (ii) the fact that Confidential Information has been made available to the Recipient or such Related Parties, or (iii) the content or import of such Confidential Information. The Recipient may disclose Confidential Information only to its Related Parties who need to know the Confidential Information for Evaluation Purposes and who shall be advised by the Recipient of this Confidentiality Agreement, shall agree in writing to act in accordance herewith and shall have executed and delivered to the Port Authority Parties a fully and properly completed Acknowledgement in the appropriate form, attached hereto as Exhibit A, and only under circumstances where the Recipient shall be satisfied that such Related Parties in fact shall act in accordance herewith.

(g) As to all Confidential Information provided by or on behalf of the Port Authority Parties, nothing in this Confidentiality Agreement shall constitute or be construed as a waiver of any public interest privilege or other protections established under applicable state or federal law.

3. **Disclosures and Discovery Requests.** If a subpoena, discovery request, court order, Freedom of Information Request, or any other request or demand authorized by law, seeking disclosure of the Confidential Information is received by the Recipient or any Related Party, Recipient shall notify the Port Authority Parties thereof with sufficient promptness so as to enable the Port Authority Parties to investigate the circumstances, prepare any appropriate documentation and seek to quash the subpoena, to seek a protective order, or to take such other action regarding the request as the Port Authority Parties deem appropriate. In the absence of a protective order, disclosure shall be made, in consultation with the Port Authority Parties, of only that part of the Confidential Information as is legally required to be disclosed. If at any time Confidential Information is disclosed in violation of this Confidentiality Agreement, the

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Recipient shall immediately give the Port Authority Parties written notice of that fact and a detailed account of the circumstances regarding such disclosure, to the Port Authority Parties.

4. **Retention Limitations; Return of Confidential Information.** Upon the earlier occurrence of either the Port Authority Parties' written request or completion of Recipient's need for any or all Confidential Information, such Confidential Information, all writings and material describing, analyzing or containing any part of such Confidential Information, including any and all portions of Confidential Information that may be stored, depicted or contained in electronic or other media and all copies of the foregoing shall be promptly delivered to the Port Authority Parties at Recipient's expense. In addition, as to Confidential Information that may be stored in electronic or other form, such Confidential Information shall be completely removed so as to make such Confidential Information incapable of being recovered from all computer databases of the Recipient.

5. **Duration and Survival of Confidentiality Obligations.** The obligations under this Confidentiality Agreement shall be perpetual (unless otherwise provided in this Confidentiality Agreement) or until such time as the Confidential Information is no longer considered confidential and privileged by the Port Authority Parties.

6. **Severability.** Each provision of this Confidentiality Agreement is severable and if a court should find any provision of this Confidentiality Agreement to be unenforceable, all other provisions of this Confidentiality Agreement shall remain in full force and effect.

7. **Injunctive and Other Relief.** Recipient (and each Related Party) acknowledges that the unauthorized disclosure and handling of Confidential Information is likely to have a material, adverse and detrimental impact on public safety and security and significantly endanger the Port Authority Parties, their facilities (including, without limitation, the Freedom Tower Project and the WTC Site), their patrons and the general public and that damages at law are an inadequate remedy for any breach, or threatened breach, of this Confidentiality Agreement by Recipient or its Related Parties. The Port Authority Parties shall be entitled, in addition to all other rights or remedies, to seek such restraining orders and injunctions as the Port Authority Parties may deem appropriate for any breach of this Confidentiality Agreement, without being required to show any actual damage or to post any bond or other security.

8. **Governing Law.** This Confidentiality Agreement shall be governed by and construed in accordance with the laws of the State of New York, without regard to conflict of laws principles. The Port Authority Parties (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient specifically and irrevocably consent to the exclusive jurisdiction of any federal or state court in the County of New York and State of New York with respect to all matters concerning this Confidentiality Agreement and its enforcement. The Port Authority Parties (subject to the terms of the Port Authority Legislation (as defined below)) and the Recipient agree that the execution and performance of this Confidentiality Agreement shall have a New York situs and, accordingly, they each consent (and solely with respect to the Port Authority Parties, subject to the terms of the Port Authority Legislation (as defined below)) to personal jurisdiction in the State of New York for all purposes and proceedings arising from this

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Confidentiality Agreement. "Port Authority Legislation" shall mean the concurrent legislation of the State of New York and State of New Jersey set forth at Chapter 301 of the Laws of New York of 1950, as amended by Chapter 938 of the Laws of New York of 1974 (McKinney's Unconsolidated Laws §§7101-7112) and Chapter 204 of the Laws of New Jersey of 1951 (N.J.S.A. 32:1-157 to 32:1-168).

9. **Notices.** Any notice, demand or other communication (each, a "notice") that is given or rendered pursuant to this Confidentiality Agreement by either party to the other party, shall be: (i) given or rendered, in writing, (ii) addressed to the other party at its required address(es) for notices delivered to it as set forth below, and (iii) delivered by either (a) hand delivery, or (b) nationally recognized courier service (e.g., Federal Express, Express Mail). Any such notice shall be deemed given or rendered, and effective for purposes of this Confidentiality Agreement, as of the date actually delivered to the other party at such address(es) (whether or not the same is then received by the other party due to a change of address of which no notice was given, or any rejection or refusal to accept delivery). Notices from either party (to the other) may be given by its counsel.

The required address(es) of each party for notices delivered to it is (are) as set forth below. Each party, however, may, from time to time, designate an additional or substitute required address(es) for notices delivered to it (provided, that such designation must be made by notice given in accordance with this Section 9.

If to the Authority:

The Port Authority of New York and New Jersey
225 Park Avenue South, 19th Floor
New York, NY 10003

with a copy to:

The Port Authority of New York and New Jersey
225 Park Avenue South - 15th Floor
New York, NY 10003
Attn: General Counsel

If to the Recipient:

with a copy to:

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10. **Entire Agreement.** This Confidentiality 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 Confidentiality Agreement may not be changed, modified, discharged, or terminated, except by an instrument in writing signed by all of the parties hereto.

11. **Potential Proposal Negotiations.** Although this Confidentiality Agreement is made in the context of a Proposal, it not an offer or acceptance and shall not be construed as such. Either party may discontinue discussions or negotiation of a Proposal at any time for any reason or no reason each in their own sole discretion and without notice to the other and without any duty to negotiate in accordance with any standards. No express or implied representation or warranty is made by the Port Authority Parties as to the accuracy or completeness of any Information disclosed hereunder and the Port Authority Parties expressly disclaim any such representation or warranty. The Recipient hereby releases the Port Authority Parties from any and all liability that may be based on errors contained in any Information furnished to the Recipient or any of its Related Parties or omissions from such Information. The Recipient and its Related Parties acknowledge and agree that the Port Authority Parties shall have no obligation to deal exclusively with the Recipient or any of its Related Parties with respect to any Proposal or the subject matter thereof.

12. **Counterparts.** This Confidentiality 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.

13. **Parties Bound.** This Confidentiality Agreement shall be binding upon the parties and their respective successors. The foregoing shall not be affected by the failure of any Related Party to join in this Confidentiality Agreement or to execute and deliver an Acknowledgement hereof.

14. **Authority.** The undersigned individuals executing this Confidentiality Agreement on behalf of the respective parties below represent that they are authorized to execute this Confidentiality Agreement on behalf of the Port Authority Parties and the Recipient respectively and to legally bind such parties.

15. **Disclosure of Ownership Rights or License.** Nothing contained herein shall be construed as the granting or conferring by the Port Authority Parties of any rights by ownership, license or otherwise in any Information.

16. **No Liability.** Neither the Commissioners of the Port Authority Parties, 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 Confidentiality Agreement, or because of its execution or attempted execution or because of any breach, or attempted or alleged breach thereof.

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17. **Construction.** This Confidentiality Agreement is the joint product of the parties hereto and each provision of this Confidentiality Agreement has been subject to the mutual consultation, negotiation, and agreement of the parties hereto, and shall not be construed for or against any party hereto. The captions of the various Sections in this Confidentiality Agreement are for convenience only and do not, and shall not be deemed to, define, limit or construe the contents of such Sections.

[No further text on this page; signatures appear on next page]

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IN WITNESS WHEREOF, the Recipient and the PORT AUTHORITY PARTIES have executed this Confidentiality Agreement as of the date first above written.

Dated: New York, New York
July 25, 2007

RECIPIENT:



By: LARRY DAVIS

Title: PRESIDENT

Date: JULY 25/07

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

By: _____

Title: _____

Date: _____

1 WORLD TRADE CENTER LLC

By: _____

Title: _____

Date: _____

May 11, 2007

EXHIBIT A

ACKNOWLEDGEMENT BY RELATED PARTY ENTITY

The undersigned LARRY DAVIS, is the PRESIDENT [TITLE] of DCH ELECTORS, INC. [NAME OF ENTITY], located at 110 EAST 42 ST #1709, NY 10017 [TYPE OF ENTITY AND JURISDICTION OF FORMATION]. I am duly authorized to execute this Acknowledgment on behalf of the above Related Party that is involved with the functions of PRESIDENT in connection with a Proposal relating to the Freedom Tower Project located at the WTC Site. I acknowledge and confirm that the above named Related Party has been provided with a copy of and shall be bound and abide by the all of the terms, requirements and conditions set forth in the Confidentiality Agreement, dated JULY 25, 2007, between DCH ELECTORS, INC. and the Port Authority Parties and by the Port Authority Handbook described in the Confidentiality Agreement. Appropriate and responsible officers and employees of the Related Party have carefully read and understand the terms and conditions of the Confidentiality Agreement. The Related Party has notice and acknowledges that any breach or violation of such the terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against such Related Party.

Signed: 
Print Name: LARRY DAVIS
Title: PRESIDENT
Date: JULY 25/07

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EXHIBIT A

ACKNOWLEDGEMENT BY RELATED PARTY INDIVIDUAL

The undersigned _____, is/are employed by _____ [NAME OF ENTITY], a _____ [TYPE OF ENTITY AND JURISDICTION OF FORMATION] located at _____, In my capacity as _____, I/we am/are involved with the functions of _____

in connection with a Proposal relating to the Freedom Tower Project located at the WTC Site. I acknowledge that I have been provided a copy of, carefully read, understand and shall be bound and abide by the all of the terms, requirements and conditions set forth in the Confidentiality Agreement, dated _____, 2007, between _____ and the Port Authority Parties and by the Port Authority Handbook described in the Confidentiality Agreement. I have notice and acknowledge that any breach or violation of such the terms, requirements and conditions may result in the imposition of remedies or sanctions as set forth or otherwise described therein against me.

Signed: _____
Print Name: _____
Title: _____
Date: _____

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EXHIBIT B

PORT AUTHORITY HANDBOOK

(attached)

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EXHIBIT C

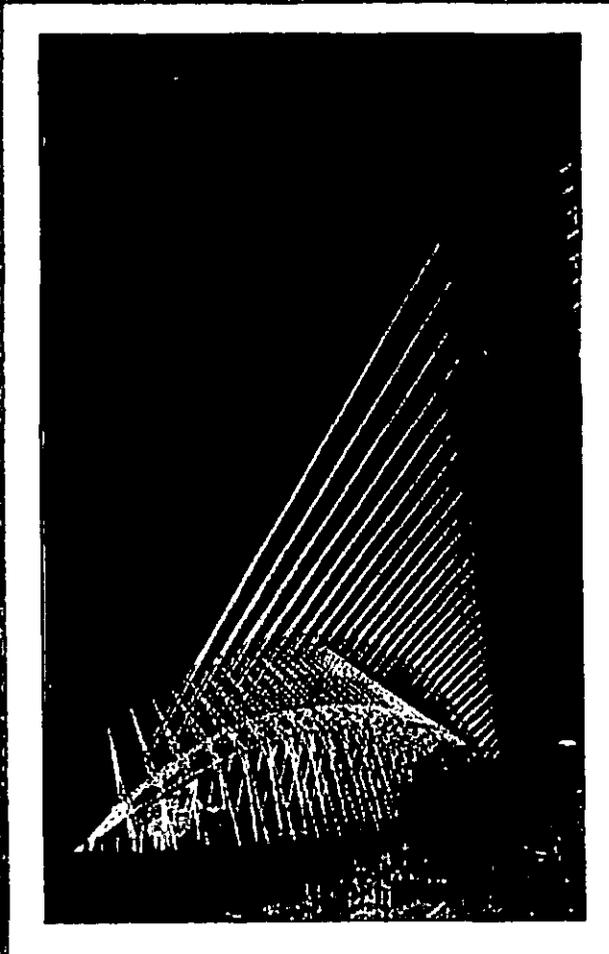
SECURITY INFORMATION PRACTICES AND PROCEDURES (SIPP)

(attached)



THE PORT AUTHORITY OF NY & NJ

Handbook for Protecting Security Information



NOVEMBER 1, 2004
REVISED-JULY 8, 2005

The Port Authority of New York and New Jersey Handbook for Protecting Security Information

Summary

This Security Program Handbook describes in detail The Port Authority of New York and New Jersey's (PANYNJ) requirement for the implementation and application of uniform security procedures regarding the identification, handling, care and storage of Confidential and Privileged Security Information belonging to the PANYNJ and Sensitive Security Information as identified in 49 CFR parts 15 and 1520. Confidential and Privileged Port Authority Security Information is information that, if subject to unauthorized access, modification, loss or misuse could adversely affect the PANYNJ, public safety and homeland security. Sensitive Security Information, in accordance with 49 U.S.C. 114(s), is information obtained or developed in the conduct of security activities, including research and development, the disclosure of which TSA has determined would--

- Constitute an unwarranted invasion of privacy - including, but not limited to, information contained in any personnel, medical, or similar file)
- Reveal trade secrets or privileged or confidential information obtained from any person;
- Be detrimental to the security of transportation.

This handbook describes the requirements and other safeguards that are necessary to prevent unauthorized disclosure of both Confidential and Privileged Port Authority Security Information and Sensitive Security Information, and to control the authorized disclosure of this information for use internally within the Port Authority or when released by the Port Authority to outside entities.

The components of this Security Program Handbook are:

Security Manual - Establishes uniform procedures for identification, handling, receipt, care, and storage of Confidential and Privileged Security Information and Sensitive Security Information (SSI).

Access Control Guide - Establishes the basis for determining what type of information requires special handling and that which does not.

Non-Disclosure and Confidentiality Agreement -

Company Non-Disclosure and Confidentiality Agreement: As a condition of its providing confidential and privileged security information, the Port Authority is requiring those working on projects that require access to Port Authority Security Information / Sensitive Security Information, whether retained by it or by other contractors or consultants for its projects, to enter into this agreement, thereby acknowledging that they understand that it will be required to safeguard any such information provided, as well as its work product including conclusions of security assessments, evaluations and/or recommendations.

Individual Non-Disclosure and Confidentiality Agreement Acknowledgement: Acknowledges the agreement between the PANYNJ and those individuals provided access to Confidential and Privileged Port Authority Security Information / Sensitive Security Information, whereby the individual agrees to not disclose Confidential and Privileged Port Authority Security Information / Sensitive Security Information to any unauthorized person. . Additionally, this agreement informs the individual of (1) the trust that is placed in them by providing them access to this information; (2) their responsibility to protect this information from unauthorized disclosure. Port Authority employees with a "need to know" will be required to sign an agreement.

Security Information Practices and Procedures document (SIPP)

This supplemental document details the procedures outlined in the Security Handbook and applies them within a specific program. Users of the Security Handbook should contact the appropriate Security Information Manager to confirm that they are referencing the appropriate Security Information Practices and Procedures document.

**Procedures For Handling
Confidential And Privileged Security Information
and
Sensitive Security Information**

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SECTION 1. Introduction

This document establishes uniform procedures for the identification, handling, receipt, care, and storage of Confidential and Privileged Port Authority Security Information and Sensitive Security Information (SSI). This Manual prescribes requirements and other safeguards that are necessary to prevent unauthorized disclosure of this information and to control authorized disclosure of it when released by The Port Authority of New York and New Jersey (PANYNJ) to architects, engineers, consultants, contractors, subcontractors, suppliers, and others deemed necessary in order to design, bid on and subsequently complete the work or contract.

Each organization that requires access to Confidential and Privileged Port Authority Security Information / Sensitive Security Information shall appoint a senior management level employee to be the company's Security Information Manager. The role of the Security Information Manager is an important one. This person is responsible for implementing and maintaining the firm's PANYNJ Program For Protecting Confidential and Privileged Security Information / SSI. An alternate Security Information Manager shall also be appointed. The alternate will assume the responsibilities of the Security Information Manager in their absence.

SECTION 2. Access to Confidential and Privileged Security Information

To protect Confidential and Privileged Security Information / SSI, each organization that requires access to this information shall participate in the requisite confidentiality and non-disclosure agreements and provide PANYNJ approved training to any employees requiring access to this information.

The firm shall ensure that employees: (1) are citizens of the United States of America or an alien who has been lawfully admitted for permanent residence 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 Act¹; and (2) have the requisite need to know as defined in the Department of Transportation and the Department of Homeland Security's regulations on Protection of Sensitive Security Information²; and (3) have completed the PANYNJ Non-Disclosure and Confidentiality Agreement Acknowledgment. If an employee refuses to execute the acknowledgment, access to the protected information must be denied. The requirements set forth above regarding citizenship or permanent residency may be waived by the Port Authority and PATH as appropriate. This information will be reflected on the Authorized Personnel Project List, cribed below, that will be provided to the PANYNJ.

The dissemination must be included in any contract awarded that will require access to Confidential and Privileged Security Information / SSI.

The dissemination of Confidential and Privileged Security Information / SSI shall only be made upon the determination that the recipient is authorized to receive it. Authorization is based on a potential recipient's need-to-know as determined by the Security Information Manager and the proper execution of a PANYNJ Confidentiality Agreement Acknowledgement.

Confidential and Privileged Security Information / SSI includes proprietary data and/or other information that, if subject to unauthorized access, modification, loss or misuse could adversely affect the PANYNJ, public safety and homeland security.

SSI is, in accordance with 49 U.S.C. 114(s), information obtained or developed in the conduct of

¹ The term "national of the United States" means (A) a citizen of the United States, or (B) a person who, though not a citizen of the United States, owes permanent allegiance to the United States. 8 U.S.C. 1101(a)(22) (Dec 19, 2003)

² 49 CFR § 15.11; 49 CFR § 1520.11

security activities, including research and development, the disclosure of which TSA has determined would—

- Constitute an unwarranted invasion of privacy - including, but not limited to, information contained in any personnel, medical, or similar file
- Reveal trade secrets or privileged or confidential information obtained from any person;
- Be detrimental to the security of transportation.

The Security Information Manager from each organization that requires access to Confidential and Privileged Security Information is required to prepare an Authorized Personnel Contract Project List - a list of employees who are authorized to access Confidential and Privileged Security Information and the date they executed the Confidentiality/Non-Disclosure Agreement. A copy of this list will be provided to the PANYNJ. This list will be used as a method for authenticating that individuals have been briefed into the program and are certified for access to Confidential and Privileged Security Information.

Security requirements are a material condition of all PANYNJ contracts that will require access to Confidential and Privileged Security Information. Contracts shall be subject to termination for default, when it has been determined that a failure to comply with security requirements resulted from willful misconduct or a lack of good faith.

An individual's access to the Confidential and Privileged Security Information / SSI may be contingent upon satisfactory completion of a security background check and the imposition of satisfactory procedures and requirements for safeguarding.

Unauthorized disclosure of SSI may be grounds for a civil penalty and other enforcement or corrective action by DOT, and appropriate personnel actions for Federal employees. Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

When a person authorized access to safeguarded information becomes aware that the information has been released to unauthorized persons, the authorized person must promptly notify the Security Information Manager. In the case of SSI, the Security Information Manager

must immediately inform TSA or the applicable DOT or DHS component or agency of the breach.

SECTION 3. Security Training & Briefings

Each organization that provides an employee with access to Confidential and Privileged Security Information shall provide training and briefings appropriate to their involvement.

Training Materials

Sample briefings and training materials may be requested from the PANYNJ.

Security Information Manager Training

The role of the Security Information Manager is critical. The Security Information Manager is responsible for implementing and maintaining the facility's PANYNJ Security Program. The Security Information Manager is responsible for educating employees on the handling of Confidential and Privileged Security Information / SSI. Security Information Managers are required to complete a half-day training session. Training requirements shall be based on the company's involvement with Confidential and Privileged Security Information and may include an orientation course. Security Information Manager training will also include a detailed explanation of the process for qualifying an individual's credentials for access. The PANYNJ is responsible for providing an initial security briefing to the Security Information Manager.

Initial Security Briefings

Prior to being granted access to Confidential and Privileged Security Information / SSI, an employee will receive an initial security briefing that includes the following:

- a. An explanation of security procedures applicable to the employee's job.
- b. An overview of the security categorization.

After receiving this briefing and prior to being granted access to any Confidential and Privileged Security Information the employee must execute a PANYNJ Non-Disclosure and Confidentiality Agreement Acknowledgement. If an employee refuses to execute the agreement, access to Confidential and Privileged Security Information must be denied.

Refresher Training

Employees granted access to Confidential and Privileged Security Information shall be provided with some form of PANYNJ approved security education and training annually. Refresher training shall reinforce the information provided during the initial security briefing and shall keep employees informed of any changes in security regulations.

SECTION 4. Safeguarding Confidential and Privileged Security Information

All persons granted access to Confidential and Privileged Security Information / SSI are responsible for safeguarding all such information in their possession or control. Confidential and Privileged Security Information / SSI shall be protected at all times either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with Confidential and Privileged Security Information is personally responsible for taking proper precautions to ensure that unauthorized persons do not gain access to it.

Use and storage

During actual working hours, steps shall be taken to preclude access to Confidential and Privileged Security Information / SSI by unauthorized personnel. Before or after actual working hours, Confidential and Privileged Security Information / SSI shall be stored in an environment with password protection or in a secure container such as a safe, locked desk or file cabinet.. Only authorized individuals are permitted access to the locks combination or to the locks key. A list should be maintained as to which individuals have access to which container. It is strongly suggested that more than one employee has access to each storage container. Authorized individuals must protect combinations and keys.

Reproduction

Confidential and Privileged Security Information / SSI may be reproduced to the minimum extent necessary - consistent with the need to carry out contract performance provided that the reproduced material is marked and protected in the same manner as the original material. Authorized individuals must accomplish all reproduction. Authorized service providers may be used for this task provided that the information remains safeguarded.

Disposal of information

When Confidential and Privileged Security Information is no longer needed it shall be disposed of by any method that prevents unauthorized retrieval. All paper products will be destroyed using a crosscut shredder at a minimum. Authorized individuals must perform the destruction. Authorized service providers may be used for this task provided that the information remains safeguarded until the destruction is completed.

Transmission and Shipment of Confidential and Privileged Security Information

Confidential and Privileged Security Information may be sent via the U.S. Postal Service or express mail services (e.g. FEDEX) provided it is packaged and sealed in a way that does not disclose its contents or the fact that it is Confidential and Privileged Security Information. All packages shall be sealed in a manner that easily identifies whether the package has been opened prior to delivery to the final consignee. The use of double wrapped package or a tamper resistant envelope may be used to fulfill this requirement.

In addition, the package must be addressed to an individual whose name appears on the Authorized Personnel Contract Project List or preferably to the Security Information Manager.

Security Information Access Control Guides

The PANYNJ is responsible for providing Security Program participants with the Security Information Access Control Guides needed during the performance of the contract.

The Security Information Access Control Guide identifies the types of Security Information that will require protection. It is each organization's responsibility to understand and apply all aspects of this guide. Security information Access Control Guidance is the exclusive responsibility of the PANYNJ, and the final determination of the appropriate categorization for the information rests with the PANYNJ.

If the PANYNJ does not advise to the contrary, a firm must return all Confidential and Privileged Information in its possession to the PANYNJ upon completion of a contract. If instead, the firm chooses to dispose of the information it must follow the destruction requirements identified in this manual. The contractor shall provide a written list/certification that all Confidential and Privileged Security Information has been properly destroyed. If the PANYNJ determines that a firm has a continuing need for the Confidential and Privileged Information a letter will be issued to show the authorized retention period and to provide final disposition instructions.

SECTION 5. Markings

Marking of Confidential and Privileged Security Information:

All documents, drawings, etc. that contain Confidential and Privileged Security Information / SSI must contain protective markings. In addition, the front page (or front and back cover if appropriate) shall be marked at the top and bottom of the page. In the case of Port Authority Confidential and Privileged Security Information, the protective marking is: CONFIDENTIAL AND PRIVILEGED SECURITY INFORMATION. A 16-point font size should be used for this marking. All copies of Confidential and Privileged Security Information / SSI documents shall also bear the required markings.

Interior pages of a document shall be conspicuously marked or stamped at the top and bottom with the category of the information appearing thereon. The document may be conspicuously marked or stamped Confidential and Privileged Security Information / SSI at the top and bottom of each interior page, when the particular information to which protection is assigned is adequately identified.

Interior pages of a document shall be conspicuously marked or stamped at the top and bottom with the category of the information appearing thereon. Alternatively, the document may be conspicuously marked or stamped Confidential and Privileged Security Information / SSI at the top and bottom of each interior page, when necessary to achieve production efficiency, and the particular information to which protection is assigned is adequately identified. Portions of this document shall be marked in a manner that eliminates doubt as to which of its parts contain or reveal Confidential and Privileged Security Information or SSI.

Sets of documents large enough to be folded or rolled shall be marked so that the marking is visible on the outside of the set when it is rolled or folded. In addition, all sensitive project information shall contain the following label on the front cover, title sheet or first page (for Confidential and Privileged Security Information plans and drawings the label shall be applied to each drawing):

"WARNING": This document is the property of the PANYNJ. Further
reproduction and/or distribution outside the contract team is prohibited
without the express written approval of:

The Port Authority of NY & NJ

In the case of paper records containing SSI, protective markings must be conspicuously placed on the top, and the distribution limitation statement on the bottom, of the outside of any front and back cover, including a binder cover or folder, if the document has a front and back cover; any title page; and each page of the document. The protective marking is: SENSITIVE SECURITY INFORMATION. A 16-point font size should be used for this marking.

The distribution limitation statement is:

WARNING: This record contains Sensitive Security Information that is controlled under 49 CFR parts 15 and 1520. No part of this record may be disclosed to persons without a "need to know", as defined in 49 CFR parts 15 and 1520, except with the written permission of the Administrator of the Transportation Security Administration or the Secretary of Transportation. Unauthorized release may result in civil penalty or other action. For U.S. government agencies, public disclosure is governed by 5 U.S.C. 552 and 49 CFR parts 15 and 1520. . An 8-point font size should be used for this marking.

In the case of non-paper records that contain SSI, including motion picture films, videotape recordings, audio recording, and electronic and magnetic records, a covered person must clearly and conspicuously mark the records with the protective marking and the distribution limitation statement such that the viewer or listener is reasonably likely to see or hear them when obtaining access to the contents of the record.

SECTION 6. Authorized Personnel Project Lists: Team Rosters

Each organization that participates on a contract that involves Confidential and Privileged Security Information will prepare an Authorized Personnel Project List. The list will include:

- Firm's name and address
- Name and contact information for the firm's Security Information Manager and Alternate
- A list of employees authorized to access Confidential and Privileged Security Information and the date they signed the Confidentiality/Non-Disclosure Agreement Acknowledgement

A copy of this list will be provided to the PANYNJ. Additional copies of this list will be provided to other companies authorized access, which the firm will interact with during the performance of the contract. This list will be used as a method for authenticating that individuals are authorized access to Confidential and Privileged Security Information. The PANYNJ needs to be notified immediately of any/all changes to key personnel on the roster. Each organization's Security Information Manager is responsible for the accuracy of this list. If an individual's name does not appear on the list they will be denied any access to Confidential and Privileged Security Information.

SECTION 7. Document Accountability

Each organization that has Confidential and Privileged Security Information / SSI in its possession will have in place a system that will account for the material in such a manner that retrieval is easily accomplished at the contract's conclusion. The accountability log must include:

- The date that a document was received or created
- The identity of the sender or creator
- A very brief description of the document
- Number of copies
- Transmission history (sent to whom, when)
- Certification that the document has been destroyed or returned to the
PANYNJ

SECTION 8. Information Technology Systems

Information systems that are used to electronically capture, create, store, process or distribute Confidential and Privileged Security Information must be managed to protect against unauthorized disclosure. Protection requires a balanced approach to include but not limited to operational (software security controls), physical and personnel controls.

The main objectives are to

- Restrict access to authorized users exclusively
- Compartmentalization of all Confidential and Privileged Security Information
- Complete removal of all Confidential and Privileged Security Information from the system when it is no longer needed

Each contractor and consultant will provide the PANYNJ with an Information Technology Systems Protection Plan for approval. The Protection Plan should describe the measures that the firm will apply to accomplish the objectives stated above.

The plan should include:

- A hardware baseline description and configuration diagram
- Software list
- Procedures for restricting access to authorized users exclusively
- Procedures used for compartmentalizing all Confidential and Privileged Security Information
- Procedures used to place system into and remove from "protected" mode
- Procedures used for removal of Confidential and Privileged Security Information

All electronic exchange of Confidential and Privileged Security Information / SSI must be accomplished using a project web site with centrally managed access control on a per individual basis with encrypted transfer.

SECTION 9. Bidding & Procurement

Confidential and Privileged Security Information that is provided under a solicitation is subject to the handling requirements for Confidential and Privileged Security Information identified in this manual.

Dissemination of Confidential and Privileged Security Information shall only be made upon the determination that the recipient is authorized to receive it. The measure for determining authorization is "need-to-know" and completion of a PANYNJ Confidentiality Agreement. This includes all persons or firms necessary to do work at the request of the PANYNJ such as architects and engineers, consultants, contractors, sub-contractors, suppliers, and others that the contractor deems necessary in order to submit an offer/bid or to complete the work or contract. It is the responsibility of the person or firm disseminating the information to assure that the recipient is an authorized user and to keep records of recipients.

The contractor shall provide a written list/certification that he and his subcontractors have properly disposed of all Confidential and Privileged Security Information after Contract award, after completion of any appeals process or completion of the work.

Section 10. Security Information Access Control Guide

The following are the basis for categorization of information and material involved in design, development, construction and/or maintenance contracts for PANYNJ projects.

Authority

The uniform procedures for categorization and/or control of Confidential and Privileged Port Authority Security Information related to architecture, engineering, construction, or rehabilitation of Port Authority facilities are issued under the authority of the Port Authority of NY&NJ.

Standards

Construction of security systems often requires that an exact standard be met or exceeded in order to insure that the security system will function properly. Drawings, details, and specification books are to indicate materials to be used, as well as any other information necessary to construct the system. They are not to indicate that the type of construction shown meets a security standard, or to contain any reference to the limits or capabilities of the type of construction/security system. This information will only be contained or referred to in the detailed Statement of Work.

Applicability

This guide applies to PANYNJ personnel, as well as to firms and individuals who are under contract, purchase order, letter contract, or who are in receipt of Confidential and Privileged Security Information through a request for quote, proposal, bid, or third party agreement.

All users of this guide are encouraged to assist in improving and maintaining its currency and accuracy.

Public Release

The fact that this section defines certain information as UNMARKED does not allow automatic public release of this information. Proposed public disclosures of UNMARKED information regarding construction/renovation shall be processed through Port Authority's project manager or the duly designated representatives for the specific contract.

Contractual Release

Contractors are responsible to the PANYNJ for all Confidential and Privileged Security Information drawings, including shop drawings, or other documentation provided to subcontractors.

Security Information Access Control Guide

Information constituting Confidential and Privileged Security Information and UNMARKED.

| Topic | Categorization | Remarks |
|--|--------------------------------------|---|
| Any mention of information that reveals vulnerabilities, built-in or potential, relating to our critical infrastructure. | CONFIDENTIAL & PRIVILEGED | |
| That a facility is designed with extensive security features. | UNMARKED | |
| Identity of individual security systems installed at the facility. | CONFIDENTIAL & PRIVILEGED | |
| Time frame or schedules showing project progress. | UNMARKED | |
| The general areas of the project or where security systems will be installed. | UNMARKED | |
| Announcement of security subcontract awards. | UNMARKED | |
| Results of site survey documentation or review that address specific physical security vulnerabilities. | CONFIDENTIAL & PRIVILEGED | When referring to specific terrorist threats and/or the specific capabilities of the installation to counter the threat, or when referring to site-unique technical threat. |
| Design and construction information revealing details unique or essential to the | UNMARKED | UNMARKED when referring to commercially available security systems, accepted |

| | | |
|---|---|--|
| security system(s). | CONFIDENTIAL & PRIVILEGED | construction techniques, information which is in the public domain and/or when security systems will be installed in area accessible to public view. CONFIDENTIAL & PRIVILEGED when referring to methods of defeating the security system(s) and/or covert/unexposed security systems. |
| Design drawings with specific forced entry ratings | CONFIDENTIAL & PRIVILEGED | |
| Shop drawings that provide specific rating information | CONFIDENTIAL & PRIVILEGED | |
| What specific security system/hardware model number is installed at a specific location? | CONFIDENTIAL & PRIVILEGED | When referring to fire safety systems, access denial systems, intrusion detection systems, core area security systems, and in-place surreptitious entry verification systems. |
| Details concerning overall security system(s) or individual subsystem(s), including design, engineering, construction, and fabrication. Also includes capabilities, vulnerabilities diagrams, operational | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED when data is commercially available in the public domain. CONFIDENTIAL & PRIVILEGED when high technology data, which was |

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| characteristics, and support requirements. | | developed by or for the PANYNJ, is revealed; or when data is site specific or concerns core area systems. |
| Security system effectiveness, to include range, maneuverability, resolutions, accuracy, and readiness cycle. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED when the information is commercially available or in the public domain. CONFIDENTIAL & PRIVILEGED when the system was developed or modified for or by the PANYNJ; or when the information concerns a specific special application. |
| Information identifying critical elements of the system; such as master controls, overrides, backup power sources. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED If equipment is readily observable to the public. CONFIDENTIAL & PRIVILEGED when an element has been developed and/or modified by or for the PANYNJ for a special application; or when such elements are not readily observable by the public. |
| Security systems command and control operating instructions and supporting | CONFIDENTIAL & PRIVILEGED | |

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| countermeasures when referring to a specific site or project location. | | |
| Blast protection design requirements for new or existing PANYNJ facilities. | CONFIDENTIAL & PRIVILEGED | |
| Blast analysis that addresses specific vulnerabilities to new or existing PANYNJ facilities. | CONFIDENTIAL & PRIVILEGED | If specific weaknesses are reflected or maximum tolerances are provided. |
| Structural plans, details, and specifications. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED when generic criteria are used. Site-specific information generated from generic criteria is UNMARKED . CONFIDENTIAL & PRIVILEGED if site-specific information involves details of security system(s) or additional protection. |
| Design data revealing engineering, construction, or fabrication details of a Communications Center electrical system or facility support systems with signal cables (e.g., intercom, telephone). This includes grounding systems. | UNMARKED CONFIDENTIAL & PRIVILEGED | UNMARKED if generic design criteria/terms are used. CONFIDENTIAL & PRIVILEGED if data reflects calculations resulting in selection of specific items to be used inside a specific Communications Center and/or listing of those items. |
| Drawings and specifications for | CONFIDENTIAL & | CONFIDENTIAL & |

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|---|--------------------------------------|---|
| emergency generator room or building. | PRIVILEGED | PRIVILEGED if site-specific or if any reference to control or security system. |
| What vulnerabilities will render the electrical and communications system(s) inoperative. | CONFIDENTIAL & PRIVILEGED | |
| Record documents identifying protective measures around Operations & Control Centers | CONFIDENTIAL & PRIVILEGED | |
| Record documents identifying the location of Police and Emergency Communication Lines | CONFIDENTIAL & PRIVILEGED | |

INFORMATION CONSTITUTING SSI

Except as otherwise provided in writing by TSA, in the interest of public safety or in furtherance of transportation security, the following information, and records containing such information, constitute SSI:

| | | |
|---|-------------------|---|
| <p>Security Programs and Contingency Plans</p> | <p>SSI</p> | <p>Any security program or security contingency plan issued, established, required, received, or approved by DOT or DHS, including—</p> <p>Any aircraft operator or airport operator security program or security contingency plan under this chapter;</p> <p>Any vessel, maritime facility, or port area security plan required or directed under Federal law;</p> <p>Any national or area security plan prepared under 46 U.S.C. 70103; and</p> <p>Any security incident response plan established under 46 U.S.C. 70104.</p> |
| <p>Security Directives</p> | <p>SSI</p> | <p>Any Security Directive or order--</p> <p>(i) Issued by TSA under 49 CFR 1542.303, 1544.305, or other authority;</p> <p>(ii) Issued by the Coast Guard under the Maritime Transportation Security Act, 33 CFR part 6, or 33 U.S.C. 1221 et seq. related to maritime security; or</p> <p>(iii) Any comments, instructions, and implementing guidance pertaining thereto.</p> |
| <p>Information Circulars</p> | <p>SSI</p> | <p>Any notice issued by DHS or DOT regarding a threat to aviation or maritime transportation, including any--</p> |

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|-----------------------------------|------------|---|
| | | <p>(i) Information Circular issued by TSA under 49 CFR 1542.303, 1544.305, or other authority; and</p> <p>(ii) Navigation or Vessel Inspection Circular issued by the Coast Guard related to maritime security.</p> |
| Performance Specifications | SSI | <p>Any performance specification and any description of a test object or test procedure, for--</p> <p>Any device used by the Federal government or any other person pursuant to any aviation or maritime transportation security requirements of Federal law for the detection of any weapon, explosive, incendiary, or destructive device or substance; and</p> <p>Any communications equipment used by the Federal government or any other person in carrying out or complying with any aviation or maritime transportation security requirements of Federal law.</p> |
| Vulnerability Assessments | SSI | Any vulnerability assessment directed, created, held, funded, or approved by the DOT, DHS, or that will be provided to DOT or DHS in support of a Federal security program. |

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| <p>Security Inspection or Investigative Information.</p> | <p>SSI</p> | <p>Details of any security inspection or investigation of an alleged violation of aviation or maritime transportation security requirements of Federal law that could reveal a security vulnerability, including the identity of the Federal special agent or other Federal employee who conducted the inspection or audit.</p> |
| | <p>SSI</p> | <p>In the case of inspections or investigations performed by TSA, this includes the following information as to events that occurred within 12 months of the date of release of the information: the name of the airport where a violation occurred, the airport identifier in the case number, a description of the violation, the regulation allegedly violated, and the identity of any aircraft operator in connection with specific locations or specific security procedures. Such information will be released after the relevant 12-month period, except that TSA will not release the specific gate or other location on an airport where an event occurred, regardless of the amount of time that has passed since its occurrence. During the period within 12 months of the date of release of the information, TSA may release summaries of an aircraft operator's, but not an airport operator's, total security violations in a specified time range without identifying specific violations or locations. Summaries may include total enforcement actions, total proposed civil penalty amounts, number of cases opened, number of cases referred to TSA or FAA</p> |

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| | | counsel for legal enforcement action, and number of cases closed. |
| Threat Information | SSI | Any information held by the Federal government concerning threats against transportation or transportation systems and sources and methods used to gather or develop threat information, including threats against cyber infrastructure. |
| Security Measures | SSI | <p>Specific details of aviation or maritime transportation security measures, both operational and technical, whether applied directly by the Federal government or another person, including—</p> <p>Security measures or protocols recommended by the Federal government;</p> <p>Information concerning the deployments, numbers, and operations of Coast Guard personnel engaged in maritime security duties and Federal Air Marshals, to the extent it is not classified national security information; and</p> <p>Information concerning the deployments and operations of Federal Flight Deck Officers, and numbers of Federal Flight Deck Officers aggregated by aircraft operator.</p> |
| Security Screening Information | SSI | The following information regarding security screening under aviation or maritime transportation security requirements of Federal law: |

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|------------------------------------|------------|---|
| | | <p>Any procedures, including selection criteria and any comments, instructions, and implementing guidance pertaining thereto, for screening of persons, accessible property, checked baggage, U.S. mail, stores, and cargo, that is conducted by the Federal government or any other authorized person.</p> <p>Information and sources of information used by a passenger or property screening program or system, including an automated screening system.</p> <p>Detailed information about the locations at which particular screening methods or equipment are used, only if determined by TSA to be SSI.</p> <p>Any security screener test and scores of such tests.</p> <p>Performance or testing data from security equipment or screening systems.</p> <p>Any electronic image shown on any screening equipment monitor, including threat images and descriptions of threat images for threat image projection systems.</p> |
| Security Training Materials | SSI | <p>Records created or obtained for the purpose of training persons employed by, contracted with, or acting for the Federal government or another person to carry out any aviation or maritime transportation security measures required or recommended by DHS or DOT.</p> |

| | | |
|--|-------------------|--|
| <p>Identifying Information of Certain Transportation Security Personnel</p> | <p>SSI</p> | <p>Lists of the names or other identifying information that identify persons as--</p> <p>Having unescorted access to a secure area of an airport or a secure or restricted area of a maritime facility, port area, or vessel or;</p> <p>Holding a position as a security screener employed by or under contract with the Federal government pursuant to aviation or maritime transportation security requirements of Federal law, where such lists are aggregated by airport;</p> <p>Holding a position with the Coast Guard responsible for conducting vulnerability assessments, security boardings, or engaged in operations to enforce maritime security requirements or conduct force protection;</p> <p>Holding a position as a Federal Air Marshal; or the name or other identifying information that identifies a person as a current, former, or applicant for Federal Flight Deck Officer.</p> |
| <p>Critical Aviation or Maritime Infrastructure Asset Information</p> | <p>SSI</p> | <p>Any list identifying systems or assets, whether physical or virtual, so vital to the aviation or maritime transportation system that the incapacity or destruction of such assets would have a debilitating impact on transportation security, if the list is—</p> <p>Prepared by DHS or DOT; or Prepared by a State or local government agency and submitted by the agency to DHS or DOT.</p> |
| <p>Systems Security Information</p> | <p>SSI</p> | <p>Any information involving the security of</p> |

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| | | operational or administrative data systems operated by the Federal government that have been identified by the DOT or DHS as critical to aviation or maritime transportation safety or security, including automated information security procedures and systems, security inspections, and vulnerability information concerning those systems. |
| Confidential Business Information | SSI | <p>Solicited or unsolicited proposals received by DHS or DOT, and negotiations arising there from, to perform work pursuant to a grant, contract, cooperative agreement, or other transaction, but only to the extent that the subject matter of the proposal relates to aviation or maritime transportation security measures;</p> <p>Trade secret information, including information required or requested by regulation or Security Directive, obtained by DHS or DOT in carrying out aviation or maritime transportation security responsibilities; and Commercial or financial information, including information required or requested by regulation or Security Directive, obtained by DHS or DOT in carrying out aviation or maritime transportation security responsibilities, but only if the source of the information does not customarily disclose it to the public.</p> |
| Research and Development | SSI | Information obtained or developed in the conduct of research related to aviation or maritime transportation security activities, where such research is approved, accepted, funded, recommended, or directed by the DHS |

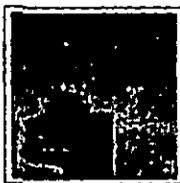
| | | |
|--------------------------|------------|---|
| | | or DOT, including research results. |
| Other Information | SSI | Any information not otherwise described in this section that TSA determines is SSI under 49 U.S.C. 114(s) or that the Secretary of DOT determines is SSI under 49 U.S.C. 40119. Upon the request of another Federal agency, TSA or the Secretary of DOT may designate as SSI information not otherwise described in this section. |



THE PORT AUTHORITY OF NY & NJ

Appendix I.

**The Protection of
Confidential and Privileged Security Information
and
Sensitive Security Information**



The Need

World events force changes in the way we live and conduct business.

U.S. Department of Homeland Security:

"The significance of protecting sensitive information cannot be ignored. The protection of critical infrastructure reduces the vulnerability of the United States to acts of terrorism."



Introduction

Port Authority Confidential and Privileged Security Information

Sensitive Security Information

sensitive information that the disclosure of which, would be detrimental to the public interest and might compromise public safety and security as it relates to Port Authority property, facilities, systems, and / or operations

information that reveals vulnerabilities relating to infrastructure / operations / fire & life safety

What are we protecting?

The Goal of the Program

The goal of the program is to implement uniform procedures for handling the Port Authority's Confidential and Privileged Security Information.

Trying to get everyone
on the same page.

The Main Components of the Program

- Security Manual
- Access Control Guide
- Non-Disclosure Agreement

Integration

Security Manual: establishes procedures for ...

- Use and storage
- Reproduction
- Transmission/Shipment of Sensitive Information
- Disposal of information
- Marking of Sensitive Material
- Team Rosters
- Document Accountability Log
- Information Technology Systems

Handling Requirements

Practically Speaking ...

What information do we protect?



How do we protect it?

What do I need to do?

The Security Manual: establishes procedures for ...

- **Use and storage**

During working hours, steps shall be taken to prevent access to Confidential and Privileged Security Information by unauthorized personnel.

When not in use it will be stored in a secure container, such as a safe, locked desk or file cabinet.

- **Reproduction**

Information copied from a document must contain the same protective markings as the original.

The Security Manual: establishes procedures for ...

- **Team Roster**

Each company will prepare an Authorized Personnel Team Roster, a list of individuals who have executed a Confidentiality Agreement Acknowledgement and require access.

These lists will be exchanged among the project team.

- **Transmission & Shipment**

Security Information may be sent via the U.S. Postal Service provided it is packaged in a way that doesn't disclose its contents or the fact that it is Confidential and Privileged.

The package must be addressed to someone on the Team Roster.

The Security Manual: establishes procedures for ...

- **Disposal of Security Information**

Security Information must be disposed of using a method that prevents unauthorized retrieval.

All paper products will be destroyed using a cross cut shredder.

- **Marking of Security Information**

All documents and drawings that contain Confidential and Privileged Security Information or Sensitive Security Information must be marked or stamped.

Access Control Guide: Which Information Gets Protected?

Identifies the information within a contract that is designated Confidential and Privileged Security Information or Sensitive Security Information (SSI).

Only information within a contract is Confidential and Privileged Security Information or SSI and requires special handling.

Identification

Access Control Guide: Examples of the types of information to be protected?

- Design Requirements and Calculations for Blast Protection
- Design Drawings with Specific Forced Entry Ratings
- Specifications for Sensitive Contractor Design Items
- Shop Drawings that provide Specific Rating Information
- Record Documents Identifying Protective Measures around Operations & Control Centers
- Record Documents identifying the Location of Police and Emergency Communication Lines

Which information?

Confidentiality Agreement

Non-Disclosure and Confidentiality Agreement:

As a condition of its providing confidential and privileged security information, the Port Authority is requiring those working on projects that require access to Port Authority Security Information / Sensitive Security Information, whether retained by it or by other contractors or consultants for its projects, to enter into this agreement, thereby acknowledging that they understand that it will be required to safeguard any such information provided, as well as its work product including conclusions of security assessments, evaluations and/or recommendations.

Individual Acknowledgement:

Acknowledges the agreement between the PANYNJ and those individuals provided access to Confidential and Privileged Port Authority Security Information / Sensitive Security Information, whereby the individual agrees to not disclose Confidential and Privileged Port Authority Security Information / Sensitive Security Information to any unauthorized person.

The Security Information Manager

The Security Information Manager is responsible for implementing and maintaining the PANYNJ Program for protecting Security Information.

Each organization that requires access to this information will appoint a senior management level employee to be the their Security Information Manager and an alternate.

Key point of contact

Security Violations

Security requirements are a material condition of all PANYNJ contracts that deal with Confidential and Privileged Security Information. Contracts shall be subject to termination for default, when it has been determined that a failure to comply with security requirements resulted from willful misconduct or a lack of good faith.

Unauthorized disclosure of SSI may be grounds for a civil penalty and other enforcement or corrective action by DOT.

Failure to comply

Next Steps

- Non-Disclosure & Confidentiality Agreement / Acknowledgement
- The Security Manual / Access Control Guide
- Selection of a Security Information Manager
- Briefings & Training

Implementation

Exhibit "C"

**World Trade Center Construction Department
Downtown Restoration Program
Port Authority Projects* at the WTC Site
Security Information Practices and Procedures (SIPP)**

November 1, 2004, Rev 0
August 4, 2005, Revision 1
April 11, 2007, Revision 2

** Note: Does not apply to third party exclusive projects such as Memorial, Tower 2,
Tower 3, and Tower 4.*

The Port Authority of New York and New Jersey
Security Information Practices and Procedures (SIPP)
WTC Transportation Hub

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(Per the Handbook for Protecting Security Information, April, 2007)

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SECTION 1. Introduction

The sections of this document augment the corresponding sections of the Handbook for Protecting Security Information (April, 2007) when applied to PA projects at the WTC site. All sections of the Handbook are listed below, if a particular section of the Handbook will be complied with as written, that section is noted here as 'not included'. Where a section is being augmented, the following text provides the additional procedures to be complied with.

SECTION 2. Access to Security Information

The requirements set forth regarding citizenship or permanent residency may be waived by the Port Authority and PATH as appropriate. The waiver shall be in writing and must have the approval of the Director of World Trade Center Construction. In such cases, access to and the handling of Confidential and Privileged Information (C&P) and / or Sensitive Security Information (SSI) will be in accordance with all requirements and conditions otherwise set forth in the handbook and applicable federal laws and regulations. In addition, depending on the circumstances of the requested waiver, additional information security safeguards may be imposed to ensure the full intent of this policy remains in force.

SECTION 3. Security Training & Briefings, not included

SECTION 4. Safeguarding Security Information

All persons granted access to C&P/ SSI are responsible for safeguarding all such information in their possession or control. C&P/ SSI information shall be protected at all times either by appropriate storage or having it under the personal observation and control of a person authorized to receive it. Each person who works with C&P/ SSI information is personally responsible for taking proper precautions to prevent unauthorized persons from gaining access to such information.

This work instruction is intended to describe the processes used to control secure documents/ data in the form of either electronic or hard copy, and is to be implemented for the control/ processing/ handling/ storage of all secure data as generated, received, or distributed by the Project design staff.

Use and Storage.

The person to whom it is assigned must maintain any hard copy C&P/ SSI data. Assignment of individual documents to appropriate staff members is made only by the Security Information Manager (SIM), or the Deputy Security Information Manager (DSIM), and marked using access control methods (see Section 5). Individuals to whom such information is assigned may only review/ share the contents of such documents with appropriate staff, i.e., those who have signed the project's Non-Disclosure Acknowledgement (NDA) form.

Access to any secure data storage / workrooms will be controlled by the SIM. Such secure data storage/ workrooms will be locked at all times. Secure data file cabinets will be locked at the end of each workday.

Reproduction

C&P/ SSI documents may be reproduced to the minimum extent necessary – consistent with the need to carry out contract performance provided that the reproduced material is marked and protected in the same manner as the original material.

Hard copy secure data may not be reproduced without the permission of the SIM. Reproduction of secure documents may be performed / witnessed only by appropriate staff who have signed the project's NDA.

Transmission and Shipment of Confidential and Privileged Security Information

Hard copy secure data may be sent through the U.S. Postal Service, express mail service (e.g. DHL) or inter-office courier, provided that it is double wrapped/ boxed. Preparation of such packages must be performed by, or witnessed by appropriate staff who have signed the project's NDA. Packaging labeling shall not indicate the security level of the contents.

All packages must have a specific individual "recipient" named on the shipping label. The individual "recipient" named on the shipping label must appear on the Authorized Personnel Contract Project List, or preferably be the SIM for that respective entity.

Document Control

For a description of the Document Control Tracking System for C&P/ SSI Information, please refer to Section 5.

Secure Data Disposal

Any C&P/ SSI data that is no longer needed is to be destroyed by either depositing into a locked shredding bin awaiting pick-up by an authorized service provider or by use of a cross cut shredder, by appropriate staff. A record of hard copy CP/ SSI information that has been destroyed must be maintained in the Accountability Log by the SIM, DSIM or other appropriate staff.

Note: A consultant/ contracting firm must return all C&P/ SSI information in its possession to the Port Authority (the Authority) upon completion of a contract. If instead, the firm is permitted by the SIM to dispose of the information, it must follow the destruction requirements identified in this manual. The firm must provide a written list to the SIM certifying that all C&P/ SSI information has been properly destroyed.

SECTION 5. Marking Documents

The Document Control tracking System for C&P/ SSI Documents is as follows:

Identification

Documents that have been identified by the SIM as C&P, will be given sequential numbers with the prefix 'CP' (Confidential & Privileged), followed by an acronym for the transmitting department, in this example, PCP (Priority Capital Programs). Next, the current year will be represented by its last two digits, and the last number is sequential. Together, these fields form the Document Control ID number. E.g. **CP-PCP-05-1**

Transmitting Documents

The SIM must have a completed and signed NDA for all recipients of C&P/ SSI information.

A Transmittal Acceptance Form must accompany all outgoing documents. This Form must be signed by the recipient upon receipt, and returned to the SIM.

When a request to transmit a set of C&P/ SSI documents to an individual (the "Recipient") is made by appropriate staff, the document, if not previously assigned a Document Control ID number, is given one by the SIM. An identifying number is assigned once a transmittal request is made.

For example, **CP-PCP-05-1** would be assigned to a document, followed by the identifying sequential number '1', which would indicate the copy assigned to the addressee. The Document Control ID number (CP-PCP-05-1), in addition to the Identifier (1), becomes the Document Tracking Number. e.g. **CP-PCP-05-1-1**

| | |
|---|--|
| Confidential and Privileged | |
| Document Control #: | |
| Identifier: | |
| Agency: | |
| Recipient: | |
| Transmittal Approved by: | |
| Date: | |
|  THE PORT AUTHORITY OF NY & NJ | |

The image above will be placed on the document as to not obstruct information on the document.

If more than one copy of document **CP-PCP-05-1** is to be transmitted, each addressee will receive a copy with the next sequential identifying number, making it a unique set. A

second addressee would receive document CP-PCP-05-1-2, a third party's copy would be CP-PCP-05-1-3, etc. This information, including the name of the agency, recipient, signature of the responsible approver, and date, are shown on the face of each confidential document.

Multiple Copies

If a single recipient is receiving multiple copies of a C&P/ SSI document, each copy would have a unique sequential identifying number. The Document Control ID number refers to a specific document and remains the same. In this example, the next document to be transmitted would be CP-PCP-05-2, followed by CP-PCP-05-3.

SECTION 6. Authorized Personnel Project Lists, not included

SECTION 7. Document Accountability Log, not included

SECTION 8. Information Technology Systems

Purpose

Information systems that are used to electronically capture, create, store, process or distribute C&P/ SSI information must be managed to protect against unauthorized disclosure. The main objectives are to:

- Provide access exclusively to appropriate staff.
- Compartmentalization of all C&P/ SSI security information
- Complete removal of all C&P /SSI information from the system when it is no longer needed.

This work instruction is intended to describe the processes used to control secure electronic data, and is to be implemented for the control / processing / handling / storage of all secure electronic data as generated, received, or distributed by the WTC Transportation Hub project staff.

Transmission/ Exchange of Electronic Information

The Authority uses Livelink as its project and program website solution to collaborate with team members both inside and outside of the firewall. The use of a web-based collaboration tool has numerous benefits that result in time- savings, cost savings, accountability, security, and disaster recovery. Within the Authority, the Downtown Restoration Program (DRP), the Security Capital Program, and the Goethals Bridge Program utilize Livelink, as do numerous smaller projects.

Access to these password-protected websites is controlled by permissions that apply to each individual user account. In this manner, users are allowed access folders and files in Livelink only when approved by the Project or Program Manager. Once users are logged in to the Livelink website they are working in a secure environment.

With these measures in place, as described in the Security Handbook, the PA has deemed that "all electronic exchange of C&P/ SSI must be accomplished using a project website with centrally managed access control on a per individual basis with encrypted transfer". For the DRP, the Livelink website is the only project website to be used for the storage and/or electronic exchange of C&P/SSI information. Under no circumstances shall e-mail or other websites be used for this purpose.

Although the entire DRP Website is secure, in order to provide for better organization and auditing of files that contain C&P/ SSI, special containers have been created. Information that has been designated as C&P and/ or SSI may only reside in these areas. Initially these containers have been created in the Stage II Drawing Exchange individual discipline folders, with one C&P/SSI container in each discipline's consultant exchange folder. Drawing files containing C&P/SSI content must be kept only in these folders. Access to these containers is limited to SIMs and/ or their designees.

Additional C&P/ SSI containers will allow other files such as reports, presentations, etc. to be stored.

In addition to the Livelink website, electronic C&P/ SSI information may also be shared via secure Local Area Networks (LAN). Information should be removed from the LAN as soon as the recipient has acknowledged receipt of the information. As is the website, these LANs are password protected, and access to them is only for those individuals who have signed the NDA and are provided with permission by the SIM.

If a situation arises whereby electronic files must be exchanged by electronic media such as CD, DVD, or Floppy Disk, all provisions within this Manual for handling physical documents must be satisfied. The use of USB drives or other volatile memory or storage devices is prohibited.

Secure Data Disposal

Electronic secure CAD files stored on the Authority's M; drive or secure hard drives may only be destroyed / erased by both the SIM and the CADD Manager. Mil Standard compliant software will be used for the destruction of secure software files. Electronic destruction / erasure of secure data files may only be performed after the review and approval of the SIM. Electronic secure files residing in Livelink may only be deleted by those with delete rights, and only with permission from the SIM.

SECTION 9. Bidding & Procurement

Introduction

The following is the procedure to be followed when processing Confidential and Privileged (C&P) shop drawings.

As a critical player in the shop drawing process, it must be emphasized with the General Contractor (GC) that the burden for coordinating/ enforcing the PA procedure, with their subcontractors, is their responsibility.

Process

A pre-construction meeting is to be held before the start of each project. The PA's project SIM, the GC's SIM, their respective document control personnel and the subcontractors are to be in attendance, as well as the reviewer/engineer of record. At the pre-construction meeting, the Construction Manager (CM)/ GC and subcontractors will be reminded of their obligation to submit a shop drawing listing with a submission schedule within 30 days of award. This listing will be required to identify each submittal and whether the submittal is to be issued as a C&P document or as an un-restricted document. In addition, the PA's SIM and Document Control Manager will give a presentation to explain the PA document security policies, the C & P submittal process and the respective responsibilities of all parties.

The subcontractors are responsible for giving a C & P number to each C & P drawing that is produced. The GC shall coordinate the numbers with the subcontractors and log the numbering sequence for their record before it is forwarded to PA.

The numbering system should comply with the following:

- Contract Number and/or Work Order Number, Spec Section, Sequence Submittal, and Sequence of CP submittal for that submittal. For example, for Contract Number 100-506, Work Order Number 05, if the first structural steel submittal were C & P, it would be numbered: 100.506-WO-05-05120-001-001

Other items of note/ concern include:

- As with all C & P information, electronic versions may not be emailed.
- Shop drawings that have been identified as C & P may not be submitted electronically, but only by hard copy, or be transmitted via Livelink with appropriate permissions.
- It is preferable to not forward C & P information on Requests for Information (RFI's). But if it is necessary a similar routing as that of a submittal shall apply.

Procedure

The exact procedure for processing of C & P shop drawings is as follows:

The subcontractor produces shop drawings in accordance with the list of drawings agreed

to at the pre-construction meeting. The subcontractor maintains one copy of the shop drawings for its records and forwards the quantity required to the GC. A Transmittal Acceptance Form (TAF) is required to be signed by the GC and returned to the subcontractor.

The GC logs the receipt of the shop drawings submittal into the master log, maintains one copy for its records, and forwards the remainder to the PA's project Document Control. A TAF is required to be signed by the PA Document Control and returned to the GC.

The PA's Document Control logs the receipt of the shop drawings submittal into the Master Log, maintains one copy for its records, and forwards the remainder to the engineer/architect reviewer. A TAF is required to be signed by the reviewer and returned to PA Document Control.

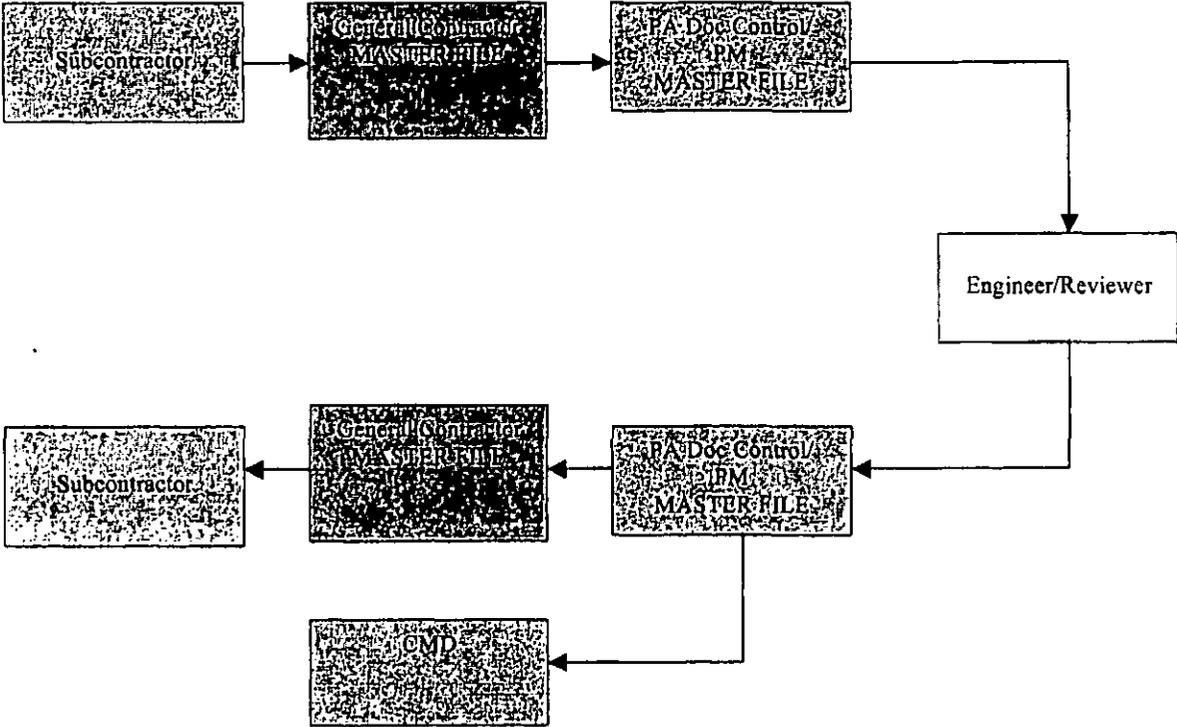
The engineer/ architect reviewer completes the review within the required time frame, maintains one copy for its records, and returns the marked-up remainder to PA Document Control. A TAF is required to be signed by PA Document Control and returned to the engineer/ architect reviewer.

PA Document Control maintains one copy for its records, provides one marked- up copy to CMD (define), and the remainder to the GC. A TAF is required to be signed by CMD and the GC and returned to PA Document Control.

The GC maintains one copy for its records, and returns the remainder to the subcontractor. A TAF is required to be signed by the subcontractor and returned to the GC.

(See Flow Chart attached).

C&P Shop Drawing Procedure Flow Chart



SECTION 10. Security Access Control Guide

Purpose

The Security Information Access Guide (SIAG) is the basis for categorization of information and material involved in the Project. Security information access control guidance is the exclusive responsibility of the Authority, and the final determination of the appropriate classification for the information rests with the Authority.

Standards

Construction of security systems often requires that an exact standard be met or exceeded in order to ensure that the security system will function properly. Drawing details and specification books are to indicate materials to be used, as well as any other information necessary to construct the system. They are not to indicate that the type of construction shown meets a security standard, or to contain any reference to the limits or capabilities of the type of construction/security system. This information will only be contained or referred to in the detailed statement of work.

Applicability

The SIAG applies to Authority personnel, as well as to firms and individuals who are under contract, purchase order, letter contract, or who are in receipt of C&P/ SSI Information.



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Sustainable construction requirements will be implemented for all Work that is performed on this Project to enhance the protection of the public, construction workers, and the environment. The Contractor shall include all cost associated with developing, implementing, filing of compliance documentation with the appropriate government agency, and monitoring as it relates to the Work included in this Contract.

Contractor shall cause each of its Subcontractors to comply with and be subject to all of the terms and conditions in this Rider G with which Contractor is obligated to comply or to which Contractor is subject. Any reference to Rider G includes all plans generated by Rider G. Contractor shall provide a copy of this Rider G and each plan described in this Rider G to Subcontractor. In the event Contractor fails to provide such copies, Subcontractor shall remain obligated to comply with and shall be subject to all terms and conditions in this Rider G.

The Contractor shall comply with the requirements for the guidelines developed by the Lower Manhattan Development Corporation entitled:

Sustainable Design Guidelines Introduction
World Trade Center Redevelopment Projects

The guidelines are available at the following link:
http://renewnyc.com/content/pdfs/rod/04_Appendix_D.pdf

The Contractor shall comply with the requirements for LEED CS 2.0 as developed by the United States Green Building Council (USGBC).

The guidelines are available at the following:
<http://www.usgbc.org>

The Contractor shall comply with the following SDG Plans, and LEED Credit Requirements, as pertains to this Contractor's Work. This Contractor will be required to submit all documents required in the following plans, also as pertains to this Contractor's Work.

A. Non-compliance

The Contractor will be issued a written Notice of non-compliance by the Construction Manager in the event that the Work of this Contractor creates conditions which fail to comply with the requirements of this Rider G. All non-compliances shall be remedied by the Contractor within twenty-four (24) hours of Construction Manager's issuance of such Notice of non-compliance. The failure of the Contractor to perform all corrective actions within this period may constitute a reason for the Construction Manager or 1 WTC to withhold payments to the Contractor in accordance with the terms of the Contract.

B. Payment, Liability, and Claims

The Contractor's compliance with this Rider G and any applicable regulations shall not be grounds for claims. The Construction Manager and 1 WTC shall be fully indemnified by Contractor of any liability or claims attributable to actions taken by this Contractor to comply with the requirements of this Rider G which result in equipment malfunction or failures, work stoppages, fouling, or any other result whatsoever. All costs and fees incurred for compliance with the requirements of this Rider G shall be paid by the Contractor at no additional cost to the Construction Manager or 1 WTC.

C. Testing and Inspection

All specified testing and inspection services will be performed by the Construction Manager. Any additional testing and inspection which is required as a result of this Contractor's Work creating a non-compliant condition will be charged to that Contractor.



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Scope of Work shall include, but not be limited to, all the Work in the following Sustainable Design Guideline (SDG) Plans and LEED Credits, except such Work as may be specifically excluded in Rider "A," Paragraph "C," "WORK NOT IN CONTRACT".

- A. SDG SEQ-5 Construction Environment Plan TCC
- B. SDG SEQ-6 Construction Storm Water Runoff and Pollution Prevention Plan
LEED SS-P1 – Erosion and Sedimentation Control Plan
- C. LEED EA-P1 – Fundamental Building Systems Commissioning
- D. LEED EA-C1 – Optimize Energy Performance
- E. LEED EA-C3 / C6 – Renewable Energy / Green Power
- F. SDG MEQ-1 Comprehensive Material Management Plan
LEED MR-C4.1 & 4.2 – Recycled Content
- G. SDG MEQ-2 Construction Waste Management Plan
LEED MR-C2.1 & 2.2 – Construction Waste Management
- H. LEED MR-C3 – Material Reuse
- I. LEED MR-C5.1 & 5.2 – Regional Materials
- J. LEED MR-C6 – Certified Wood
- K. SDG IEQ-1 IAQ (Indoor Air Quality) Performance Management Plan
- L. SDG IEQ-5 Construction IAQ (Indoor Air Quality) Management Plan
LEED EQ-C3 – Construction IAQ Management Plan
- M. LEED EQ-CR 4.1 – Low Emitting Materials – Adhesives and Sealants
LEED EQ-CR 4.2 – Low Emitting Materials – Paints and Coatings
LEED EQ-CR 4.3 – Low Emitting Materials – Carpet Systems
LEED EQ-CR 4.4 – Low Emitting Materials – Composite Wood and Agrifiber
- N. SDG IEQ-9 Integrated Pest Management Plan

A. SDG SEQ-5: Construction Environment Plan

Contractor shall provide all methods and means to reduce pollution and noise from its construction activities and vehicles to the adjoining neighborhood in compliance with SEQ-5, Construction Environment Plan. The Contractor will submit documentation for all fuel and engines it uses on the Project.

Purpose: To reduce pollution, dust, diesel emissions, noise, and vibration from construction activities and vehicles.

Action:

- Context: This Construction Environment Plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractor and his respective Subcontractors, acting under the supervision of the Construction Manager.
- Introduction: The intent of this plan is to reduce pollution, noise and vibration from construction activities and vehicles.
- Project Measures

1. Air Quality: Diesel Emission Mitigation

a. Ultra Low Sulfur Diesel Fuel

All diesel-powered non-road equipment to be used in the performance of Work under this Contract shall use Ultra Low Sulfur Diesel (ULSD) fuel that is certified to contain an average sulfur content of no more than 15 parts per million (ppm) as determined over a six month period. In the event that the Contractor can clearly demonstrate that ULSD fuel with an average sulfur content of not more than 15 ppm is not available, a written

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waiver may be granted by the Construction Manager until such time that the ULSD fuel has become available, or an approved equal is determined by the Construction Manager, to satisfy the intent of this Rider. The Construction Manager shall collect monthly samples of the ULSD fuel used during the period directly from the fuel tanks of the non-road diesel-powered equipment used on the construction site. The Testing Standards shall include but are not limited to:

- ASTM D6920 - 03 "Total Sulfur in Naphthas, Distillates, Reformulated Gasolines, Diesels, Biodiesels, and Motor Fuels by Oxidative Combustion and Electrochemical Detection," or
- ASTM D6428 - 99 "Test Method for Total Sulfur in Liquid Aromatic Hydrocarbons and Their Derivatives by Oxidative Combustion and Electrochemical Detection."

The ULSD fuel shall be obtained from any distributor capable of meeting the requirements of this specification. All ULSD fuel shall be dispensed directly on the construction site from either a dedicated on-site fuel storage facility or segregated truck delivery. In the case of on-site storage, all such facilities shall comply with all applicable jurisdictional codes pertaining to the storage and dispensing of fuel. The details of which shall be submitted to and approved by the Construction Manager prior to implementation.

A listing of ULSD fuel suppliers is included on the following web page under ULSD fuel Suppliers:

http://www.epa.gov/otaq/retrofit/cont_fuels.htm

Additionally, all diesel-powered on-road vehicles traveling to the jobsite, as well as stationary equipment used in the performance of Work at the jobsite, must use ULSD fuel, and will be required to provide fuel receipts demonstrating compliance. All Subcontractors and vendors are required to conform to the requirements noted herein.

b. Diesel Emissions Control Technologies

All non-road diesel-powered equipment with a rated horsepower of 50 HP or greater shall be retrofitted with Emissions Control Devices (devices) utilizing the best available technology. The retrofit devices shall consist of Diesel Particulate Filters (DPFs), or other measures of equivalent particulate matter (PM) removal efficiency wherever the implementation of such a device is feasible. In cases where DPF(s) 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 Construction Manager for review and approval prior to the use of the equipment. If the Construction Manager grants the waiver, Diesel Oxidation Catalysts (DOCs), shall be used. Only in the following cases will the use of diesel engines with a rated horsepower of 50HP or greater without tailpipe reduction measures be permitted by the Construction Manager:

- Where for technical reasons neither DPFs or DOCs can be used effectively, and the operation cannot be performed by another engine or other means;
- To immediately remedy safety and health hazards;
- In response to emergencies.

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Such reductions are to be targeted primarily toward the reduction of PM and secondarily on the reduction of nitrogen oxides (NOx), and shall in no event result in an increase in the emissions of either pollutant. The devices shall be 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 Construction Manager to provide the maximum level of pollutant reductions intended under this Rider. For more information, refer to the following websites:

U.S. Environmental Protection Agency Verified Technology List:
<http://www.epa.gov/otaq/retrofit/retroverifiedlist.htm>

California Air Resources Board Verified Technology List:
<http://www.arb.ca.gov/diesel/verdev/level3/level3.htm>

Europe's Verified Technology List:
<http://www.akpf.org/pub/vertfilterliste.pdf>

Vendors of such technologies include: Cleaire, Huss, DCL International, Engelhard, Johnson-Matthey, Fleetguard Emission Solutions, E-Global Solutions, Donaldson, Engine Control Systems, or other approved equal.

c. Diesel Construction Equipment Age Requirements

In order to facilitate the application of verified emission control devices as well as provide lower baseline emissions, all equipment used for the performance of Work under this Contract must use post-1995 fuel injection engines which meet Tier II engine emissions standards, as defined in 40 CFR Section 89.112. Exceptions will be made only for specific engines that are not yet commercially available as Tier II, and where the task cannot be reasonably accomplished using alternative engines or means which do comply with these demands. In such cases, the Contractor shall submit a request for a waiver to the Construction Manager for review and approval prior to the use of such equipment.

d. Contractor Diesel Emissions Mitigation Plan for Non-Road and On-Road Engines/Equipment

A Diesel Emission Mitigation Plan (the "DEM Plan") shall be prepared by the Contractor and submitted to the Construction Manager for review and approval prior to the use of any diesel-powered engines, including non-road and on-road vehicles. The DEM Plan shall identify all engines and vehicles to be utilized in the performance of Work under this Contract. No Work involving the use of non-road diesel-powered engines shall proceed under this Contract until a DEM Plan is submitted and approved by the Construction Manager. Once approved, no changes in or deviations from the DEM Plan will be permitted unless approved by the Construction Manager. The DEM Plan shall address the control of emissions from all diesel-powered equipment and vehicles including on-road vehicles (i.e., diesel-powered trucks) and non-road equipment not retrofitted with devices. The contents of the DEM Plan shall specifically address the following:

1. **Work Zone Creation:** The Construction Manager shall establish and Contractor shall utilize on-road vehicle (i.e., diesel trucks) staging zones for the off-loading and loading of materials to and from the construction site. Such zones shall be located to minimize the impact of pollutants from diesel engines and vehicles on sensitive receptors and the general public. In addition, the Contractor shall ensure that its diesel-powered engines and vehicles are located away from the fresh air intakes as determined by the Construction Manager.

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2. Contractor shall comply with the material staging and access requirements as set forth in Chapter 21 of the Final Environmental Impact Statement and in the Record of Decision.
 3. Designated truck routes have been established to minimize impact on adjacent community. Contractor shall utilize these truck routes provided by the Construction Manager.
 4. Diesel Engine Idling Time: The idling time of non-road and on-road vehicles shall be limited to three (3) consecutive minutes as determined by the Construction Manager except as follows:
 - o When an on-road vehicle is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control.
 - o When it is necessary to operate heating, cooling or auxiliary equipment installed on the vehicle when such equipment is necessary to accomplish the intended use of the vehicle.
 - o To bring the vehicle to the manufacturer's recommended operating temperature. In this event, the temperature requirements must be indicated in the Diesel Emission Mitigation Plan as an exception.
 - o When the outdoor ambient temperature is below twenty (20) degrees Fahrenheit.
 - o When the vehicle is being actively worked on for repairs or maintenance.
 5. Electrification: The Construction Manager shall develop and implement a plan to distribute temporary electrical power throughout the construction site. The Contractor shall comply with the requirements of such plan. The plan shall identify all diesel-powered equipment intended to be used for the performance of construction, and indicate the availability of alternate electrically powered versions; in order that Construction Manager can prepare such a plan, Contractor shall identify to Construction Manager all such diesel-powered equipment and the availability of such alternate versions. In cases where electrically powered versions are available, only the electrically powered version shall be used. At a minimum, all stationary equipment (e.g., air compressors, grout plants, mixers, pumps, welding machines, etc.) required for the performance of Work that can be practicably replaced with an electrically powered version shall be powered electrically in lieu of diesel engines.
- e. Limited Work Zone**
Adjacent to the Route 9A walkway/bikeway in the vicinity of the east-west pedestrian concourse, the modeled concentration of particulate matter (PM 2.5) over a 24-hour period could exceed the National Ambient Air Quality Standards. Therefore, to ensure that such potential exceedances are mitigated, the Contractor shall not operate non-road diesel-powered equipment in this "Limited Work Zone" during periods of extreme meteorological conditions without the approval of the Construction Manager.
- f. Submittals:**
1. **Inventories: On-Road and Non-Road Diesel Equipment and Engines, and Verified Emission Control Devices.**
No Work shall commence utilizing diesel-powered non-road engines and vehicles or motor vehicles ("engines or vehicles") with a rated horsepower equal to or greater than 50HP until the Contractor submits a comprehensive and complete inventory list inclusive of all such engines and vehicles including the specifics of each as detailed in the following subparagraph, and same is approved by the Construction Manager.

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In the event that the Contractor clearly demonstrates to the Construction Manager that no emission control device is available for a particular engine or vehicle, or the retrofit of such a device may endanger the operator or those working nearby, the Construction Manager may grant a waiver to permit the use of such an engine or vehicle. Nonetheless, the engine or vehicle must be included on the inventory list, and the Contractor must continue to demonstrate a reasonable effort to determine the availability of a substitute engine or vehicle of equivalent performance.

The inventory list shall be provided in an electronic format, and shall include the following:

- a. The owner, whether the Contractor, Subcontractor, or rental firm. The firm name, address, telephone number and contact person familiar with the operation and maintenance of the equipment and the emission control technologies;
 - b. The number, type, make, year of manufacture, manufacturer and serial number;
 - c. The engine type, make, horsepower rating, year of manufacture, and serial number;
 - d. The approximate fuel consumption rate per shift;
 - e. The anticipated duration of use, and days and hours of operation;
 - f. Retrofit type, make, model, manufacturer, installation date, EPA or CARB verification number or supporting documentation related to emission control devices.
2. **On-Going Equipment Updates and ULSD Fuel Deliveries:**
The Contractor shall submit a weekly update to the Construction Manager of the inventory list of all diesel-powered non-road equipment. This update shall include the baseline inventory list, and a compilation of all ULSD fuel deliveries during the week, including delivery tickets.
3. **Ultra Low Sulfur Diesel Fueling Plan**
The Contractor shall submit his fueling plan, identifying the proposed ULSD fuel supplier, independent test results of sulfur content of the proposed supplier's fuel as determined by the Testing Standards referenced in the preceding Section entitled "Ultra Low Sulfur Diesel (ULSD) Fuel", and a description of segregated truck delivery or on-site fuel distribution plans.

2. Air Quality: Dust Control

The Contractor shall control fugitive dust at all times – 24 hours a day, 7 days per week, including non-working days, weekends and holidays. The requirements for controlling fugitive dust dispersions within the construction site during the performance of Work under this Contract, such as earth moving and demolition activities, shall include the following:

- The spraying of a (non-hazardous, biodegradable) dust suppressing agent;
- The physical containment of fugitive dust particles through the use of tarps or other wind protection devices;
- The adjustment for meteorological conditions, as appropriate;
- Wheel washing of all non-road and on-road vehicles leaving the site including the containment and treatment of wash water;

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- The wetting and covering of all trucks loads containing materials delivered to or removed from the site that may generate fugitive dust;
 - The routine wetting and cleaning of streets and access roads within the construction site.
- a. **Submittals:**

The Contractor shall comply with all federal, state and local laws and regulations applicable to the control and mitigation of fugitive dust dispersion. The Contractor shall submit a Dust Control Plan ("DC Plan") to the Construction Manager for review and approval to address the specific measures contained in this Section. The DC Plan shall include contact information for responsible individual(s) from the Contractor with 24 hour, 7 days per week availability, and who have been vested with the authority to implement all controls and mitigation measures identified in the DC Plan. The DC Plan must detail all dust control procedures for all such controls and measures as approved by the Construction Manager, and be job specific to address all anticipated Work activities that may generate fugitive dust dispersions (e.g., demolition, saw-cutting, pavement milling, haul roads, etc.).

3. Noise Abatement

The Construction Manager and Contractor shall control and mitigate noise in the performance of the Work during all hours of construction. All construction activities shall be controlled to comply with the following noise levels.

Table 1: Noise Limitation Thresholds For Sensitive Receptor Sites – Resultant noise at sensitive receptor sites shall not exceed the following levels:

| <u>TIME</u> 8-hour Leq (dBA) Limit |
|---------------------------------------|
| <u>Weekdays, 7AM to 6 PM</u> 80 |
| <u>All Other Times</u> 70 |

The Contractor shall use equipment that ensures that the noise generated during all construction activities, including the performance of its Work, does not exceed the threshold levels indicated in Table 1. In addition, the following specific noise mitigation measures indicated in Table 2 shall be implemented during the use of impact wrenches, pavement breakers and pneumatic grout drills, to ensure that the noise threshold limits of Table 1 are not exceeded:

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Table 2: Noise Criteria For Specific Equipment

| |
|---|
| Equipment Noise Mitigation Measure |
| Impact wrenches Use impact wrenches with a noise emission level of 82 dBA at 50 feet |
| Pavement breakers Install mufflers on pavement breaker cylinders |
| Pneumatic grout drills Place drills inside acoustic enclosures |

Other than the specific equipment and mitigation measures listed in Table 2, and in the event that Construction Manager determines that the Contractor has exceeded the noise thresholds specified in Table 1, the Construction Manager may direct the Contractor to implement, at Contractor's own cost, abatement measures deemed appropriate by the Construction Manager and/or as specified and approved in the Contractor's Noise Control And Abatement Plan (the "NCA" Plan):

Where practicable, the Construction Manager and Contractor shall schedule all construction activities to avoid and minimize any adverse acoustic noise that could impact sensitive receptors as determined by the Construction Manager. Acoustical sensitive receptors presently include the Millennium Hotel on Church Street, Embassy Suites on Vesey Street, Multi Family Residential Structure on the corner of Park Place and West Broadway, 114 Liberty Street and the World Financial Center. Sensitive receptors may be added as deemed appropriate by Construction Manager.

a. Contractor Noise Control And Abatement Plan

The Construction Manager and each Contractor shall comply with all appropriate federal, state and local laws and regulations applicable to noise control and mitigation. The Construction manager shall develop and submit to 1 WTC for review and approval an NCA Plan that describes the Construction Manager's intended mitigation procedures and methods to control and mitigate noise generated during the performance of Work under this Contract. The NCA Plan shall specifically address the following:

1. Means and methods for the implementation of all control and mitigation measures including all calculations and supporting documentation;
2. Design drawings of noise abatement enclosures and barriers, signed and sealed by a licensed professional engineer in the State of New York;
3. Description of physical noise mitigation materials, including the name of manufacturer and its specifications. All such materials shall be fire resistant;
4. Catalog Cuts and technical data sheets of construction equipment to be employed during Work of this Contract;
5. Baseline background noise measurements taken prior to the start of construction;
6. Construction noise assessment. The method for predicting the construction noise impact shall be the Federal Highway Administration (FHWA) prediction method, or similar.

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b. Construction Noise Monitoring

To ensure compliance with this Section 3, the Construction Manager shall identify and submit to 1 WTC for review and approval the qualifications of an acoustical firm to provide assistance in the development and implementation of the NCA Plan. The acoustical firm shall also provide noise monitoring services on the site. Both the Construction Manager and the Contractor shall comply with the terms and conditions of the NCA Plan.

The qualifications of the acoustical firm shall be as follows:

1. The firm shall have within the preceding five years provided noise measurement, monitoring and analysis consulting services on at least three projects of similar size and complexity that included specific noise control and abatement initiatives, preferably in the City of New York;
2. The entity designing the noise mitigation measures and performing the noise assessment shall be a member in good standing with the National Council of Acoustical Consultants;
3. The firm shall have a Noise Control Engineer (NCE) on staff or under contract who is either certified by the Institute of Noise Control Engineers (INCE), or has earned a baccalaureate or higher degree from an accredited college or university in engineering, physics, acoustics or architecture which devoted courses to the principles of acoustics. The NCE shall be fully familiar with the means, methods, materials, equipment and designs associated to noise control and abatement;
4. Each employee of the firm who will actually perform measurements or monitoring in the field shall be a Noise Control Officer (NCO). The NCO shall have been trained in the review and mitigation of community noise issues, and the standard methods for noise measurement and monitoring, including the use of all associated equipment and data collection. Training shall have been by a NCE certified by INCE, by the NCE on staff at the firm, or by other NCO(s) with a minimum of three (3) years experience. The NCO shall possess a working knowledge of all applicable standards.

Upon the approval by 1 WTC, the Construction Manager shall immediately procure the services of the firm to perform baseline background noise measurements at the construction site and near the sensitive receptors identified above. The background noise monitoring shall be performed to determine the "noise signature" or "noise level trend" for the construction site and the immediate vicinity.

A complete construction noise assessment for the Project shall be conducted. The method for predicting the construction noise impact shall be the FHWA prediction method, or similar, approved by the Construction Manager. The NCA Plan shall be submitted to 1 WTC by the Construction Manager for review a minimum of one month prior to the commencement of Work unless otherwise directed by the Construction Manager.

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The Construction Manager shall measure the noise levels and submit a written report to verify compliance with the allowable noise thresholds on a weekly basis, or as otherwise deemed necessary by 1 WTC, throughout the duration of construction activities to ensure compliance. Readings shall be taken on a continuous basis during any construction activity, including, but not limited to, the delivery of materials and movement of construction equipment. The Construction Manager may monitor noise levels at known sensitive receptors or other locations as deemed appropriate to verify compliance. When noise level measurements with respect to the Contractor's Work exceed the allowable thresholds, the Contractor, with approval by the Construction Manager, shall cease performance of the Contractor's Work and immediately implement the mitigation procedures indicated in the approved NCA Plan as directed by the Construction Manager. If applicable procedures are not included in the NCA Plan, revised procedures are to be developed and implemented. Such revised procedures are to be incorporated in the NCA Plan as a revision, and submitted to the Construction Manager for review and approval. In the event of a conflict between the Contractor's noise level measurements and those taken by 1 WTC, 1 WTC's noise level measurements shall prevail.

c. Submittals:

1. Construction Manager shall submit an NCA Plan for review and approval by 1 WTC prior to commencement of any Work. The submittal shall include all revisions, and a copy of the approved NCA Plan revisions shall be provided to each Contractor and Subcontractor prior to the commencement of such Work. The Subcontractor shall be specifically obliged to comply with the requirements of the approved NCA Plan in the provisions of his subcontract.
2. Construction Manager shall submit the name and qualifications of the acoustical firm, the name and qualifications of the firms NCE's and NCO's.
3. Construction Manager shall submit a weekly report to 1 WTC summarizing the noise measurement readings taken at the construction site. All events that exceed the limits indicated in Tables 1 or 2 shall be clearly indicated and the corrective action taken to address the cause.

4. Vibration Abatement

The Construction Manager and Contractor shall control and mitigate vibration during all hours of construction. The Construction Manager shall develop and implement specific construction vibration mitigation measures to protect historic properties from increased vibration levels associated with construction activities at the site (see Section 5 Historic Resource Protection). In conjunction with the protection of historic properties, overall construction vibration abatement and monitoring shall be addressed as follows:

a. Contractor Vibration Control And Abatement Plan

The Construction Manager and Contractor shall comply with all appropriate federal, state and local laws and regulations applicable to vibration control and mitigation. The Construction Manager shall develop and submit to 1 WTC for review and approval a Vibration Control And Abatement Plan (the "VCA Plan") that describes Construction Manager's intended mitigation procedures and methods to control and mitigate vibration during the performance of Work under this Contract. The VCA Plan shall specifically address the following:

1. Means and methods for the implementation of all control and mitigation measures including all calculations and supporting documentation;
2. Baseline background vibration measurements taken prior to the start of construction;

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3. Construction vibration assessment. The method for predicting the construction vibration levels to be approved by the Construction Manager.

b. Construction Vibration Monitoring:

To ensure compliance with this Section 4, the Construction Manager shall identify and submit to 1 WTC for approval the qualifications of a firm to provide assistance in the development and implementation of a VCA Plan, and to provide vibration monitoring on the construction site. The qualifications of the firm shall be as follows:

1. The firm shall have within the preceding five years provided vibration measurement and analysis consulting services on at least three projects of similar size and complexity that included specific noise control and abatement initiatives, preferably in the City of New York.
2. Each employee of the firm who will actually perform measurements or monitoring in the field shall possess appropriate training, and have demonstrated experience in the measurement and implementation of mitigation techniques for similar types of construction projects.

Upon the approval by 1 WTC of a vibration control firm, the Construction Manager shall immediately procure the services of the firm to perform baseline vibration measurements at the construction site and near the historic properties identified above, and submit a report to 1 WTC, including a review and assessment of the existing vibration levels relative to the allowable threshold.

On a weekly basis, or at other intervals deemed appropriate by 1 WTC, the Construction Manager shall submit a written report to verify compliance with the allowable vibration threshold based on vibration measurements taken continuously at the construction site and near the historic properties for the duration of the Work. The Construction Manager may also monitor vibration levels at locations deemed appropriate to verify compliance. When vibration level measurements exceed the allowable thresholds for any Work being performed by a Contractor, then the Contractor, if instructed by the Construction Manager, immediately shall cease performance of Contractor's Work and/or implement the mitigation procedures described in the approved VCA Plan as directed by Construction Manager. If applicable procedures are not included in the VCA Plan, revised procedures are to be developed and implemented by Construction Manager only with the approval of 1 WTC. Such revised procedures are to be incorporated in the VCA Plan as a revision, and resubmitted to 1 WTC for review and approval. In the event of a conflict between the Construction Manager's vibration level measurements and those taken by 1 WTC, 1 WTC's measurements shall prevail.

5. Cultural and Historic Resource Protection

Consistent with the stipulations of the executed Memorandum of Agreement (MOA) pursuant to Section 106 of the National Historic Preservation Act, a Resource Protection Plan (RPP) was developed by the Port Authority in consultation with its Project Historical Architect (PHA). The purpose of which is to protect historically significant elements of the World Trade Center site ("WTC site") that are to remain in situ during construction from inadvertent damage. The element designated to be protected is presently as follows:

- West Slurry Wall

The Contractor shall be responsible for compliance with all the requirements specified in the RPP for protection of the above historic WTC site element to remain undamaged and in situ during construction.

The Construction Manager shall notify the Contractor when Contractor's non-compliance with any WTC site historic element protection requirement is discovered. Conversely, if the Contractor discovers any non-compliance by any other Contractor or entity with site element

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protection requirements, Contractor shall notify the Construction Manager or 1 WTC immediately. In all cases, the Construction Manager shall implement appropriate corrective actions immediately to restore the required protection, and Contractor shall cooperate in the implementation of such corrective actions.

a. Inspection of Existing Conditions of Historic Element

The Construction Manager shall inspect and record the existing conditions of the above historic element on the WTC site.

b. Protection Considerations in All Contractor Submittals

The Contractor shall consider the protection of any historic WTC site element in all submittals, especially those regarding means and methods, made to the Construction Manager for review and approval. The Contractor shall design, furnish and install all protective measures specified in the Contract documents, and is responsible for the preservation of all existing protection measures in place that may be damaged or affected by his construction activities or the performance of Contractor's Work. The Contractor shall not locate any equipment, deliver any materials or commence any Work whatsoever that may impact any historic element on the WTC site unless approved by the Construction Manager.

Each Contractor submittal shall include the following information:

1. A general location map of the WTC site showing where the Contractor's Work shall be performed, including a notation on the map of location of the historic elements relative to the Work;
2. A listing of materials or construction equipment to be used in the performance of Contractor's Work that shall or may come in contact with any of the WTC site's historic elements, and the proposed methods to be employed to prevent any damage to said historic elements.

c. Protection Requirements

If during the review of a Contractor submittal, the Construction Manager determines that the potential exists for damage, the Construction Manager may direct the Contractor to preserve or implement or restore the following protective measures in accordance with the Port Authority's Resource Protection Plan (RPP). In the event that the Contractor identifies a more effective and/or efficient methods of protection as construction proceeds, the Contractor shall propose said measures for further consideration. Under no conditions, however, shall the Contractor proceed with such an alternate method without the approval of the Construction Manager.

1. **Requirements for the Protection of West Slurry Wall:** If Work is required by the Contract on or adjacent to the existing west slurry wall bounding the construction site in the West Bathtub (as such location is commonly referred to), and the Construction Manager determines that a potential exists for the existing slurry wall to be damaged, the Contractor shall furnish and install appropriate protective measures approved by the Construction Manager that provide a clear, unobstructed, recognizable and respectful view of the wall.
2. **Protection of Historic Resources from Construction Vibration:** The Contractor shall develop and implement specific mitigation measures with respect to Contractor's Work (as discussed in Section 4 Vibration Abatement) to protect other surrounding properties from increased vibration levels associated with construction activities at the site. Such measures shall reduce vibration to a level below the threshold criterion of 0.12 in/sec (approximately 95 VdB):

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d. Monitoring Program

1. Periodic Monitoring:

Prior to construction, the Contractor shall meet with the Construction Manager to establish a program to periodically inspect and examine all protection measures in place to verify compliance with the applicable provisions of the RPP. The Contractor shall develop and submit a written monitoring program for the review and approval of the Construction Manager. The program shall include an Emergency Remediation Plan (the "ERP") identifying the emergency contacts and outlining the procedures to be followed should an unforeseen condition or unanticipated damage arise that compromises or places at risk any historic element on the WTC site. Once approved by the Construction Manager, the Contractor shall set aside the materials, products and equipment in a safe and accessible location on the WTC site to ensure an immediate response to any such occurrence.

2. Routine Monitoring:

During the progress of the Work, the Construction Manager will routinely review (inspect) all protection measures in place to verify compliance with the applicable provisions of the RPP. Upon the completion of the Construction Manager's review, a meeting will be conducted with the Contractor to discuss and document the following:

- a. The progress achieved since the previous inspection;
- b. An assessment of the performance of the protection measures in place, and a determination of the adjustments or modifications required to correct non-compliances with the requirements of the RPP;
- c. A review of the upcoming scheduled Work activities, a determination of the required protection measures, and a verification that the existing protective measures are adequate for such activities. If necessary, there will be a determination of supplemental measures to be implemented for compliance with the requirements of the RPP.

3. Emergency Remediation

Should any condition arise or damage occur during performance of Contractor's Work or other construction that compromises the integrity of the in-place protection measures, or adversely affects any historic element on the WTC site, the Contractor shall stop its Work in the affected area, immediately notify the Construction Manager, and implement the relevant measures outlined in the approved ERP as directed by the Construction Manager. At a minimum, the notification to the Construction Manager shall include a description of the following:

- a. The situation that arose;
- b. Its cause, if known;
- c. Response measures implemented;
- d. Recommendations for further intervention, if any.

The Construction Manager will determine whether or not the Contractor may resume Work in the affected area. If not, the Contractor shall repair and/or furnish and install all supplemental remediation and mitigation measures deemed appropriate by the Construction Manager. All repair Work shall be done in such a manner as to minimize the adverse impact to the affected historic element.

6. [Intentionally Left Blank]

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7. Discoveries of Archeological Resources and Effects on Historical Resources

In the event that archaeological deposits or features are encountered during the performance of construction activities, the Contractor shall stop all Work immediately, flag or fence off the archaeological discovery location, and immediately notify the Construction Manager. The Contractor shall not recommence its Work until so directed by the Construction Manager.

8. Construction Protection Plan

The Contractor shall develop and submit to the Construction Manager for review and approval a comprehensive Construction Protection Plan (CPP) to address the implementation, enforcement and monitoring of the Environmental Performance Commitments (EPCs) as outlined in the previous Sections 1 through 6 of this Specification for Air Quality: Diesel Emission Mitigation and Dust Control, Noise and Vibration Abatement, Cultural and Historic Resource Protection, and Archaeological Discoveries. The CPP shall be submitted to the Construction Manager for review and approval within thirty (30) calendar days of acceptance by the Construction Manager of the Contractor's proposal. No Work by the Contractor shall commence until the CPP is approved by the Construction Manager. The CPP will be organized to address each EPC Section, and shall include the following plans:

- Diesel Emission Mitigation (DEM) Plan (as per Section 1);
- Dust Control (DC) Plan (as per Section 2);
- Noise Control and Abatement (NCA) Plan (as per Section 3);
- Vibration Control And Abatement (VCA) Plan (as per Section 4);
- Emergency Remediation (ERP) Plan (as per Section 5);

B. SDG SEQ-6: Construction Storm Water Runoff and Pollution Prevention
LEED SS-P1 – Erosion and Sedimentation Control Plan

Unless otherwise directed by the Construction Manager, the Contractor shall provide all methods and means to control site erosion and reduce negative impacts on hydrological and atmospheric systems produced by construction activities in compliance with SEQ-6, Construction Storm Water pollution Prevention Plan and LEED SS-P1 Erosion and Sedimentation Control Plan. The Contractor shall coordinate specific measures with the overall Project plan prepared by the Construction Manager that shall be in accordance with US EPA document 832/R-92-005. Each Contractor shall comply with the measures established by the Construction Manager in the overall Project plan as follows:

See following links:

http://cfpub.epa.gov/npdes/docs.cfm?document_type_id=1&view=Policy+and+Guidance+Documents&program_id=6&sort=name

<http://www.epa.gov/npdes/pubs/owm0307.pdf>

<http://www.epa.gov/owm/sectstm.htm>

Purpose: Control site erosion and reduce negative impacts on hydrological and atmospheric systems produced by construction activities

Action:

A. Context

This Erosion and Sedimentation Control Plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

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B. Introduction

The intent of this Erosion and Sedimentation Control Plan is to coordinate the implementation, oversight, and enforcement of the erosion and sedimentation control measures that will be implemented during excavation and construction. Through the use of various control measures, scheduled inspections, and camera evidence, the Erosion and Sedimentation Control Plan encourages regular maintenance of construction site erosion control mechanisms, thereby maximizing plan effectiveness.

C. Project Measures

1. Skeletal sheeting will be used to stabilize the face of an excavated slope.
2. Recycled water from the construction site will be used to control dust, regularly sprinkling soil surfaces as a preventative measure to inhibit dust swirling on-site and beyond the site boundary.
3. Construction site fencing will be utilized along with concrete berms to channel and control water flow before it may dissipate beyond the site boundary and enter the sewage system untreated.
4. Relief drains will be implemented to allow dewatering of the site when the water table is unusually high. Permits shall be required from the New York State Department of Environmental Conservation (NYCDEP) prior to implementation.
5. Storm drains will be fitted with filter fabric and gravel or mesh filters to prevent sedimentation from entering drains prematurely. Tanks will be provided to capture storm water and properly filter it before it is recycled on-site, for tire washing or dust control.
6. Gravel grading may be implemented in areas where excessive runoff occurs, to slow the travel of water, and properly channel water at the base of the slope.
7. Materials stored on-site will be protected from dust and particulates by tarps or sheds.
8. Vehicle rinsing will be enforced to prevent soils, etc., from leaving the site.
9. Contractor will assemble and submit to Construction Manager all drawing, permits, and other documentation, and will regularly photograph control measures at scheduled intervals.
10. The Contractor will submit to the Construction Manager a log of all ongoing maintenance activities associated with the Erosion and Sedimentation Control Plan.
11. The prime responsibility for implementing the provisions of this plan rests with the Construction Manager acting under the supervision of 1 WTC. In addition, each Contractor will be responsible for the requirements listed below as applicable to such Contractor's Work.

The intent of this plan is to control the storm water removed from the vicinity of the Project site and to control the erosion and sediment generated by the Project during the demolition and construction activities associated with construction of the Freedom Tower. Currently, storm water within the Project site is collected in two separate below grade sump pits located at the northern and southern ends of the site. These sumps collect storm water flow at the below grade site and pump storm water up to an adjacent NYCDEP combined sewer system. It is intended to maintain this existing storm water management system during performance of all of the Work at the site. Best Management Practices (BMP) are to be used during the construction of the Project in order to prevent adverse water quality impacts and control pollution of New York State waters and/or waters of the United States. The storm water discharge generated during construction shall neither cause nor contribute to a violation of water quality standards contained in New York Code Rules and Regulations Title 6 Parts 700 through 705, including but not limited to:

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there shall be no increase in turbidity that will cause a substantial visible contrast to natural conditions; there shall be no suspended, colloidal or settleable solids that will cause deposition or impair the waters for their best usages; and there shall be no residue from oil and floating substances, visible oil film, globules, or grease.

a. Erosion and Sediment Control

The disturbance caused by demolition and clearing of the construction site and the Work and other construction activities occurring at the site shall be appropriately managed and designed to minimize the effect of sediment being carried away from the construction site with runoff into the drainage systems on and off the construction site. As noted above, within the WTC site are two existing sump pits for collecting storm water at the site. Best Management Practices (BMPs) for storm water management at construction sites will be incorporated into the site design to prevent sediment from entering these sump pits. These measures will comply with the New York State Guide for Urban Erosion and Sediment Control. Before excavation and foundation work begins, the sediment control measures shall be in place. The Excavation and Foundation Contractor is to maintain the measures installed, to inspect them after rainfalls, and to replace any non-functioning elements.

- Sediment Filter – A sediment filter is to be located around the existing sump pit area to prevent sediment from disturbed areas from flowing into the sump pumps. The sediment filter is to be installed in a manner to allow particles to be removed from storm water flow before pumping off site. The filter is to consist of a combination of straw hay bales and a silt fence as per the New York State Guide for Urban Erosion and Sediment Control details. These items are to be installed in a manner to create an enclosed boundary around the sump pump area. This filter system is to be installed at both of the sump pit areas located within the WTC site.

- Stabilized Construction Entrance - A stabilized construction entrance shall be provided at all construction vehicle entrances. This shall consist of a bed of 1-inch to 2-inch stone approximately 6-inches deep underlain by filter cloth across the access road. This is provided to reduce the off-site transport of soil from the construction site. When construction vehicles have traveled over dirt or mud on the site, their wheels shall be swept or washed prior to entrance on public rights-of-way. Dry power sweeping is prohibited; however dry broom sweeping shall be performed to keep areas neat wherever effective. In addition, any bare areas shall be stabilized as Work takes place. These areas shall be topped with gravel.

b. Litter, Debris and Waste Materials Control - Contractor is responsible for routinely removing, collecting in suitable containers, transporting off-site and disposing of in an acceptable and lawful manner the trash, garbage, rubbish and other refuse. The Contractor shall be responsible for keeping the Work site clean on a daily basis. Measures shall be used to control litter and waste materials. Some of these measures include:

- The Contractor shall be required to implement dust control and rodent control plans.
- The Contractor shall be required to properly remove all debris and waste from the site on the day it is generated in accordance with the Construction Waste Management Plan in Section G of this document.
- Filter fabric shall be installed on all drains and inlets within and around the Project site.

c. Waste Materials Stored on Site

Leaks or spills of hydraulic oils, lubricating oils, fuel oils, gasoline or other engine fluids shall be contained upon detection using oil-absorbent materials and other methods, as appropriate. An Emergency Response Plan shall be prepared and approved by Construction Manager prior to the start of construction, including a Pollution Prevention and Spill Contingency Plan. A supply of absorbent materials shall be readily accessible at the site 24 hours a day to help contain any spills.

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d. Delineation of Responsibilities

The Construction Manager shall be responsible for implementing, monitoring, documenting and maintaining the storm water pollution prevention plan (SWPPP) measures. Water quality and water quantity measures shall be provided as part of this Project. These measures shall be designed to meet the New York State Storm water Management Design Manual's required sizing criteria and pollutant removal goals.

e. Site Assessment and Inspections

The Construction Manager shall conduct a site assessment prior to the start of construction and certify in an inspection report that the specified soil erosion and sediment control measures have been adequately installed. Construction Manager shall maintain a record of all inspection reports in a site log book, maintained on site. Any changes to the SWPPP shall be documented on the SWPPP.

The Construction Manager shall perform regular inspections on all of the storm water management systems to ensure they are functioning properly. In any instance of non-compliance, corrective measures shall be implemented. The Construction Manager shall inspect the construction site at least once every seven (7) calendar days and within 24 hours of the end of a storm that is 0.5 inches or greater.

f. Maintenance

The sediment filter system installed around the two existing sump pumps are to be maintained as needed to ensure that storm water is filtered before entering the sump pump. Material shall be removed from the silt fence when 'bulges' develop on the fence. Hay bales shall be removed and replaced when they have served their usefulness so as not to block or impede storm flow or drainage. The filter fabric shall be replaced as necessary, but not beyond when its capacity has been reduced by fifty (50) percent from the design capacity.

Erosion and Sedimentation Control Plan

- A. The Construction Manager shall be responsible for the development, coordination and oversight of the Erosion and Sedimentation Control Plan as well as coordination and communication with all Contractors to ensure compliance with the Erosion and Sedimentation Plan requirements. The Construction Manager shall designate one individual on-site to coordinate and address issues relating to the plan.
- B. The Construction Manager shall oversee, coordinate, document, and enforce the installation of all control measures and maintenance activities on site. The Construction Manager shall develop a "Sequence of Major Construction Activities" document which identifies and coordinate the control measures to be used throughout each major construction activity. The document will be reviewed with each Contractor prior to the start-up of their Work.
- C. The Construction Manager shall assemble from the Contractors all drawings, permits, or other documentation related to the control measures implemented, and shall photograph applicable control measures at regular intervals throughout the construction process for documentation purposes. The Construction Manager shall also keep a log of all ongoing maintenance activities.
- D. Each Contractor shall coordinate with the Construction Manager regarding the responsibilities of each under the plan, including installation, maintenance, and documentation of control measures and submission of any applicable permits. Each Contractor shall be responsible for compliance by each of its staff members, personnel, suppliers, and vendors. Each Contractor also shall be responsible for the compliance of all vehicles entering and leaving the site relating to the Contractor's scope of Work.
- E. Contractors shall have the opportunity to review a draft plan prepared by the Construction Manager, to comment on proposed control measures and suggest alternative measures to those of the Construction Manager which meet the goals of the plan.

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- F. Erosion and Sedimentation Control Plan: The plan shall contain at a minimum the following:
1. An analysis of the construction activities during each phase of the Project, relative to the objectives of the Soil Erosion and Sedimentation Control Plan. The Construction Manager shall identify possible causes of erosion, sedimentation, site pollution, and dirt and dust migration from the site. Likely causes include, but are not limited to, the following:
 - a) Excavation and transportation of soil from construction site
 - b) Dewatering
 - c) Concrete mixing, placement, and rinsing.
 - d) Transportation of materials onto and out of the site
 - e) Improper disposal of waste generated by construction activities, including packaging from products and materials
 2. An analysis of New York City and State requirements related to dewatering, erosion and sedimentation to which the Construction Manager and all Contractors must comply.
 3. The list of control measures which will be installed on the construction site by designated Contractors to address each cause of erosion, sedimentation, site pollution, and dirt and dust migration identified, and all applicable State of New York and City of New York requirements. Likely control measures include, but are not limited to, the following:
 - a) Installation of a construction fence with wind screen around construction site.
 - b) During demolition, breaking up of existing ground floor slabs to allow drainage into soil below, and wetting of demolition debris to minimize dust generation.
 - c) During excavation, soil retaining measures and continuous sheeting to stabilize areas of earth excavation around the perimeter of the site.
 - d) Removal of demolition materials and excavated soil from site on a timely basis and in covered trucks.
 - e) Controlled sprinkling of the site on an as-needed basis throughout construction to suppress dust.
 - f) Collection of sediment from pumped ground water by sediment trap or filtration tank.
 - g) Control and containment of all runoff resulting from rainwater on the site, by curbs and other barriers, such that no runoff leaves the site without having passed through the sediment trap or filtration tank.
 - h) Protection of storm drains and catch basins from sedimentation with filter fabric, gravel and mesh filters, and hay bale stops firmly anchored in the path of any runoff streams within the street.
 - i) Cleaning of concrete from transit mix trucks and finishing tools with minimal water in delineated washout area(s). Excess concrete shall be collected in a box and removed from the site by the Contractor as necessary. Excess water from concrete washout shall not leave the construction site.
 - j) Rinsing of trucks, as needed, in delineated truck rinsing area(s) before the trucks leave the site. Sediment shall be prevented from entering the storm sewer by protection of the storm sewer or capturing rinse water in filtration tank(s). The establishment of a truck rinsing area for use by multiple trades shall be coordinated by the Construction Manager.
 - k) General housekeeping measures including protection of materials stored on site from moisture, construction dust, wind, and damage. The Construction Manager shall designate storage locations on site to protect materials and prevent contamination of surrounding sites.
 - l) Proper disposal of all product and material packaging, in accordance with Section 01505 "Construction Waste Management".
 4. A list of procedures and when they will be employed relative to the sequence of the Project's construction activities, for installing, inspecting, and maintaining controls.

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- G. Contractors who do not comply with the requirements of the plan will be held responsible for necessary corrective actions at the direction of the Construction Manager.
- H. Final Submittals: The Construction Manager shall submit to 1 WTC the following documentation, as verification of Erosion and Sedimentation Control Plan implementation:
 - 1. Soil Erosion and Sedimentation Control Plan.
 - 2. Construction site drawing, indicating the location where control measures will be installed or established.
 - 3. Drawings, permits or other documentation related to the control measures implemented, including construction details for individual control measures.
 - 4. Photographs of implemented control measures taken at regular intervals throughout the demolition and construction process.
 - 5. Log of ongoing maintenance activities

C. LEED EA-P1 – Fundamental Building Commissioning

Contractor is aware of the building commissioning described below. This plan is provided for information only. There are no additional requirements for the Contractor, unless otherwise shown on the Contract documents.

Purpose: To implement a Building Commissioning Plan.

Action: Engage an independent commissioning authority to prepare and execute a building commissioning plan in accordance to specification section 01810. Implement fundamental, best practices building commissioning procedures. Include design phase reviews, Contractor submittal reviews, pre-functional testing (including seasonal testing), training, operations and maintenance manuals and post occupancy review. Provide Building Commissioning Plan consistent with the requirements of the NY State Green Building Tax Credit (NYSGBTC) 638.8.

D. LEED EA-c1 – Optimize Energy Performance
Reduce Whole Building Energy Consumption 20% (ASHRAE 90.1-1999)

Contractor is aware of the Optimize Energy Performance strategies, described below. This plan is provided for information only. There are no additional requirements for the Contractor, unless otherwise shown on the Contract documents.

Purpose: To optimize the performance of building energy systems.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

B. Introduction

The intent of this plan is to coordinate the integration of energy conserving measures into the Project in order to result in an overall energy consumption from non-renewable energy source of the building that is 20% lower than that allowed by the Energy Cost Budget Method of ASHRAE 90.1-1999, thereby reducing emissions of greenhouse and other environmentally harmful pollutants as well as reducing reliance on fossil fuel energy. The DOE-2 energy modeling tool has been utilized to demonstrate the required energy performance. The contribution of the tenant fit-out portion of the Project, including readily available energy conserving measures that are applicable to the tenant provided systems, is accounted in the overall building performance assessment.

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C. Project Measures

Specific measures that will be implemented for the Project are as follows:

1. Options for curtain wall glazing have been identified that offer the greatest reduction in solar heat gain transmission while allowing the highest possible transmission of beneficial visible daylight.
2. Lighting systems for all core and shell spaces (including mechanical equipment rooms) will utilize high efficiency luminaires and ballasts and will result in overall energy densities (watts/sq.ft.) that are approximately 20 percent lower than the levels allowed by ASHRAE Standard 90.1.
3. Automatic lighting controls (i.e. occupancy sensors) and continuous daylight dimming controls will be utilized for all base building lighting systems, as appropriate.
4. Displacement ventilation systems with radiant flooring are being implemented in the lobby and observation deck spaces.
5. Hot and cold water pumps will utilize variable frequency drives in order to allow significant reductions in pumping energy during periods of part load operation.
6. Deleted.
7. The air conditioning systems that serve the typical office spaces of the building will utilize low temperature supply air (48 deg. F) which will result in a reduction in fan energy consumption of the Project.
8. CO₂ sensors will be provided to allow for an automatic reduction in the quantity of outside air that will be delivered to each occupied floor of the building.
9. Exterior shading devices that would be integrated into the exterior façade of the building lobby, observation deck and restaurant levels are being evaluated.
10. Integrated day lighting strategies with sensor-based light and window blind controls are being evaluated in conjunction with the Lawrence Berkeley National Laboratory to determine optimal day lighting solutions for tenant fit-out and exemplar spaces.
11. A quantitative summary of the overall performance of the Project, based upon the DOE-2 simulation results, that demonstrates conformance with the 20% energy cost reduction criteria.

E. **LEED EAC6 – Green Power**
LEED EAC2 – Onsite Renewable Energy
Achieve net zero CO₂ for all base building electricity

Contractor is aware of the renewable energy requirements, described below. This plan is provided for information only. There are no additional requirements for the Contractor, unless otherwise shown on the Contract documents.

Purpose: To achieve net zero CO₂ for all base building electricity consumption with on site and/or purchased renewable energy sources and institute a plan for transition as renewables become more cost-effective.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

B. Introduction

The intent of this plan is to coordinate the measures and strategies that are available to the Project to allow a portion of the building's energy to be produced by renewable sources, with the ultimate goal to meet 20% of the building's annual energy consumption with renewable energy by 2010.

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C. Project Measures

The specific renewable energy measures that will be implemented or have been evaluated for the Project are as follows:

1. 1 WTC has begun discussions with the local electricity utility (New York Power Authority [NYPA]), including the primary customer for the site (the Port Authority) in order to develop a plan whereby NYPA will deliver 20% of the site electricity from renewable sources, in accordance with the requirements of New York State Executive Order 111.
2. Deleted
3. 1 WTC is exploring the use of advanced technology photovoltaic panel on various locations of the building in order to generate additional electricity from renewable sources.
4. Market research is being conducted to identify forthcoming photovoltaic products that may significantly reduce the cost barrier currently associated with photovoltaic technology. Fuel cell technology is also under active consideration.

F. **SDG MEQ-1: Comprehensive Material Management Plan**
LEED MR C-4.1 & 4.2 – Recycled Content

1 WTC is committed to utilizing materials that contain recycled content. 1 WTC is also committed to utilizing materials that are manufactured and/or within 500 miles of the Project construction site. Contractors shall provide corresponding statistics concerning materials furnished, as specified herein and in accordance with SDG measure MEQ-1. The following items shall be incorporated into the Work of the Contract at no additional cost.

Purpose: To optimize utilization of construction site material resources and to facilitate the reduction of waste generated by Contractors that would otherwise be hauled to and disposed of in landfills and/or incinerators.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractors and Subcontractors, acting under the supervision of Construction Manager.

B. Introduction

The intent of this plan is to optimize utilization of construction site material resources and to facilitate the reduction of waste that would otherwise be hauled to and disposed of in landfills and/or incinerators; to incorporate previously used building materials and products into new construction; to incorporate materials with recycled content and increase market demand for building materials and products that incorporate recycled content; to reduce environmental degradation resulting from transportation impacts by increasing the demand for building materials and products that are extracted and/or manufactured in close proximity to the construction site; to specify wood which has been harvested according to sustainable forest management principles; and to encourage the specification of materials which are renewable and that grow in such a way as to support biological diversity and the health of the ecosystem.

C. Project Measures

- 1.0 The Contractor shall provide calculations and documentation of all pre and post consumer recycled content in accordance with Specification Section 01115, in the form of product cut sheet or manufacturers data with each application for payment as well as a final report and summary upon completion of Contractor's Work.

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- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor or Subcontractor's scope of Work. Cost reporting shall include the total cost for the Contractor's Work plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

G. SDG MEQ-2: Construction Waste Management Plan
LEED MR C2.1 & 2.2 – Construction Waste Management

Contractor shall develop and implement a program to reduce the amount of construction and demolition waste delivered to landfills and/or incinerators and to conserve resources through reuse and recycling in compliance with MEQ-2, the Construction Waste Management Plan, as prepared by the Construction Manager.

Purpose: To reduce the amount of construction and demolition (C&D) waste going to landfills and/or incinerators and to conserve resources through reuse and recycling.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractors and Subcontractors, acting under the supervision of Construction Manager.

B. Introduction

The intent of this plan is to reduce the amount of construction and demolition (C&D) waste going to landfills and/or incinerators and to conserve resources through reuse and recycling.

C. Project Measures

1. 1 WTC has established that this Project shall generate the least amount of waste possible and that processes that ensure the generation of as little waste as possible due to error, inaccurate planning, breakage, mishandling, contamination, or other factors shall be employed.
2. Of the inevitable waste that is generated, as many of the waste materials as economically feasible, and as stated here, shall be reused, salvaged, or recycled. Waste disposal in landfills shall be minimized.
3. Construction Manager will recycle and/or salvage a minimum of 75% of construction and demolition debris, calculated by weight. The following waste categories are likely candidates to be included in the diversion plan for this Project:

1. Concrete
2. Unit masonry (CMU, brick, etc.)
3. Asphalt
4. Metals (e.g. banding, stud trim, ductwork, piping, rebar, roofing, other trim, steel, iron, galvanized, stainless steel, aluminum, copper, zinc, brass, bronze);
5. Cardboard, packaging
6. Reuse items indicated on the Contract drawings and/or elsewhere in the Specifications;
7. Clean dimensional wood;
8. Drywall
9. Carpet and pad;
10. Ceiling tiles
11. Glass
12. Paper
13. Plastics
14. Beverage containers, aluminum, glass, and plastic

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Fluorescent lamps, HID lamps and mercury-containing thermostats removed from the construction site shall be recycled to the maximum extent feasible, and in accordance with applicable codes and regulations

4. Due to the nature and location of the construction site, sorting and recycling of waste on the construction site will not be allowed, unless otherwise directed by Construction Manager. Construction Manager, Contractors, and vendors are to include off-site opportunities to recycle and reuse removed material in the Construction Waste Management Plan.
5. The Construction Manager and each Contractor shall provide calculations and documentation of salvage and recycling for all materials monthly and/or in each application for payment, whichever is more frequent, as well as a final report and summary upon completion of Contractor's Work.
6. The Construction Manager and each Contractor shall ensure that all waste removed for disposal is hauled away by an entity licensed to haul that type of waste, and is disposed at a landfill, incinerator or other facility licensed to dispose of that type of waste.
7. The Construction Manager and each Contractor shall ensure that all recyclable materials and waste materials to be removed from the site are taken away in trucks that have all necessary coverings to minimize dust impacts.
8. Each Contractor shall submit a Construction Waste Management Plan to the Construction Manager for approval. The plan shall contain at a minimum the following:
 1. An analysis of the materials to be used to crate, protect, transport equipment and materials to the site. The analysis to include methods to avoid, reuse, recycle, return and in general minimize the amount of waste that will be generated by this Contractor's Work.
 2. Contractor to meet with its vendors and suppliers to explore opportunities to minimize transportation, excess handling, excess packaging and use of non-environmentally responsible practices. Contractor shall submit documentation of this process.
 3. Estimate of the total proposed construction site waste to be generated, including types and quantities.
 4. Landfill options: The name of the landfill(s) where trash will be disposed.
 5. Proposed alternatives to land-filling: A list of each material proposed to be salvaged, reused, or recycled during the course of the Contractor's Work, the proposed destination for each material, and the projected amount by weight.
 6. Materials handling procedures. A description of the means by which waste materials identified above for salvage reuse, or recycling will be protected from contamination, and a description of the means to be employed in recycling the above materials consistent with the requirements for acceptance by recycling processors to be utilized.
 7. Transportation: A description of the means of transportation for the recyclable materials (whether materials will be site-separated and self-hauled to designated centers, or whether mixed materials will be collected by a waste hauler and removed from the site) and destination of materials.
 8. Manager: Name and phone number of the Contractor's designated on-site party (or responsible parties) responsible for construction workers and overseeing and documenting results of the Construction Waste Management Plan.
 9. List of documentation to be provided in each progress report.
 10. Identification of how his Plan will be documented on a monthly basis.

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H. LEED MR C3 Material Reuse

Purpose: To incorporate previously used building materials and products into new construction.

Action: In coordination with the Materials Management Plan consider the use of salvaged, refurbished or reused materials and products in the building. Materials for reuse typically include reclaimed lumber and wood such as salvaged wood flooring and wood doors and cabinets, structural metal work such as beams, and miscellaneous metal such as doors, door hardware, etc. Decorative and specialized items such as salvaged wood and glass panels, banquettes, front and back bars and decorative or period lighting fixtures may be used in special public locations such as cafeterias or restaurants.

The Contractor is aware of the above resource reuse requirement, and will utilize such materials as applicable to the Contractor's trade.

A. Project Measures

- 1.0 The Contractor shall provide quantity calculations and documentation of all reused resources with each application for payment as well as a final report and summary upon completion of Contractor's Work.
- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor's or its Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

I. LEED MR C5.1 & 5.2 – Regional Materials

Purpose: To reduce environmental degradation resulting from transportation impacts by increasing the demand for building materials and products that are extracted and/or manufactured in close proximity to the site.

Action: Utilize materials that are locally manufactured and/or locally extracted/harvested. "Manufactured" in this context means the location where final assembly takes place. If only a fraction of the material is locally manufactured and/or locally extracted/harvested then only that percentage (by weight) shall contribute to the regional value.

LEED CR5.1: Use a minimum of 10% of all building materials (based on cost) that are manufactured and extracted/harvested within a 500 mile radius of the site.

LEED CR5.2: Use a minimum of 20% of all building materials (based on cost) that are manufactured and extracted/harvested within a 500 mile radius of the site.

The Contractor is aware of the above local / regional materials requirements, and will utilize such materials as applicable to the Contractor's trade.

a. Project Measures

1. The Contractor shall provide quantity calculations and documentation of location of manufacture, extraction, and harvest in accordance with Specification Section 01115 in the form of product cut sheets or manufacturers data of all materials with each application for payment as well as a final report and summary upon completion of Contractor's Work.
2. The Contractor shall provide cost breakdowns for the materials included in the Contractor's or Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor equipment, overhead and profit).

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J. LEED MR C6: Certified Wood

Purpose: To specify wood which has been harvested to sustainable forest management principles.

Action: Utilize wood materials certified under the Forest Stewardship Council's Principles and Criteria (FSC) (fsc.org) in conjunction with the Materials Management Plan. These materials include dimensional framing components, flooring, doors, paneling, millwork and furnishings, handrails and trim, etc. as well as temporary lumber and wood construction materials.

The Contractor is aware of the above materials requirements, and will utilize such materials as applicable to the Contractor's trade.

A. Project Measures

- 1.0 The Contractor shall provide quantity calculations and documentation and chain-of-custody certification numbers in accordance with Specification Section 01115 for all wood products with each application for payment as well as a final report and summary upon completion of Contractor's Work.
- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor's or Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

K. SDG IEQ-1: IAQ Performance Management Plan

Contractor is aware of the Indoor Air Quality (IAQ) Performance Management Plan (IEQ-1), described below. This plan is provided for information only. There are no additional requirements for the Contractor per IEQ-1, except as shown on the Contract documents.

Purpose: Establish high indoor air quality (IAQ) for comfort and well-being by minimizing the potential for poor air quality, and by establishing minimum IAQ performance and standards.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation.

B. Introduction

The intent of this plan is to create and maintain a healthy indoor environment. Various measures and technologies will be utilized in order maintain adequate ventilation to occupied spaces, reduce quantities of pollutants that may be introduced into the building, and verify proper indoor air quality through ongoing measurement and testing.

C. Project Measures

1. Indoor air quality testing will be conducted in accordance with New York State Green Building Tax Credit, section 638.7d (1). A detailed plan will be prepared prior to completion of construction in accordance with the EPA "Building Air Quality: A Guide for Building Owners and Facilities Managers".
2. MERV 15 high efficiency particulate filters and gas phase filtration will be provided to serve each outside air intake system and each local floor air handling unit.
3. Low volatile organic compound materials (VOC) will be utilized to the greatest extent possible, including: insulation, adhesives, sealants, paint, etc.
4. A mandatory 5-year air quality management plan shall be incorporated, which outlines detailed plans and testing procedures, training and education material, survey forms, and reporting methodologies, for building occupants and maintenance staff.

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5. Carbon Dioxide sensors will be installed in outdoor air intakes and in return air plenums of core and shell building spaces.

6. Ventilation will be provided at a rate of a minimum of 20 cfm per person for all occupied spaces of the building, and will satisfy ASHRAE Std 62-2001 utilizing ASHRAE's Ventilation Rate Procedure.

L. SDG IEQ-5: Construction IAQ Management Plan
LEED EQ-C3 – Construction IAQ Management Plan

Contractor shall maintain minimum indoor air quality standards during construction operations. This Contractor shall develop and implement the following indoor air quality management programs as it related to its operations in compliance with IEQ-5, Construction Indoor Air Quality Management Plan.

Purpose: To provide minimum standards for the air quality of building areas upon occupancy.

Action:

A. Context

This plan has been prepared in accordance with the Commercial Sustainable Design Guidelines adopted by the Lower Manhattan Development Corporation. Prime responsibility for implementing the provisions of this plan rests with the Contractors and Subcontractors, acting under the supervision of 1 WTC.

B. Introduction

The intent of this plan is to provide minimum standards for the air quality of building areas upon occupancy.

C. Project Measures

1. The Construction Manager and Contractors shall prohibit smoking in any area of the Project, including, without limitation, their staff, workers, vendors, and guests.
2. Contractors performing any Work with respect to HVAC (HVAC Contractors) shall meet or exceed the recommended Design Approach of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) Indoor air quality guidelines for occupied buildings under construction, Chapter 3.
3. HVAC Contractors shall furnish, install, maintain, repair, replace, and remove high efficiency filtration media at all HVAC return air grilles during construction and replace all base building mechanical system filtration media with Minimum Efficiency Reporting Value of 13 (MERV 13) filters in accordance with ASHRAE 52.2 – 1999 immediately prior to occupancy. On completion of construction and prior to occupancy, such HVAC Contractor shall conduct a two (2) week flush out with new filter media using 100% outside air, in accordance with NYSGBTC 638.7(d)(2).
4. HVAC Contractors shall test indoor air quality at random sampling points for every 20,000sf, or by each floor if smaller, in accordance with recognized national standards, to achieve an air quality profile at the time of occupancy which satisfies the specific minimums for carbon dioxide, carbon monoxide, formaldehyde, volatile organic compounds, particulates, and radon as per NY State EO-111 reference to NYSGBTC 638.7(d)(2) and include one (1) additional testing procedure for 4-PCh to satisfy all of the alternative procedure requirements for LEEDS. Where concentration levels of contaminants exceed the established parameters in any specific area, flush out area with 100% outside air for a minimum of two (2) weeks and retest until a satisfactory result is achieved.

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5. Only low-emitting VOC material is to be used for this Project. Adhesives and paints must meet or exceed VOC limits and chemical content restrictions as stated in the Contract documents. Carpets must meet Carpet and Rug Institute limits. Composite wood must contain no added Urea-formaldehyde resins.
6. Contractor shall construction, properly ventilate, and physically isolate activities associated with chemical contaminants.
7. Indoor Air Quality Management Goals: 1 WTC has established that this Project shall minimize the detrimental impacts on Indoor Air Quality (IAQ) resulting from construction activities. Factors that contaminate indoor air, such as dust entering HVAC systems and ductwork, improper storage of materials on-site, poor housekeeping, and improper sequencing of finishes, shall be minimized.
8. Contractor Responsibilities: The Contractor shall be responsible for developing and implementing an overall "Construction IAQ Management Plan" for the Project, including the following coordination activities:
 1. Outline the scope of the Construction IAQ Management process during construction, including submittal review, inspection and enforcement
 2. Outline the expected written work products, including checklists and worksheets
 3. Provide an activities schedule.
 4. Provide a schedule of Construction IAQ Management Plan meetings for every phase of the Project.
 5. Outline the IAQ-related training programs that will be provided for the trades.
 6. Designate an IAQ representative with daily responsibility for IAQ issues.
 7. Include procedures related to Construction IAQ Management Plan on the agenda during performance of the Work during every pre-construction meeting and during every regularly scheduled meeting. Minutes shall be recorded at all such meetings.
9. Construction IAQ Management Plan
 - A. The Construction Manager shall prepare and submit a Construction IAQ Management Plan to 1 WTC for approval. The Construction IAQ Management Plan shall meet the following criteria.
 1. Construction activities shall be planned to meet or exceed the minimum requirements of the Sheet Metal and Air Conditioning National Contractors' Association (SMACNA) "IAQ Guidelines for Occupied Buildings under Construction", First Edition, 1995.
 2. Absorptive materials shall be protected from moisture damage when stored on-site and after installation.
 3. If air handlers are to be used during construction, filtration with a Minimum Efficiency Reporting Value (MERV) of 8 must be at each return air grill, as determined by ASHRAE 52.2-1999.
 4. Filtration media shall be replaced immediately prior to occupancy. Filtration media shall have a Minimum Efficiency Reporting Value (MERV) of 13 as determined by ASHRAE 52.2-1999.
 5. A "Sequence of Finish Installation Plan" shall be developed, highlighting measures to reduce the absorption of VOCs by materials that act as "sinks".
 6. Each floor of the building shall be subject to a flush-out / air purge immediately prior to occupancy, as per the requirements described elsewhere in this Section L.
 7. All air filters, casings, coils, fans, and ducts shall be clean before proceeding with testing, adjusting and balancing (TAB) and air quality testing.

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8. Permanent return air ducts must be inspected and/or cleaned to comply with the minimum requirements of the Contract documents. Duct testing and cleaning shall be witnessed and documented by the commissioning authority established by the Building Commissioning Plan.

- B. Upon approval by 1 WTC, the plan shall be implemented through the duration of the construction process, and documented in accordance with the submittal requirements of this Section.

Further description of the Construction IAQ Management Plan requirements is as follows:

1. SMACNA Guidelines: Chapter 3 of the referenced "IAQ Guidelines for Occupied Buildings Under Construction", outline IAQ measures in five categories as listed below. The Construction IAQ Management Plan shall be organized in accordance with the SMACNA format, and shall address measures to be implemented in each of the five categories (including subsections). All subsections shall be listed in the Plan; items that are not applicable for this Project should be listed as such.
 - a. HVAC Protection
 - Return Side
 - Central Filtration
 - Supply Side
 - Duct Cleaning
 - b. Source Control
 - Product Substitution
 - Modifying Equipment Operation
 - Changing Work Practices
 - Local Exhaust
 - Air Cleaning
 - Cover or Seal
 - c. Pathway Interruption
 - Depressurize Work Area
 - Pressurize Occupied Space
 - Erect Barriers to Contain Construction Areas
 - Relocate Pollutant Sources
 - Temporarily Seal the Building
 - d. Housekeeping
 - Identify storage, disposal and housekeeping practices to be applied to building supplies and waste materials to protect building systems from contamination
 - e. Scheduling
 - Airing out of new materials
 - Sequencing installation of finish materials
 - Proper curing of concrete before covering
 - Installation during unoccupied periods
 - Avoidance of building occupancy while construction-related pollutants are still present

C. Additional IAQ Plan Requirements

1. Protection of Materials from Moisture Damage: As part of the "Housekeeping" section of the Construction IAQ Management Plan, measures to prevent installed materials or material stored on-site from moisture damage shall be described. This section should also describe measures to be taken if moisture damage does occur to absorptive materials during the course of construction.

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2. Replacement of Filtration Media: Under the "HVAC Protection" section of the Construction IAQ Management Plan, a description of the filtration media in all ventilation equipment shall be provided. The description shall include replacement criteria for filtration media during construction, and confirmation of filtration media replacement for all equipment immediately prior to occupancy.
 3. Sequence of Finish Installation for Materials: Absorptive materials (referred to herein as "Type 2" materials) shall be installed after the installation of materials or finishes which have high short-term emissions of VOC's, formaldehyde, particulates, or other air-borne compounds (referred to herein as "Type 1" materials).
 - a. Absorptive materials include, but are not limited to: carpets; acoustical ceiling panels; fabric wall coverings; Insulations (exposed to the airstream); upholstered furnishings; and other woven, fibrous or porous materials.
 - b. Materials with high short-term emissions include, but are not limited to: adhesives, sealants and glazing compounds (specifically those with petrochemical vehicles or carriers); paints, wood preservatives and finishes; control and/or expansion joint fillers; hard finishes requiring adhesive installation; gypsum board (with associated finish processes and products); and composite or engineered wood products with formaldehyde binders.
 4. Ventilation during installation of materials and finishes: 100% outside air shall be provided continuously during the installation of materials and finishes, beginning after the building is substantially enclosed. If building HVAC systems are used to supply the ventilation air, filtration media shall be installed per the requirements of this Section.
- D. Flush-out / Air Purging: Flush out must be conducted on every floor immediately prior to initial occupancy, based on the following parameters:
1. Flush-out shall be conducted with new filtration media having a Minimum Efficiency Reporting Value (MERV) of 13, as determined by ASHRAE 52.2-1999. After the flush-out, between 30 and 60 percent, 100 percent outside air is provided at a minimum of 50 percent of the full airflow rate of the fan during typical operating conditions.
 2. When outside air temperatures and relative humidity are outside the ranges specified in the paragraph directly above, 100 percent outside air is provided at a minimum of 25 percent of the full airflow rate of the fan during typical operating conditions.
 3. Duration: The minimum duration of the flush-out period shall be the greater of the following:
 - a. Time required for delivery of a total air volume of 14,000 cu. ft. per sq. ft. of floor area
 - b. Seven consecutive days
 4. The ventilation system must be capable of replacing 100 percent of the air on any floor, on a minimum of two floors at a time.
 5. Scheduling: The Contractor is responsible for coordinating the scheduling and sequencing of the building flush-out with 1 WTC (or 1 WTC's designated representative). Scheduling and sequencing shall be addressed and incorporated into the Contractor's Construction IAQ Management Plan, and shall meet the following criteria:

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- a. Building flush-out must be conducted immediately prior to occupancy.
 - b. Regardless of the duration as determined above, the flush-out must be scheduled so that it concludes a minimum of two weeks after substantial completion of construction.
- E. Indoor Air Quality Testing: IAQ Testing shall be performed in accordance with the requirements of the New York State Green Building Tax Credit (GBTC), section 638.7(d) "Indoor Air Quality", sub-section (1) "Indoor Air Quality Testing". A copy of the pertinent GBTC section is appended to the end of this Specification Section.
1. Testing shall be conducted no later than 30 days after occupancy, and subsequently on an annual basis for five years. The testing entity shall be hired directly by 1 WTC.
 2. The Construction Manager shall be responsible for coordination of all IAQ testing and flush-outs required by the GBTC during the duration of Construction Manager's contract with 1 WTC, up to the date of substantial completion of the Project or beneficial occupancy as determined by 1 WTC, whichever is later.
 3. In addition to the contaminants required under GBTC, testing shall also be performed for 4-Phenylcyclohexene (4-PCH), as per the State of Washington IAQ standard applicable to carpet only. The maximum concentration for 4-PCH shall be 6.5 micrograms per cubic meter.
- M. LEED EQ C4.1 Low Emitting Materials – Adhesives and Sealants
LEED EQ C4.2 Low Emitting Materials – Paints and Coatings
LEED EQ C4.3 Low Emitting Materials – Carpet Systems
LEED EQ C4.4 Low Emitting Materials – Composite Wood and Agrifiber

Purpose: To reduce the density of contaminants that are emitted by common building materials and which affect the comfort and well-being of building occupants.

Action: Develop and implement a Materials Management Plan to minimize utilization of materials with high levels of volatile organic compounds (VOC's) and other toxic characteristics which adversely affect Indoor Air Quality (IAQ). VOC's must meet or be lower than those indicated in the Contract documents. Comply with chemical component restrictions as indicated in the Contract documents. the following standards:

- Adhesives and sealants: South Coast Air Quality Management District Rule #1168
- Paints and coatings: Green Seal Standard GS-11 (1993); Green Seal Standard GC-03 (1997), South Coast Air Quality Management District Rule 1113
- Carpet and carpet adhesives: Carpet and Rug Institute Green Label Plus Indoor Air Quality Test Program

Use only non-urea-formaldehyde-based bonding agents in composite wood and typical millwork applications such as veneer and plastic laminate applications, etc. Use no unprotected insulation in ducts, supply plenums and return plenums per NYSGBTC 638.7(j).

The Contractor is aware of the above plan to reduce contaminants from materials. Contractors using VOC's shall submit a Material Management plan to minimize VOC's.

Project Measures

- 1.0 The Contractor shall provide documentation of the VOC contents for all products containing VOCs (unless indicated otherwise in the Contract documents) with each application for payment as well as a final report and summary upon completion of Contractor's Work. The Contractor shall also submit product cut sheet or manufacturers data indicating that all applicable wood products contain no-urea formaldehyde bonding agents.

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- 2.0 The Contractor shall provide cost breakdowns for the materials included in the Contractor's or Subcontractors' scope of Work. Cost reporting shall include the total cost for the Contractor's Work, plus itemized material costs (excluding the Contractor's labor, equipment, overhead and profit).

N. SDG IEQ-9: Integrated Pest Management Plan

The Contractor is aware that the Project will have an Integrated Pest Management Plan IEQ-9, as described below. This Contractor will mitigate unwanted pests by not allowing debris from this Contractor's operations to accumulate, and dispose of any food debris from this Contractor in sealed containers. This Contractor will further comply with the requirements of the Integrated Pest Management Plan, as developed, at no additional cost. The Integrated Pest Management Plan, including Subcontracting with a licensed Pest Control Subcontractor, shall be performed by the following Contractor's while construction progresses as follows:

- Excavation and Foundation Contractor: during Excavation and Foundation Phase
Superstructure Concrete Contractor: during Concrete Superstructure phase
Rough Carpentry Contractor: from completion of Concrete Superstructure until job completion.

During Construction it shall be the responsibilities of all Contractors on-site to comply with the methods established in the Pest Management Plan. These include:

- 1.0 Separation of leftover food and biodegradable materials (sandwiches, paper wrappers, cartons, etc. from construction workers on-site meals, etc.) in provided bins to prevent commingling this waste with construction debris. The Construction Manager shall provide special steel waste receptacles with lids for these materials.
- 2.0 Proper sealing of all areas where service pipes, etc. enter the building and waste pipes exit to prevent pests entering the building. These locations will be regularly inspected by the Construction Manager to confirm tightness of seals at points of entry and exit.
- 3.0 Pipe-fittings and all holes, voids, cracks or similar are to be properly stopped in all wet locations (rest rooms, janitors' closets, kitchens, pantries, maintenance and service areas, etc). Regular inspections shall be made by the Construction Manager to confirm tightness of seals..
- 4.0 Spills and standing water or puddles must be cleaned or mopped-up promptly.
- 5.0 When applicable the Contractor shall cover drains and open pipes with grilles.
- 6.0 The Construction Manager will allocate space for stock-piling materials. Stacking materials against the building where they can act to conceal the presence of rodents and vermin, potentially allowing them access to the building from concealed locations, will not be permitted.

The intent of this plan is to provide long term, environmentally sound pest prevention and suppression for the job site and surrounding areas through the use of a wide variety of technological and management practices.

The Construction Manager shall furnish all supervision, labor, materials and equipment necessary to accomplish the monitoring, trapping, pesticide application, and pest removal of this program. Contractor shall cooperate with Construction Manager to the extent necessary to satisfy these requirements. The measures to be employed by the Construction Manager include but are not limited to the following:

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1. A complete and thorough inspection of the construction site and improvements at least ten (10) working days prior to the starting date of the Contract. Construction Manager will submit an inspection report evaluating the pest control needs of all locations and identifying problem areas and any equipment, structural features, or management practices that are contributing to pest infestations. The report should contain recommendations for actions to mitigate the presence of pests.
2. Prior to starting Work, this Contractor is required to submit a comprehensive Pest Control Plan addressing the following items:
 - Proposed Materials and Equipment for Service: Furnish for review and approval current labels and MSDS for all pesticides to be used, brand names of application equipment, rodent bait boxes and trapping devices, pest monitoring devices and detection equipment, and any other equipment or devices used to satisfy the requirements.
 - Proposed Methods and Means for Monitoring and Detection
 - Service Schedule for Site and Inspection Reports
 - Recommendations for Structural or Operational changes that would facilitate pest control.
 - Commercial Pesticide Applicator Certificates or Licenses for every Contractor employee who will be performing on-site service.
3. All pesticides used by the Contractor must be registered with the U.S. Environmental Protection Agency (EPA), state and/or local jurisdictions. Transport, handling and application of all pesticides shall be in strict accordance with manufacturer's label instructions and all federal, state, and local laws and regulations.
4. Pesticide application shall be by need and not by schedule. As a general rule, application of pesticides shall not occur unless visual inspection or monitoring devices indicate the presence of pests in that specific area. Requests for preventive measures will be evaluate by the CM on a case by case basis.
5. When pesticide use is necessary, the Contractor will employ the least hazardous material and method, most precise application technique, and minimum quantity of pesticide needed to achieve control. No exposed surface spraying or fogging will be allowed unless *alternative measures are not practical*. *Application of insecticides shall be considered as crack and crevice treatment only.*
6. Contractor shall use non-pesticide methods of control wherever possible. (e.g. portable vacuums for cleanout of cockroach infestations, etc.). At the Construction Manager's discretion, Contractor will provide minor applications of caulk or sealant to eliminate pest harborage or access.
7. Trapping devices and bait boxes shall be concealed in protected areas so as not to be affected by job site operations. All bait boxes shall be securely locked and tamper resistant. Rodent carcasses shall be disposed of immediately in an appropriate manner.
8. This Contractor shall comply with manufacturer's instructions for cleanup and disposal of spilled pesticides.
9. During the course of construction, this Contractor shall maintain and submit a log recording types, location and amounts of chemical pesticides used on site, date of application and reapplication, spillages, etc. In addition, the Contractor should conduct inspections no less than bi-weekly to observe and report on the effectiveness of measures taken and the condition of the site as it relates to pest control.
10. It is the responsibility of Construction Manager to post warning signs around the construction site.



Ex. 4

RIDER "H"
REQUIREMENTS FOR WORK IN PATH RIGHT OF WAY
WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK

June 16, 2006

June 21, 2007

RIDER "I"
SALES AND USE TAX REQUIREMENTS
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

1. Port Authority of New York & New Jersey Sales Tax Letter, dated June 21, 2007.
2. Form ST-120.1: New York State and Local Sales and Use Tax, Contractor Exempt Purchase Certificate, _____
3. Form ST-124: New York State and Local Sales and Use Tax, Certificate of Capital Improvement.





THE PORT AUTHORITY OF NY & NJ

Michael B. Francois
Director, Development Department

June 21, 2007

Re: CONSTRUCTION OF 1 WORLD TRADE CENTER ("FREEDOM TOWER")
NEW YORK CITY, NEW YORK

Dear _____:

In connection with the construction work that you are to perform with respect to the building known or to be known as 1 World Trade Center ("1 WTC") also known as the Freedom Tower, located at the World Trade Center site, in New York, New York, this letter confirms that the land upon which 1 WTC will be located, and all improvements constructed or to be constructed thereon (including 1 WTC) are owned by The Port Authority of New York and New Jersey ("Port Authority"), a municipal corporate instrumentality and political subdivision of the States of New York and New Jersey. This letter also confirms that 1 World Trade Center, LLC, a wholly owned entity of the Port Authority, is the net lessee of 1 WTC and the improvements being constructed in connection therewith, pursuant to a lease dated July 16, 2001 which was Amended and Restated on November 16, 2006, which lease is for a term of ninety-nine years (the "Lease"). The Lease is in full force and effect.

It is my understanding that contractors duly registered with the New York Department of Taxation and Finance as vendors may purchase certain tangible personal property in New York exempt from sales taxes if the personal property will be used to improve the real property of an exempt entity under Section 1116(a) of New York's Tax Law, such as the Port Authority, and if the contractors present each of their own suppliers with a properly completed Contractor Exempt Purchase Certificate, Form ST-120.1 (4/06).

You may use this letter in communications with your subcontractors and with the New York State Department of Taxation and Finance relating to sales tax issues that may arise in connection with the construction of the 1 WTC.

Sincerely,

Michael B. Francois
Director
Development Department

225 Park Avenue South - 19th Fl.
New York, NY 10003
T: 212 435 6482 F: 212 435 5146

mfrancois@panynj.gov



New York State and Local Sales and Use Tax Contractor Exempt Purchase Certificate

To be used only by contractors who are registered with the Tax Department for sales tax purposes.

To vendors:

You must collect tax on any sale of taxable property or services unless the contractor gives you a properly completed exemption certificate not later than 90 days after the property is sold or service is rendered. In addition, you must keep the certificate for at least three years, as explained in the instructions.

To contractors and vendors: read the instructions on pages 3 and 4 carefully before completing or accepting this certificate.

| | | | | | |
|----------------|-------|----------|-------------------------------|-------|----------|
| Name of vendor | | | Name of purchasing contractor | | |
| Street address | | | Street address | | |
| City | State | ZIP code | City | State | ZIP code |

1. I have been issued a New York State Certificate of Authority, _____, to collect New York State and local sales and use tax, and this certificate has not expired or been suspended or revoked.
(enter your sales tax vendor identification number)

2. The tangible personal property or service being purchased will be used on the following project:

located at _____

for and with _____

pursuant to prime contract dated _____

3. These purchases are exempt from sales and use tax because:

(Mark an X in the appropriate box; for further explanation, see items A through O in instructions.)

A. The tangible personal property is to be used in the above project to create a building or structure or to improve real property or to maintain, service, or repair a building, structure, or real property, owned by an organization exempt under section 1116(a) of the Tax Law. *(For example, New York State governmental entities, United States governmental entities, United Nations and any international organization of which the United States is a member, certain posts or organizations of past or present members of the armed forces, and certain nonprofit organizations and Indian nations or tribes that have received New York State sales tax exempt organization status).* The tangible personal property will become an integral component part of such building, structure, or real property.

B. The tangible personal property is production machinery and equipment, and it will be incorporated into real property.

C. The tangible personal property will be used:

- in an Internet data center, or
- directly and predominantly in connection with telecommunications services for sale or Internet access services for sale, or
- directly and predominantly by a television or radio broadcaster in connection with producing or transmitting live or recorded programs.

D. The tangible personal property, including production machinery and equipment, is for installation in the above project and will remain tangible personal property after installation.

Note: This certificate is not valid unless the purchaser completes the certification on page 2.

- E. The tangible personal property will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.
- F. The machinery or equipment will be used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. The tangible personal property will be used to erect, add to, improve, repair, maintain, or service a building, structure, or real property owned by a qualified empire zone enterprise (QEZE), and will become an integral component part of such building, structure, or real property. (Note: Item G purchases are exempt from the New York State tax rate and from the 3/4% Metropolitan Commuter Transportation District (MCTD) rate. Item G purchases may be exempt from local taxes. See instructions.)
- H. The tangible personal property is residential solar energy systems equipment. (Note: Item H purchases are exempt from the 4% New York State tax rate and from the 3/4% MCTD rate. Item H purchases may be exempt from local taxes. See instructions.)
- I. The tangible personal property will be used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year.
- J. The services are for the project described in line 2 above and will be resold. (This includes trash removal services in connection with repair services to real property.)
- K. The trash removal service being performed for the above project is in connection with a capital improvement to the real property of an organization exempt under section 1116(a) of the Tax Law.
- L. The services are to install, maintain, service, or repair tangible personal property used in an internet data center, for telecommunication or internet access services, or for radio or television broadcast production or transmission.
- M. The services are to install, maintain, service, or repair tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both.
- N. The services are to install residential solar energy systems equipment.
- O. The services are to install tangible personal property purchased during the first year of the qualifying tenant's lease and delivered to the leased premises no later than 90 days after the end of that first year, that will be used directly and exclusively, in addition to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*.

Caution: Contractors may not use this certificate to purchase services exempt unless the services are resold to customers in connection with a project. Construction equipment, tools, and supplies purchased or rented for use in completing a project but that do not become part of the finished project may not be purchased exempt from tax through the use of this certificate.

I certify that the above statements are true and complete, and I make these statements with the knowledge that willfully issuing a false or fraudulent certificate, with the intent to evade tax, is a misdemeanor under section 1817(m) of the New York State Tax Law and Section 210.45 of the Penal Law, punishable by a fine of up to \$10,000 for an individual or \$20,000 for a corporation. I also understand that the Tax Department is authorized to investigate the validity of exemptions claimed or the accuracy of any information entered on this form.

| | |
|---|---------------|
| Type or print name and title of owner, partner, etc. of purchasing contractor | |
| Signature of owner, partner, etc. | Date prepared |

Substantial penalties will result from misuse of this certificate.

Instructions

Only a contractor who has a valid *Certificate of Authority* issued by the Tax Department may use this exemption certificate. The contractor must present a properly completed certificate to the vendor to purchase tangible personal property, or to a subcontractor to purchase services tax exempt. This certificate is not valid unless all entries have been completed.

The contractor may use this certificate to claim an exemption from sales or use tax on tangible personal property or services that will be used in the manner specified in items A through K below. The contractor may not use this certificate to purchase tangible personal property or services tax exempt on the basis that *Form ST-124, Certificate of Capital Improvement, has been furnished by the project owner to the contractor. The contractor must use a separate Form ST-120.1, Contractor Exempt Purchase Certificate, for each project.*

Purchase orders showing an exemption from the sales or use tax based on this certificate must contain the address of the project where the property will be used, as well as the name and address of the project owners (see page 1 of this form). Invoices and sales or delivery slips must also contain this information (name and address of the project for which the exempt purchases will be used or where the exempt services will be rendered, as shown on page 1 of this form).

Use of the certificate

This certificate may be used by a contractor to claim exemption from tax only on purchases of tangible personal property that is:

- A. Incorporated into real property under the terms of a contract entered into with an exempt organization that has furnished the contractor with a copy of Form ST-119.1, *Exempt Organization Exempt Purchase Certificate*, governmental purchase order, or voucher.
- B. Incorporated into real property and is production machinery or equipment for which the customer has given the contractor a copy of Form ST-121, *Exempt Use Certificate*.
- C. Used in one of the following situations:
 - Machinery, equipment, and other tangible personal property related to providing Web site services for sale to be installed in an Internet data center. (Examples of qualifying machinery, equipment, and tangible personal property include: computer system hardware, pre-written software, storage racks for computers, property relating to building systems designed for an Internet data center such as interior fiber optic and copper cable, property necessary to maintain the proper temperature and environment such as air filtration and air conditioning, property related to fire control, power generators, protective barriers, property that when installed will constitute raised flooring, and property related to providing security to the center.) The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*.
 - Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
 - Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also includes machinery, equipment, and other tangible personal property used by a broadcaster directly and predominantly to transmit live or recorded programs. (Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)
- D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.
- E. Used predominantly (more than 50%) either in farm production or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*. The exemption is allowed on tangible personal property whether or not the property is incorporated into a building or structure.
- F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. Incorporated into a building, structure, or real property located in the empire zone in which the qualified empire zone enterprise (QEZE) has qualified for tax benefits. The exemption is allowed on the New York State tax rate and on the 3/4% MCTD rate. The exemption does not apply to Municipal Assistance Corporation (MAC) taxes in New York City, or to county, city, or school district taxes, unless New York City or the county, city, or school district elects the exemption. In that case, purchases are exempt from the full, combined New York State and local tax rate. See Publication 718-Q, *Local Sales and Use Tax Rates on Sales to a Qualified Empire Zone Enterprise (QEZE)*, for a listing of sales tax rates pertaining to the QEZE exemption. The customer must furnish the contractor a completed Form ST-121.6, *Qualified Empire Zone Enterprise (QEZE) Exempt Purchase Certificate*.
- H. Residential solar energy systems equipment. *Residential solar energy systems equipment* means an arrangement of or combination of components installed in a residence that utilizes solar radiation to produce energy designed to provide heating, cooling, hot water, and/or electricity. The exemption is allowed on the New York State 4% tax rate and where applicable, the 3/4% MCTD rate. The exemption does not apply to local taxes unless the locality specifically enacts the exemption. Note: No local exemption may be effective before December 1, 2005. The customer must furnish the contractor with a completed Form ST-121, *Exempt Use Certificate*, by completing the box marked *other*. For the definition of *residence* and for an exception relating to recreational equipment used for storage, as well as for other pertinent information, see TSB-M-05(11)S, *Sales and Use Tax Exemption for Residential Solar Energy Systems Equipment*.
- I. Delivered and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property*

Purchased for Leased Commercial Office Space in Lower Manhattan, provided that the tangible personal property becomes an integral component part of the building in which the leased premises are located, and where such property is purchased within the first year of the qualifying tenant's lease.

This Certificate may also be used by a contractor to claim exemption from tax on the following services:

J. Installing tangible personal property, including production machinery and equipment, that does not become a part of the real property upon installation.

Repairing real property, when the services are for the project named on the front of this form and will be resold.

Trash removal services rendered in connection with repair services to real property, if the trash removal services will be resold.

Note: Purchases of services for resale can occur between prime contractors and subcontractors or between two subcontractors. The retail seller of the services, generally the prime contractor, must charge and collect tax on the contract price, unless the project owner gives the retail seller of the service a properly completed exemption certificate.

K. Trash removal services purchased by a contractor and rendered in connection with a capital improvement to an exempt organization's property.

L. Installing, maintaining, servicing, or repairing tangible personal property used for Web hosting, telecommunication or Internet access services, or by a broadcaster (described in C on page 3).

M. Installing, maintaining, servicing, or repairing tangible personal property that will be used predominantly either in farm production or in a commercial horse boarding operation, or in both (described in E on page 3).

N. Installing residential solar energy systems equipment (described in H on page 3).

O. Installing tangible personal property delivered to and used directly and exclusively in adding to, altering, or improving a qualifying tenant's leased premises for use as commercial office space in Eligible Area A or B as described in TSB-M-05(12)S, *Tangible Personal Property Purchased for Leased Commercial Office Space in Lower Manhattan*, provided that the tangible personal property becomes an

integral component part of the building in which the leased premises are located.

To the purchaser

Warning for misuse of this form

Any person who intentionally issues a false exemption certificate to evade sales and compensating use tax may be assessed for the tax evaded, and will be subject to a penalty of 100% of the tax due and a penalty of \$50 for each such certificate issued. The purchaser will also be guilty of a misdemeanor punishable by a fine not to exceed \$10,000 (\$20,000 for a corporation). Other penalties may also apply.

In addition, your *Certificate of Authority*, allowing you to make certain tax-free purchases, may be revoked, prohibiting you from conducting any business in New York State for which a *Certificate of Authority* is required.

To the vendor

Do not accept this certificate unless all entries have been completed. The contractor must give you a properly completed exemption certificate no later than 90 days after delivery of the property or service; otherwise, the sale will be deemed to have been taxable at the time the transaction took place. When a certificate is received after the 90 days, both the seller (vendor) and contractor assume the burden of proving that the sale was exempt, and both may have to provide additional substantiation.

Your failure to collect sales or use tax, as a result of accepting an improperly completed exemption certificate or receiving the certificate more than 90 days after the sale, will make you personally liable for the tax plus any penalty and interest charges due.

You must keep this exemption certificate for at least three years after the due date of the last return to which it relates, or after the date when the return was filed, if later. You must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate you have on file for that customer.

Caution: You will be subject to additional penalties if you sell tangible personal property or services subject to tax, or purchase or sell tangible personal property for resale, without possessing a valid *Certificate of Authority*. In addition to the criminal penalties imposed under the New York State Tax Law, you will be subject to a penalty of up to \$500 for the first day on which such a sale or purchase is made, plus up to \$200 for each subsequent day on which such a sale or purchase is made, up to the maximum allowed.

Need help?



Internet access: www.nystax.gov
(for information, forms, and publications)



Fax-on-demand forms: Forms are available 24 hours a day, 7 days a week. 1 800 748-3878



Telephone assistance is available from 8:00 A.M. to 5:00 P.M. (eastern time), Monday through Friday.
To order forms and publications: 1 800 462-8100
Business Tax Information Center: 1 800 972-1233
From areas outside the U.S. and outside Canada: (518) 485-6800



Hotline for the hearing and speech impaired:

If you have access to a telecommunications device for the deaf (TDD), contact us at 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



Persons with disabilities: In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

New York State and Local Sales and Use Tax
Certificate of Capital Improvement

After this certificate is completed and signed by both the customer and the contractor performing the capital improvement, it must be kept by the contractor.

Read this form completely before making any entries.

This certificate may not be used to purchase building materials.

| | | | | | |
|--|-------|----------|--|-------|----------|
| Name of customer (print or type) | | | Name of contractor (print or type) | | |
| Street address | | | Street address | | |
| City | State | ZIP code | City | State | ZIP code |
| Certificate of Authority number (if any) | | | Certificate of Authority number (if any) | | |

To be completed by the customer:

Describe capital improvement to be performed:

| | | | |
|--|------|-------|----------|
| Project name | | | |
| Street address (where the work is to be performed) | City | State | ZIP code |

I certify that:

- I am the owner, tenant, of the real property identified on this form, and
- The work described above will result in a capital improvement to the real property within the guidelines listed on the back of this form, and
- This contract (check one) includes, does not include, the sale of tangible personal property that, when installed, retains its identity as tangible personal property and does not become a permanent part of the real property.

I understand that:

- I will be responsible for any sales tax, interest, and penalty due on the contractor's total charge for tangible personal property and for labor, if it is determined that this work does not qualify as a capital improvement, and
- I will be required to pay the contractor the appropriate sales tax on tangible personal property (and any associated services) transferred to me pursuant to this contract, when the property installed by the contractor does not become a permanent part of the real property; and
- I will be subject to civil or criminal penalties (or both) under the Tax Law, if I issue a false or fraudulent certificate.

| | | |
|-----------------------|-------|------|
| Signature of customer | Title | Date |
|-----------------------|-------|------|

To be completed by the contractor:

I, the contractor, certify that I have entered into a contract to perform the work described by the customer named above. (A copy of the written contract, if any, is attached.)

I understand that my failure to collect tax as a result of accepting an improperly completed certificate will make me personally liable for the tax otherwise due, plus penalties and interest.

| | | |
|------------------------------------|-------|------|
| Signature of contractor or officer | Title | Date |
|------------------------------------|-------|------|

This certificate is not valid unless all entries are completed.

Guidelines

If a contractor gets a property completed (that is, no required entries on the form are left blank) Form ST-124, *Certificate of Capital Improvement*, from the customer within 90 days after rendering services, the customer bears the burden of proving the job or transaction was a capital improvement (that is, was not taxable to the customer).

If a contractor does not get a property completed *Certificate of Capital Improvement* within 90 days, the contractor bears the burden of proving the work or transaction was a capital improvement. The failure to get a property completed certificate, however, does not change the taxable status of a transaction; that is, a contractor may still show that the transaction was a capital improvement. If a contractor erects a building for a customer, or performs some other work that constitutes a capital improvement, the contractor must pay tax on the purchase of building materials or other tangible personal property, but is not required to collect tax from the customer for the capital improvement. If the work performed is taxable (such as repair, service, or maintenance), the contractor must collect tax from the customer on the full charge to the customer, including labor and materials.

The contractor must keep any exemption certificate for at least three years after the due date of the last return to which it relates, or the date the return was filed, if later. The contractor must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate on file for that customer.

When the customer completes this certificate and gives it to the contractor, it is evidence that the work to be performed will result in a capital improvement to real property.

A capital improvement to real property is defined in section 1101(b)(9) of the Tax Law and Sales Tax Regulation section 527.7(a)(3), as an addition or alteration to real property that:

- (a) substantially adds to the value of the real property or appreciably prolongs the useful life of the real property,
and
- (b) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself,
and
- (c) is intended to become a permanent installation.

The work performed by the contractor must meet all three of these requirements to be considered a capital improvement. This certificate may not be issued unless the work qualifies as a capital improvement.

A contractor, subcontractor, property owner, or tenant, may not use this certificate to purchase building materials or other tangible personal property tax free. A contractor's acceptance of this certificate does not relieve the contractor of the liability for sales tax. A contractor must pay sales tax on the purchase of building materials or other tangible personal property subsequently incorporated into the real property as a capital improvement (see Publication 764, *Home Improvements and Repairs*, for additional information) unless the contractor can legally issue Form ST-120.1, *Contractor Exempt Purchase Certificate*.

The term *materials* is defined as items that become a physical component part of real or personal property, such as lumber, bricks, or steel (Sales Tax Regulation, section 541.2(l)).

This term also includes items such as doors, windows, kits, and prefabricated buildings used in construction.

Floor Covering

Floor covering such as carpet, carpet padding, linoleum and vinyl roll flooring, carpet tile, linoleum tile, and vinyl tile installed as the initial finished floor covering in (1) new construction, (2) a new addition to an existing building or structure, or (3) in a total reconstruction of an existing building or structure, constitutes a capital improvement regardless of the method of installation. As a capital improvement, the charge to the property owner for the installation of floor covering is not subject to New York State and local sales and use taxes. However, the retail purchase of floor covering (such as carpet or padding) itself is subject to tax.

Floor covering installed other than as described in the preceding paragraph does not qualify as a capital improvement, even though it meets the criteria stated in (a), (b), and (c). Therefore, the charge for materials and labor is subject to the sales tax, regardless of the manner in which the covering is installed (see Publication 884.1, *Floor Coverings and the Sales Tax Law*, for additional information), but the contractor may apply for a credit or refund of any sales tax already paid on the materials.

The term *floor covering* does not include flooring such as ceramic tile, hardwood, slate, terrazzo, and marble. Thus, the rules for determining when floor covering constitutes a capital improvement do not apply to such flooring. Rather, the criteria stated in (a), (b), and (c) above apply to the flooring.

For guidance as to whether a job is a repair or a capital improvement, refer to Publication 882, *Sales and Use Tax Classifications of Capital Improvements and Repairs to Real Property*.

Need Help?

Telephone Assistance is available from 8:30 a.m. to 4:25 p.m., Monday through Friday. For business tax information and forms, call the Business Tax Information Center at 1 800 972-1233. For general information, call toll free 1 800 225-5829. To order forms and publications, call toll free 1 800 462-8100. From areas outside the U.S. and Canada, call (518) 485-6800.

Fax-on-Demand Forms Ordering System - Most forms are available by fax 24 hours a day, 7 days a week. Call toll free from the U.S. and Canada 1 800 748-3676. You must use a Touch Tone phone to order by fax. A fax code is used to identify each form.

Internet Access - <http://www.tax.state.ny.us> Access our website for forms, publications, and information.

Hotline for the Hearing and Speech Impaired - If you have access to a telecommunications device for the deaf (TDD), you can get answers to your New York State tax questions by calling toll free from the U.S. and Canada 1 800 634-2110. Assistance is available from 8:30 a.m. to 4:15 p.m., Monday through Friday. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.

Persons with Disabilities - In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call the information numbers listed above.

Mailing Address - If you need to write, address your letter to: NYS Tax Department, Taxpayer Assistance Bureau, W A Harriman Campus, Albany NY 12227.



Ex. 4

RIDER "J"
BELOW-GRADE TEMPORARY SERVICES FOR CONSTRUCTION PURPOSES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

February 2, 2007.

A. GENERAL REQUIREMENTS

RIDER "K"
PROJECT CORRUPTION PREVENTION PROGRAM
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

January 8, 2007

I World Trade Center LLC (I WTC) and Tishman Construction Corporation are implementing a Project Corruption Prevention Program ("PCPP") for the World Trade Center - Tower One Project. The Office of the Inspector General of The Port Authority of New York and New Jersey is assisting I WTC in the design and implementation of the PCPP. The PCPP is grounded in the bedrock belief that fair and ethical business practices are an absolute prerequisite to doing business on this Project. These ethical practices must be followed by all Contractors, subcontractors, consultants, vendors and suppliers on the 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 Project possess high ethical standards and a record of law abiding conduct. Screening is being performed through the use of a background qualification questionnaire ("BQQ").

To that end, and to facilitate the consideration of your firm for the award of a contract, we have enclosed a BQQ for your immediate attention. Please complete the BQQ in accordance with the instructions and return it to the Office of the Inspector General. **In order to ensure timely processing of your completed questionnaire, please return it to the Office of the Inspector General via facsimile (973-565-4307), to the attention of Steven A. Pasichow, as soon as possible, but in no event later than two weeks after receipt of the BQQ,** and then follow up with the original by regular mail to Steven A. Pasichow; Assistant Inspector General, 5 Marine View Plaza, Suite 502, Hoboken, NJ 07030.

We appreciate your cooperation.



RIDER "K" - ATTACHMENT
WORLD TRADE CENTER - TOWER ONE PROJECT
BACKGROUND QUALIFICATION QUESTIONNAIRE
FOR

("The Company")

Tax ID# (or SSH) _____

World Trade Center Tower One Project Contractor Qualification Procedures

Instructions

This Questionnaire must be completed by an officer who is knowledgeable about the past and present operations of the applicant. That person's name should be identified in question 26. That person must also complete the attached Exhibit A, which must be notarized.

A response should be provided to each question. If a particular question does not apply, the response should state "Not Applicable" ("N/A").

Please complete the Questionnaire and send the original along with a copy to:

**Steven A. Pasichow
Assistant Inspector General
5 Marine View Plaza, Suite 502
Hoboken, NJ 07030**

Please answer all questions truthfully, fully and accurately. The Company may expand on the answers given or the information submitted by attaching additional pages. Use 8 1/2 X 11" paper, marking each page with firm's name and Tax ID # (also known as Employer Identification Number-EIN). Individual contractors that do not have a Tax ID # should enter their Social Security Number.

In the event of changes in ownership, address, circumstances, conditions or status of the firm that would require amending the answers to this Questionnaire, the firm shall notify the above in writing of such changes within one month after the change has occurred.

Tax ID# (or SS#) _____

General Identification

1. Tax ID # _____
- Company Name (the "Company") _____
- D/B/A name, if any _____
(D/B/A means "doing business as")
- Street address _____
- City/State/Zip _____
- Mailing address (if different) _____
- City/State/Zip _____
- Phone No. (_____) _____ Fax No. (_____) _____
- E-mail address _____

2. a. Has the Company changed address(es) in the past five years?
 No Yes
- b. Has the Company operated under any other name(s) in the past five years?
 No Yes
- c. Does the Company have offices, plants or warehouses at other addresses?
 No Yes

If 'yes', to question 2 a, b, or c provide details below:

| Name | Address | From (Mo./Yr.) | To (Mo./Yr.) |
|------|---------|-------------------|-----------------|
| | | | |
| | | | |
| | | | |

Business Organization and History

3. Type of Company: Corporation Partnership Proprietorship
 Limited Liability Company Other (Specify) _____
4. a. Date the Company was formed ____/____/____
b. Date of incorporation if different than date the Company was formed _____
c. State in which formed or incorporated _____
d. Number of shares authorized for issuance if company is a corporation _____
e. Number of shares issued to individuals or entities _____
f. Registered Agent (Lawyer/incorporator) _____
5. Was the Company purchased as an existing business by its present owner(s)?
 No Yes (if yes, provide information below)

Tax ID# (or SS#) _____

Date purchased ____/____/____

Previous Owner(s) Name(s): _____

6. Does the Company own, rent, or lease any of its office facilities?
 Own
 Lease/Rent (if leased or rented, provide information below)

Owner name: _____

Phone No.: (____) _____

Address: _____

7. Does the Company share office space, staff, or equipment (including telephone exchanges) with any other business or organization?
 No Yes (list below)

| Tax # | Firm Name | Address/Nature Of Shared Facilities |
|-------|-----------|-------------------------------------|
| | | |
| | | |
| | | |

8. Identify all Key People

Instructions: On the following page, fill in the required information on all present and past **Key People for the past five years.** "Key People" include:

- Principals, directors, officers
- Shareholders of 5% or more of the Company's issued and outstanding stock
- Any manager or individual who participates in overall policy-making or financial decisions for the Company
- Any person in a position to control and direct the Company's overall operations
- Authorized signatories to bank accounts and any debt instruments, whether or not otherwise considered Key People

"Shareholders" are owners of stock or other securities that can be converted to stock that, if converted, would constitute 5% of the Company's issued and outstanding stock. Other securities include stock options, secured or unsecured bonds, warrants and rights.

Be sure to include all those who fit the definition of Key People for the past five years whether or not they are currently with the Company. Copy the table on the following page if more space is required.

Tax ID# (or SS#) _____

**KEY PEOPLE TABLE
COMPLETE ALL BLANK AREAS**

| | PERSON #1 | PERSON #2 | PERSON #3 |
|--------------------------|-----------|-----------|-----------|
| *NAME AND HOME ADDRESS | | | |
| Date of Birth | | | |
| SS # | | | |
| Title | | | |
| From (Date) | | | |
| To (Date) | | | |
| % of Ownership | | | |
| Number of Shares Owned | | | |
| How Shares Were Acquired | | | |

* Provide current proper legal name and specify any name change, including maiden or married names or aliases.

9. Number of employees (not including key people) _____

10. At present or during the past five years:

- a. Has the Company been a subsidiary of any other firm?
 No Yes
- b. Has the Company consisted of a partnership in which one or more partners are other firms?
 No Yes
- c. Has any other firm owned 5% or more of the Company?
 No Yes
- d. Has the Company been a joint venture partner with any other firms?
 No Yes

If 'yes', to question 10 a, b, c, or d, list the other firms below and indicate the percent of stock, if any, owned in the Company.

| | FIRM #1 | FIRM #2 |
|---|---------|---------|
| Tax ID# | | |
| Firm Name | | |
| Address | | |
| Relationship To The Company (Co. Owner, Partner, Etc.) | | |
| % of the Company Owned | | |
| From (Date) | | |
| To (Date) | | |
| Representative Name/Title | | |

Tax ID# (or SS#) _____

11. At present or during the past five years:

- a. Has the Company had any subsidiaries?
 No Yes

- b. Has the Company owned 5% or more of any other firm?
 No Yes

If 'yes', to question 11 a or b, list the firms below and indicate the percent of the other firm's stock owned by the Company.

| Tax Id# | Firm Name and Address | % Owned By The Company | Dates of Ownership From/To |
|---------|-----------------------|------------------------|----------------------------|
| | | | |
| | | | |

12. At present or during the past five years have any of the Key People of the Company served as a Key Person (see definition on page 3) or owned 5% or more of any other firm (including firms that are inactive or have been dissolved)?
 No Yes

If 'yes,' list below:

| Firm Name and Address | Tax Id# | Key Person | Position Held | % Owned | Remainder Owned By | Dates Owned To/From |
|-----------------------|---------|------------|---------------|---------|--------------------|---------------------|
| | | | | | | |
| | | | | | | |
| | | | | | | |
| | | | | | | |

All firms listed in questions 10 a-d, 11 a-b, and 12 will be referred to in the following questions as "Affiliate Firms."

13. Are any Key People of the Company:

- a. present or past employees of The Port Authority of New York and New Jersey or Tishman Construction Corporation?
 No Yes

- b. related by kinship or marriage to any present or past employee of The Port Authority of New York and New Jersey or Tishman Construction Corporation?
 No Yes

If 'yes', to question 13a or b, provide names of such individual(s) and indicate relationship to the current/former employee.

Financial Information

14. At present or in the past five years:

- a. Has the Company been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more?
 No Yes

- b. Have any of the Company's Key People been indebted to an individual or entity other than a commercial lending institution in the cumulative amount of \$50,000 or more, for the benefit of the Company?
 No Yes

- c. Has the Company pledged any of its stock to guarantee any of the above obligations?
 No Yes N/A

- d. Has any individual or the Company been a guarantor, co-maker or co-signer of any of these obligations on behalf of the Company?
 No Yes N/A

If 'yes', to any portion of question 14a-d, provide details below:

| Name of Creditor | Name of Borrower | Amount of Loan & Balance Remaining | Terms of Pledge or Loan | Name of Guarantor, or Co-Signer |
|------------------|------------------|------------------------------------|-------------------------|---------------------------------|
| | | | | |
| | | | | |

- e. Have monies generated by the Company in the cumulative amount of \$50,000 or more been loaned to another firm or individual by the Company or its key people? No Yes

If 'yes', please provide details below:

Name: _____

Address: _____

- f. Has the Company or any of its affiliates or key people paid commissions or finders fees to obtain contracts or work to anyone other than its own key people? No Yes

If yes, explain: _____

- 15. Has the Company, or its affiliates or any of its Key People been a party to a bankruptcy or reorganization proceeding?
 No Yes

If 'yes,' provide details below:

| Caption | Date | Docket # | Court | County |
|---------|------|----------|-------|--------|
| | | | | |
| | | | | |

Tax ID# (or SS#) _____

16. During the past five years, has the Company ever:

a. been the subject of a lien, judgment or litigated claim of \$25,000 or more by a subcontractor, supplier or other creditor?

No Yes

b. failed to complete a contract for a commercial or private owner or government agency?

No Yes

c. had, or does it currently have, any delinquent local, city, state or federal taxes outstanding?

No Yes

If 'yes', to question 16a, b or c, supply details below:

| Agency/Owner | Contract # | Describe Circumstances & Current Status | Date of Events | Name/Phone No. of Contact Person |
|--------------|------------|---|----------------|----------------------------------|
| | | | | |
| | | | | |
| | | | | |

Experience/Performance

17. On the following table state the Company's gross revenues for the past three years:

| Fiscal Year End | Total Income |
|-----------------|--------------|
| 2005 | |
| 2004 | |
| 2003 | |

18. Does the Company have a bonding capacity?

No Yes

If 'yes', provide information below on all surety companies that have agreed to furnish the Company with performance and payment bonds and answer all related questions:

a. Surety Name: _____
Address: _____

Agent/Broker: _____
Phone No. (____) _____

b. In writing bonds for the Company, does the surety company rely on the indemnity of any other firm(s) or individual(s)?

No Yes

If 'yes', supply names & addresses of others:

Tax ID# (or SS#) _____

c. What is the Company's bonding capacity:

Single Job: \$ _____ Aggregate: \$ _____

19. Has the Company or any of its officers, owners or managers had any business related licenses, certificates or certifications revoked in the past 5 years?

No Yes (if yes, explain below)

Compliance Information

20. Has the Company or any of its affiliate firms been the subject of any of the following actions by any government agency:

Government agencies include city, state, federal public agencies, quasi-public agencies, authorities and corporations, public development corporations and local development corporations.

- a. been suspended, debarred, disqualified, had its prequalification revoked or otherwise been declared ineligible to bid or to perform work?
 No Yes
- b. been barred from bidding or denied a contract as a result of refusal of Key People to testify before a grand jury or administrative board?
 No Yes
- c. been denied a contract despite being the low bidder for any other reason?
 No Yes
- d. been defaulted on any contract?
 No Yes
- e. had a contract terminated, for either "cause" or "convenience"?
 No Yes
- f. been given a final unsatisfactory performance determination or deemed a poor performer (by letter or formal proceedings)?
 No Yes
- g. been prevented, or barred from bidding for any other reason?
 No Yes
- h. been denied a contract for failure to obtain surety or otherwise provide required security?
 No Yes

Tax ID# (or SS#) _____

- i. had liquidated damages assessed against it upon completion of a contract or failure to complete a contract?
 No Yes

(move this because does not just apply to government situations)

Matters under appeal must be disclosed

If 'yes', to any portion of question 20 supply details below:

| Agency | Contract # | Date of Action | Describe Action | Name/Phone # of Agency or Owner Contact Person |
|--------|------------|----------------|-----------------|--|
| | | | | |
| | | | | |
| | | | | |

21. In the past five years, has the Company or any current or past Key People or affiliate firms been a plaintiff or defendant in any lawsuits arising out of the Company's operations?
 No Yes

If 'yes', to question 21, supply details below and submit documentation if applicable. Indicate in P/D column whether the Company's Key People or key firms were plaintiffs (P) or defendants (D).

| Caption or Action | P/D | Court | Index/Docket No. | Date | Status |
|-------------------|-----|-------|------------------|------|--------|
| | | | | | |
| | | | | | |

22. In the past ten years has the Company or any of its current or past Key People or affiliate firms:
- a. voluntarily engaged the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (hereinafter collectively referred to as an "integrity monitor") in connection with the performance of any public or private contract?
 No Yes
 - b. been required to engage the services of an integrity monitor in connection with the award of, or in order to complete, any public or private contract?
 No Yes
 - c. otherwise been the subject of audits/investigations performed by an integrity monitor in connection with any public or private contract?
 No Yes

If yes to any portion of question 22, explain below:

23. Has the Company or any of its current or past Key People or affiliate firms:
- a. been under investigation involving any alleged violation of criminal law relating to business activities?
 No Yes

An INVESTIGATION includes an appearance before a grand jury by representatives of a business entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body including, but not limited to, subpoenas and/or search warrants, or questioning of employees concerning the general operation or a specific project or activities of such business entity.

- b. had records in its or his/her control, custody or ownership subpoenaed by any law enforcement agency?
 No Yes
- c. been questioned by any officer or agent of a law enforcement agency regarding any practices or conduct relating to the providing of construction related services?
 No Yes
- d. been advised of being the target or subject of an investigation involving any violation of criminal law?
 No Yes
- e. been notified of being the subject of court ordered electronic surveillance?
 No Yes
- f. been arrested or indicted or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument?
 No Yes
- g. been convicted, after trial or by plea, of any felony under state or federal law?
 No Yes
- h. been convicted of any misdemeanor involving business-related crimes?
 No Yes
- i. entered a plea of nolo contendere to any felony and/or business-related misdemeanor?
 No Yes
- j. entered into a consent decree?
 No Yes
- k. been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?
 No Yes
- l. taken the Fifth Amendment in testimony regarding a business related crime?
 No Yes

If 'yes', to any portion of question 23, supply details below and submit documentation.

| Agency Or Court | Nature Of Action | Person Or Entity Named or Involved | Date | Status/Outcome |
|-----------------|------------------|------------------------------------|------|----------------|
| | | | | |

- 24. Do any current or past Key People listed in this application have any felony or misdemeanor charges pending against them that were filed either before, during or after their employment with the Company?
 No Yes

Tax ID# (or SS#) _____

If 'yes', provide details below:

| Agency or Court | Nature of Charges | Key Person Named | Date of Charges |
|-----------------|-------------------|------------------|-----------------|
| | | | |
| | | | |

25. Has the Company or any of its current or past Key People or affiliate firms engaged in any of the following practices:
- a. filed with a government agency or submitted to a government employee a written instrument which the Company or any of its Key People or affiliate firms knew contained a false statement or false information?
 No Yes
 - b. falsified business records?
 No Yes
 - c. given, or offered to give, money, gifts or anything of value or any other benefit to a labor official or public servant with intent to influence that labor official or public servant with respect to any of his or her official acts, duties or decisions as a labor official or public servant?
 No Yes
 - d. given or offered to give, money, gifts or anything of value or any benefit to a labor official or public servant for any reason?
 No Yes
 - e. given, or offered to give, money or other benefit to an official or employee of a private business with intent to induce that official or employee to engage in unethical or illegal business practices?
 No Yes
 - f. agreed with another to bid below prevailing market rate?
 No Yes
 - g. agreed with another to submit identical or complementary bids or otherwise not to bid competitively or agree to withdraw or abstain from bidding?
 No Yes
 - h. agreed with another not to submit competitive bids in another's territory established either by geography or customers?
 No Yes
 - i. agreed with another to take turns in obtaining contracts by pre-determining which firm shall submit the lowest bid?
 No Yes

If 'yes', to any portion of question 25, explain below:

26. This document was prepared by:

(Name)

(Title)

(Signature)

(Date)

Tax ID# (or SS#) _____

**EXHIBIT A
CERTIFICATION**

Certifications must be notarized when signed.

I _____, being duly sworn, state that I am _____
(full name) (title)
of the Company, and that I have read and understood the questions contained in the attached questionnaire.

I certify that to the best of my knowledge the information given in response to each question is full, complete and truthful as of this date hereof. I agree and warrant that truthfully answering the questions is an event entirely within my control.

I recognize that all the information submitted is for the express purpose of inducing 1 WTC and/or Tishman Construction Corporation to enter into a contract with, or to approve the award of a contract to, the Company.

I acknowledge that 1 WTC, Tishman Construction Corporation, or the Office of the Inspector General may, by means it deems appropriate, determine the accuracy, truth and completeness of the answers to the questions in the questionnaire. I authorize 1 WTC, Tishman Construction Corporation, or the Office of the Inspector General to contact any person or entity for purposes of verifying the information supplied by the Company.

Name (please print)

Signature

Sworn to before me

this _____ day of _____ 20 _____.

Notary Public



RIDER "L"
CONTRACTOR PAYMENT PROCEDURES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

DECEMBER 14, 2006

TRADE: ALL TRADES

1. SCHEDULE OF VALUES

Prior to the commencement of Work hereunder, Contractor shall prepare and submit to Construction Manager, for approval by 1 WTC, a "Schedule of Values" furnishing a complete, detailed and itemized breakdown of the various divisions of the Work, including values for materials and labor. The total of this cost breakdown shall be equal to the Lump Sum.

2. PROGRESS PAYMENTS

With each pencil draft and official Application for Payment, the Contractor shall attach an Affidavit of Payment and Waiver of Claims (in the form attached) to the date of the last advance, as well as a statement of any back charges and credits to which the Construction Manager is entitled, a sworn statement of any claim for charges or extras due to the Contractor, such claim not to be valid unless made at the time and in the manner aforesaid, a sworn statement setting forth all amounts, if any, owed by Contractor to its subcontractors and suppliers, and a Schedule of Values showing the percentages of the various divisions of work completed, including values for materials and labor, and any other documentation or information requested by 1 WTC or Construction Manager. All requisitions shall be made on and in compliance with Construction Manager's standard form of Contractor's requisition (in the form attached) and shall be subject to the terms thereof, including the submission of sworn statements from Contractor's subcontractors and vendors. In addition to retainage and other amounts withheld under this Contract, the Construction Manager shall also retain a sum sufficient, in its opinion, to complete the Work in accordance with the terms of this Contract. Moreover, in each instance of requisition prior to completion, the Contractor shall certify to the Construction Manager that the cost of the Work remaining to be done under this Contract does not exceed 90% of the balance of the Lump Sum unpaid. In no event will the Construction Manager be required to pay in excess of 90% of the Lump Sum prior to the completion of all the Work the Contractor is obligated to perform under this Contract.

3. WITHHOLDING BY CONSTRUCTION MANAGER

The Construction Manager may withhold payment to the Contractor as set forth in the Contract, including, without limitation, on account of (1) the failure of the Contractor to comply fully with any requirements of this Contract, including the failure of the Contractor to make payments to subcontractors or for material or labor, (2) the failure of the Contractor to prevent the filing of liens or claims or to avoid the reasonable probability of the filing of liens or claims against the Construction Manager, 1 WTC, the Authority, the Project or the Contractor, and (3) damage to another contractor by reason of acts or failure to act of the

FIRM NAME: _____



Contractor.

4. FINAL PAYMENT

The balance owing to the Contractor under the terms of this Contract shall not be due and payable except as set forth in the Contract and until:

- (1) the completion of all Work in this Contract, including patching and the furnishing of missing material,
- (2) acceptance thereof by the Construction Manager and 1 WTC, and
- (3) receipt by the Construction Manager of (A) all Contractor's "as built" drawings, records and related data; (B) all guaranties and warranties to which the Construction Manager is entitled hereunder; (C) all permits, licenses, approvals, certificates and authorizations required by any authority having jurisdiction; (D) a general release from the Contractor in form and substance satisfactory to 1 WTC, in favor of 1 WTC, the Authority, other persons and entities designated by 1 WTC, Construction Manager and sureties, if any; and (E) satisfactory proof that all claims, including taxes, growing out of the Work to be performed hereunder and any liens or attempts at liens growing out of the same which shall have been filed or recorded, have been released.
- (4) Payment of the Lump Sum and/or any other sums for the Work or any portion thereof and/or any other amounts due or claimed to be due or claimed to be due to Contractor shall be made by Construction Manager only from funds which Construction Manager has actually received in hand from 1 WTC and designated by 1 WTC for disbursement to Contractor. CONTRACTOR AGREES TO LOOK SOLELY TO SUCH FUNDS FOR PAYMENT. Contractor understands and agrees that Construction Manager shall have no responsibility to pay Contractor any amounts due to Contractor upon the Lump Sum and/or for the Work or any portion thereof and/or for any other amounts due or claimed to be due to Contractor except from and to the extent that Construction Manager has actually received funds from 1 WTC specifically designated for disbursement to Contractor. Receipt of such funds by the Construction Manager shall be a condition precedent to payment by Construction Manager to Contractor.

FIRM NAME: _____

REQUISITION NO.

TO

DATE

TISHMAN CONSTRUCTION CORP

BUILDER

CONTRACTOR _____ TRADE _____
 ADDRESS _____ PROJECT PERIOD _____
 _____ ENDING _____

| ITEM | CONTRACTOR USE ONLY | DO NOT WRITE IN THIS COLUMN |
|--|---------------------|-----------------------------|
| 1. Amount on Contract | | |
| 2. Change Orders Issued to Date (Item II, Attached Summary) | | |
| 3. Pending Change Orders (Item III, Attached Summary) | | |
| 4. Total of Above | | |
| 5. Value of Work Completed to Date (Item IV, Attached Breakdown) | | |
| 6. Less 10% Retained | | |
| 7. Net of Items 5 and 6 | | |
| 8. Total Prior Payments | | |
| 9. Amount of This Requisition (Net of Item 7 less 8) | | |
| 10. Total Payments to Date | | |

Attached hereto is our Contract Breakdown together with claimed value of work completed to date substantiating the amount specified in Item 5 above. Neither payment on account hereof or any invoice, change order or other request, nor any entry by Builder in its records relating to such payment or work, shall constitute acceptance by Builder of any part of any work or the completion or value thereof or serve to waive any of Builder's rights under the Contract. If the Builder is acting in the capacity of a General Contractor all references in this entire requisition to "Contractor" shall be deemed to mean "Subcontractor."

 Contractor
 By _____
 (Title)

AFFIDAVIT ON REVERSE SIDE MUST BE EXECUTED BY CONTRACTOR
 (DO NOT WRITE BELOW)

Checked by _____ Approved by _____ \$ _____
 Approved by _____ Final Release in hand _____

ACCOUNTING USE ONLY

| REQUISITION NUMBER | | DATED / / | | CHECK NUMBER | CHECK DATE |
|--------------------|---------------|-----------|--------|---------------|------------|
| 0 | R | R | E | Q | |
| PROJECT | CONTRACTOR NO | TRADE | TENANT | VALUE OF WORK | PAYMENT |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ |

Remarks _____

COST BREAKDOWN SUMMARY

Project: _____ For Period Ending _____

Contractor _____ Trade _____

I CONTRACT BREAKDOWN

Total Contract \$ _____ Total Completed to Date \$ _____

Do not Write
In This Col.

II CHANGE ORDERS ISSUED TO DATE

CHANGE
ORDER

| NO. | DESCRIPTION | AMOUNT | VALUE COMPLETED |
|-----|-------------|--------|-----------------|
| 1 | _____ | _____ | _____ |
| 2 | _____ | _____ | _____ |
| 3 | _____ | _____ | _____ |
| 4 | _____ | _____ | _____ |
| 5 | _____ | _____ | _____ |
| 6 | _____ | _____ | _____ |
| 7 | _____ | _____ | _____ |
| 8 | _____ | _____ | _____ |
| 9 | _____ | _____ | _____ |
| 10 | _____ | _____ | _____ |
| 11 | _____ | _____ | _____ |
| 12 | _____ | _____ | _____ |
| 13 | _____ | _____ | _____ |
| 14 | _____ | _____ | _____ |
| 15 | _____ | _____ | _____ |
| 16 | _____ | _____ | _____ |

Do not Write
In This Col.

Total Change Orders \$ _____ Total Completed to Date \$ _____

III PENDING CHANGE ORDERS

| DATE & DESCRIPTION | AMOUNT | VALUE COMPLETED |
|--------------------|--------|-----------------|
| 1 | _____ | _____ |
| 2 | _____ | _____ |
| 3 | _____ | _____ |
| 4 | _____ | _____ |
| 5 | _____ | _____ |
| 6 | _____ | _____ |
| 7 | _____ | _____ |
| 8 | _____ | _____ |
| 9 | _____ | _____ |
| 10 | _____ | _____ |
| 11 | _____ | _____ |
| 12 | _____ | _____ |
| 13 | _____ | _____ |
| 14 | _____ | _____ |
| 15 | _____ | _____ |
| 16 | _____ | _____ |

Do not Write
In This Col.

Total Pending Changes \$ _____ Completed to Date \$ _____

IV TOTAL WORK UNDER ITEMS I, II, III COMPLETED TO DATE \$ _____

**AFFIDAVIT OF PAYMENT
AND WAIVER OF CLAIMS**

Re: _____
(Project)

STATE OF)
) ss:
COUNTY OF)

_____ being duly sworn, deposes and says:

1. That s/he is the _____ of _____ (hereafter called the "Contractor") which has a contract with TISHMAN CONSTRUCTION CORPORATION as agent for 1 World Trade Center, LLC (hereafter called the "Builder") covering the _____ work for the building at 1 World Trade Center, NY, NY.
2. That the said Contractor has paid in full (at the prevailing recognized rate and without any improper or illegal deductions or rebates), in accordance with the specifications and contract obligations, for all work, labor, materials and services supplied or performed in connection with said work to the date of the requisition on the reverse side hereof, including all Social Security, Unemployment Insurance and Sales and other Taxes applicable thereto, and there are no unpaid claims for any said labor or materials in connection with the performance of said Work or any of the said Taxes except as stated in paragraph 3 below, and any claim for such amounts is hereby forfeited and waived.
3. That as of the date hereof no amounts are due and no claims have been made against the said Contractor for any unpaid material or labor with the exception of the following: all of which are for labor and/or materials provided since the date of the requisition preceding this requisition, and as to such unpaid claims the Builder is hereby authorized, at its option, in behalf of the Contractor, to make direct payment to such claimants and charge same to the Contractor, i.e.:

| NAME & ADDRESS | ITEM | AMOUNT |
|----------------|------|--------|
|----------------|------|--------|

4. That no payment made to the Contractor shall be deemed an acceptance by the Builder of defective work or materials or shall operate as an admission on the part of the Builder or Architect that the said contract, or any portion thereof, has been complied with the Contractor in case the fact shall be otherwise.
5. All sums received by the Contractor shall be held in trust to pay for any labor or materials in connection with the work, before being used for any other purpose.

6. This Affidavit and Waiver is made for the purpose of inducing the Builder to make payment under the terms of the subject contract relying on the truth of the statement contained herein.

Subscribed and sworn to before me

(Company Name)

this _____ day of _____

By _____
(Title)

Notary Public

BILL OF SALE

For and in consideration of the total value of materials\$ _____ less retainage of \$ _____ current payment due\$ _____ by 1 World Trade Center LLC (hereinafter referred to as "Purchaser")

_____ (hereinafter referred to as "Seller"), the receipt whereof is to be acknowledged Seller does hereby grant, bargain, sell, convey, set over, transfer, assign and deliver unto Purchaser all the right title and interest which it has in the personal property set forth in Invoice# _____ dated _____ attached hereto and made part hereof by reference, and described in attached listing of materials received from vendors.

Seller does hereby covenant and warrant that it is the true and lawful owner of the property assigned, transferred, sold, and conveyed pursuant to this Bill of Sale; that said property is free and clear from all encumbrances and liens; that Seller has good right and full power and authority to sell, transfer, assign and convey all of said property; and the Seller will warrant and defend the title to all of said property unto Purchaser, its successors and assigns, against all claims and demands of all persons, firms or corporations whatsoever. Materials are being stored at: _____ and at (see below)*.

IN WITNESS HEREOF, the parties hereto, by their duly authorized officers, have executed and set their hands and seals to this Bill of Sale, this _____ day of _____.

Company: _____ (Seller)
Signature: _____
Title: _____

STATE OF))
COUNTY OF))

Sworn to before me this _____ day
of _____ 200__

1 World Trade Center, LLC

(NOTARY)

RIDER "M"

November 2, 2005

Tishman Construction Safety Guidelines

"Tishman Values Safety"

Tishman Construction Corporation
666 Fifth Avenue
New York, NY 10103



INITIAL HERE
@

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FORWARD

The Tishman Construction Safety Guidelines:

- *Serve as a guide to the implementation of safety procedures and administration for your project.*

- *Identify general Tishman Construction Policy regardless of location and site requirements.*

- *Outline qualifications and responsibilities of the CM and the contractor's respective safety representative.*

- *Serve as a guide to OSHA CFR 1926.1 and its applicable provisions for the inspection and program administration, as well as provide information on OSHA inspection and complaint procedures.*

Note: Regional requirements may augment, add to, or enhance, but shall not replace these guidelines.

PART I TISHMAN CONSTRUCTION'S SAFETY OVERVIEW

1.1 TISHMAN CONSTRUCTION'S SAFETY OVERVIEW

Tishman Construction Corporation (Tishman Construction) is firmly committed to providing all of its employees and contractors with a safe and healthy work environment, which allows the contractors' submitted and approved safety plans to contribute to the achievement of an accident-free work environment. Furthermore, it is a matter of company policy to provide our employees with information about OSHA regulations, including, but not limited to, personal protection, training and the Hazard Communication Standard.

SAFETY WILL NOT BE SACRIFICIED FOR PRODUCTION. Project Safety will be considered an integral part of quality control, cost reduction, and job efficiency. Every level of management and supervision shall be held responsible for the safety performance of employees under their supervision. It is the policy of Tishman Construction that a safe work place is provided. Tishman Construction and all others employed on the project will work in a safe manner consistent with good construction safety practices, all written requirements, and the submitted and approved safety plan of all parties.

Management and supervision personnel are charged with the implementation and monitoring of the Safety Guidelines. The ultimate success of the safety program depends fully upon the total cooperation of every individual employee. It is management's responsibility to ensure that safety rules and procedures are enforced and to ensure that effective training and education programs are employed. Work will be performed in a safe manner to protect all employees, visitors, the public and adjacent property.

The Objective of the Safety Guidelines is to prevent or control the exposure to the failures that cause fatalities, injuries, illnesses, equipment damage and/or fire damage, or destruction of property at the Tishman Construction site.

Goals of the Safety Guidelines include:

- The total elimination of incidents that cause or could cause injuries or illness.
- The achievement of zero fatalities, zero permanent disabling injuries, and zero lost workday cases.

Tishman Construction requires full compliance with these safety guidelines and with all federal, state, and local laws, statutes, ordinances, rules, regulations, requirements, and guidelines of government authorities bearing on the performance of the work.

The Federal Occupational Safety and Health Act, as well as other federal, state, and local project codes or regulations promulgated in the interest of safety, are required by law and/or the contract.

The Safety Guidelines are supplementary to all government rules, codes, and regulations and do not negate, abrogate, alter, or otherwise change any provisions of these rules, codes, and/or regulations. The safety guidelines are intended to supplement and enforce the individual program of each trade contractor and to coordinate the overall safety effort. CONTRACTORS SHALL BEAR SOLE AND EXCLUSIVE RESPONSIBILITY FOR SAFETY IN ALL PHASES OF THEIR WORK; NOTHING CONTAINED HEREIN SHALL RELIEVE SUCH RESPONSIBILITY.

These construction Safety Guidelines are one of the construction contract documents. All contractors are required to ensure that they and their employees, subcontractors, suppliers, vendors, and visitors, while on the job and in the conduct of contracts, comply with the provisions of this manual. THE PROVISIONS OF THESE GUIDELINES SHALL BE STRICTLY ENFORCED. Non-compliance with safety requirements shall be treated the same as non-compliance with any other item. Any non-compliance may result in work stoppage and/or employee dismissal. Willful and/or repeated non-compliance will result in contractor dismissal.

It shall be the responsibility of each contractor/subcontractor to comply with 29CFR1926 OSHA Construction Safety Standard. In addition, each contractor/subcontractor shall comply with the applicable city, state, and federal regulatory requirements that govern construction safety.

Before contractors begin work on the site, they are each required to provide their written safety program to Tishman Construction and the designated project safety representative for approval. Contractors must identify their own full-time, on-site, competent safety person, as defined by OSHA. (see section 3.4). This competent person designation will be incorporated in the Site Safety Manual. If the contractor does not possess an accepted and approved safety plan, at a minimum they will comply with and be held accountable to all federal, state, and local laws of a general or specific nature that apply to their trade and the work for which they have been contracted.

Depending on location, Tishman Construction will provide appropriate safety personnel for monitoring safety compliance on the project.

The contractor will inform the CM safety representative of any violation of the site safety standards. The CM safety representative shall immediately notify the persons involved in the violation to correct the deficiency. If the safety representative is unable to obtain the cooperation of these persons in correcting the violation, he or she will be instructed to inform their direct supervisor and

request that the supervisor order the necessary corrective action. If the supervisor is not present at the site or is not available, the safety representative will notify any other supervisory personnel of the contractor present on the job or any other responsible manager of the contractor. In the event that no responsible party is available, it is the obligation of the CM and their safety representative to take corrective action to ensure the safety of the site and its personnel. The CM and their safety representative should inform the offending contractor in writing of the corrective action and the cost, if any, to Tishman for the actions taken on behalf of the contractor. The contractor will then be obligated to respond to the CM as to what steps must be taken to avoid a repeat of the violation.

Through commitment, responsibility, vigilance and proactive communication, the Tishman team will achieve the goals and objectives set forth in these Safety Guidelines.

PART II SAFETY COMPLIANCE

PROGRAM RESPONSIBILITIES & ADMINISTRATION

- 2.1 General Information
- 2.2 Contractor's Safety Representative Requirements
- 2.3 Construction Manager's Responsibilities
- 2.4 Contractor Responsibilities
- 2.5 General Requirements for the Construction Safety
- 2.6 Site Appearance

2.1 GENERAL INFORMATION

DESIGNATION OF SAFETY REPRESENTATIVE

Depending on regional practices, Tishman Construction will designate an internal (Tishman) construction safety representative, or through the bid process retain an outside safety representative, who in either case, will be responsible for monitoring the contractors' compliance to their own safety requirements outlined in their individual submitted and **approved** safety plans.

2.2 CONTRACTOR'S SAFETY REPRESENTATIVE REQUIREMENTS

An acceptable safety representative must be a competent person as defined by OSHA CFR 1926. The individual must be "capable of identifying existing and predictable hazards in the surroundings or working conditions, which are unsanitary, hazardous, or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them." The safety representative must be an "on job" representative who possesses some valid training in safety-related processes and procedures associated to his or her trade.

2.3 CONSTRUCTION MANAGER'S RESPONSIBILITIES

Through its on-site personnel and safety representative, the Construction Manager shall have a daily inspection to determine contractor compliance with safety requirements and job-specific safety program.

Tishman Construction is responsible for ensuring that all participants in the construction activities adhere to the contents of this program in the performance of their work.

The Project Executive, Project Manager, Project Superintendents, Assistant Superintendent (and/or Area Superintendent and/or Foreman), and Project Safety Representative are responsible for the implementation, execution and monitoring of the project safety program for all areas under their control. In addition, the Project Safety Representative is also responsible for inspecting the site on a daily basis.

1. Project Executive - The project executive has full responsibility for the implementation and execution of the project safety program.
2. Project Manager - The project manager has full responsibility for the implementation and execution of the project safety program for all areas under his/her control.

3. Project Superintendent - The project superintendent is responsible for the implementation and execution of the project safety program for all areas under his/her control.
 - Establish with his/her line supervisors a clear understanding of each member's responsibilities and specific duties.
 - Make a thorough review of all incident investigations and, in collaboration with the offending contractor, initiate corrective action.
 - Hold one formal safety meeting each week with his/her line supervisors.
 - Review weekly the safety performance and take actions as may be necessary within his/her area of responsibility.
 - In the event of a fatal or disabling injury, assist in coordinating an investigation according to the prescribed requirements.
 - Maintain effective and prompt line of communications of safety matters through all levels of supervision.
 - Monitor contractors' compliance regarding the required weekly safety toolbox meetings with their employees.
 - Monitor compliance with established environmental and pollution control standards and regulations.
 - Have working knowledge of, and conduct as necessary, job hazard assessment (JHA) with the contractor(s).
4. Assistant Superintendent, Area Superintendent, and/or foremen - The assistant superintendent, area superintendent, and/or foremen are responsible for the safety performance in his/her assigned area. They are responsible for administration of the following:
 - Enforce all phases of the established safety program, including, special controls issued by the project superintendents
 - Communicate safety information to his/her contractors and alert them daily on potential dangers that may develop from their daily operations.
 - Install a workable housekeeping program to maintain the structural soundness and cleanliness of the site. Assign definite duties to

individual contractors. Perform daily check of work areas. Make weekly housekeeping inspections (accompanied by a contractor supervisor). Keep records of deficiencies found, and hold contractor accountable for taking corrective action.

- Ensure that contractors are requiring all employees to make proper use of Personal Protective Equipment (PPE).
 - Make spot checks covering housekeeping, unsafe acts, unsafe conditions, conditions of equipment, and observance of safety rules.
 - Maintain an effective line of communication of safety matters to the workers.
 - Instill in all personnel, by action, example, and training, a sincere attitude towards safety. This develops a better understanding of efficiency in accident prevention and/or loss control.
 - Assist with developing and communicating safe job procedures for unusual or hazardous operations.
 - Enforce compliance with federal, state, city and other agencies on their safety manual requirements. Be prepared to employ such remedies, as they deem necessary to ensure the contractors' compliance with their own safety plans.
5. Site, Corporate, or Project Safety Representative (where required)
- Serves as a technical advisor to project management on safety, health planning, training, and problem resolution.
 - Applies recognized policies, procedures, and work practices to promote the company's project safety and health program. Administers assigned functions to aid in this overall responsibility.
 - Administers the project safety program.
 - Monitors, as necessary, medical and emergency first aid services and programs.
 - Monitors compliance with mandatory safety and health laws, standards, and codes.
 - Fosters and maintains a close working relationship with all government and local safety health and fire-prevention officers.

- Supports hearings on matters involving the project's safety and loss prevention program.
- Investigates injuries, conditions, and incidents that do or could involve actual or potential liability. Also, maintains adequate records of pertinent data and compiles the required reports of job, occupational injuries and illnesses.
- Assists project management in the inspection of equipment, facilities, and work-in-progress.
- In conjunction with project controls and construction engineering, develops and initiates specific safety and health procedures in order to translate policies and regulations into effective work practices.
- Plans and utilizes promotional material to further safety and health education among job, craft, and supervisory personnel.
- Promulgates safety standards during the course of the project as necessary.
- Conducts preconstruction safety orientation prior to contractor mobilization.
- In the interest of safety and for the protection of all employees, the project safety representative will render any tool, piece of equipment, or materials that create or could create a hazard to employees inoperable, as he deems necessary.
- Administers the project incentive programs, if any, in accordance with the Project Safety Guidelines.
- Personally inspects, on a regular basis, the specific areas and items (listed below) and notifies responsible personnel employed by the general contractors, construction manager, or any subcontractors when violations occur.
- Ensures that all daily entries in a site safety log are completed. Entries must be recorded by 7:00 a.m. on the day following the activities.
- Inspects the construction site in accordance with the schedule to determine that the conditions at the site meet the public safety and security parameters for the appropriate work.
- Items to be recorded in the Site Safety Log:

- Details of areas inspected by the safety representative.
- Companies and representatives met with weekly to ascertain their compliance.
- Any unsafe acts and/or conditions (dates and locations).
- Companies and representatives notified of unsafe acts and/or conditions.
- Date(s) of notification of unsafe acts and/or conditions.
- Date(s) of correction of unsafe acts and/or conditions.
- Any accident or damage to public or private property.
- Any equipment brought onto the job that requires permits, including a description of the equipment, where it is to be located, permit number, issue and expiration dates of the permit, and certificate of inspection (if required) shall be entered on a Permit Log (if applicable).
- Any visits to the site by any regulatory agency.
- Any phone or written correspondence with any regulatory agency.

2.4 CONTRACTOR RESPONSIBILITIES (Competent Person / Safety Coordinator)

Contractor management, line supervisors, and safety personnel have the same duties and responsibilities of those described above. All contractors must ensure that a designated competent safety person(s) who is knowledgeable in safety, health, and fire prevention is on the site at all times (includes overtime work, off hour work, and subcontractor coverage). There shall be no deviation from this requirement.

The contractor's responsibility cannot be delegated to their subcontractors, suppliers, or other persons.

Contractors must perform "Job (task) Hazard Analysis" as described in these guidelines. The competent person, or person trained in JHA's, must perform job hazard analysis on all operations prior to the beginning of work.

1. Within ten (10) days after receipt of notification of contract award, submit to the project safety representative a letter signed by an officer

of the company setting forth the following:

- a. A statement of their company's safety plan based upon compliance with the project safety program.
 - b. A detailed safety program that is specific to the job and that reflects the contractor's intentions for full and complete compliance with the project safety program and hazard communications program.
 - c. Furnish a copy of their disciplinary program to the project safety representative. Contractor's disciplinary program will not supercede project requirements except where they are more stringent.
2. In accordance to OSHA regulations and contract inclusions, the contractors are required to comply immediately with all verbal and written safety directives, including stop work directives. Failure to comply with such directives will result in corrective action by the Construction Manager, General Contractor, or Program Manager and the cost will be deducted from the contractor's progress payment.

An eminently dangerous condition will result in a stop work order; work will not resume until corrections are made.

It is imperative that employees at every level comply with the provisions and directives of the safety program at all times.

3. The contractor is responsible for the orientation of their employees, subcontractor(s), and visitor(s). Newly employed, promoted, and/or transferred personnel shall receive orientation regarding the General Safety and Health Standards, as well as site specific hazards and policies. Documentation of this orientation shall be submitted to the construction manager's safety representative.
- a. The Safety Representative is responsible for the orientation, which shall include, but is not limited to:
 - i. Fall Protection (6' Rule)
 - ii. Struck-by
 - iii. Electrical Hazards
 - iv. PPE - including 100% eye, hard hat protection
 - v. Fire protection
 - vi. Housekeeping
 - vii. Floor and Wall Openings
 - viii. Accident Reporting
 - ix. Emergency Procedures

- x. Hazardous Communication and location of MSDS's

ALL DEFICIENCIES SHALL BE DOCUMENTED IN WRITING AND ADDRESSED ACCORDINLY. (i.e. – toolbox meetings, retraining)

4. Contractors are required to maintain a continual employee safety-training program. The program will include, but is not limited to, identifying hazards in all areas of the job, personal protective equipment (PPE), proper procedures for reporting unsafe jobs, and explaining and properly executing the project safety program. The contractors are responsible for ensuring that immediate action is taken to eliminate all unsafe conditions. If contractor delays or refuses immediate corrective action, the construction manager, general contractor, program manager or its representative will immediately take the following steps:
 - a. Cease the operation.
 - b. Stop payment for the work performed.
 - c. Correct the situation and back charge the responsible contractor for expenses incurred.
 - d. Permanently remove the responsible manager or supervisor from the project.
5. In addition to any initial training given to their employees, all contractors are responsible for implementing retraining programs where necessary. These programs shall be documented and submitted to the safety representative. Retraining techniques *may* commonly be accomplished in the form of a toolbox meeting, but, ultimately, the decision is open to each contractor's discretion and will vary for each individual contractor.
6. Contractors are responsible for ensuring the site is safe and will perform routine safety audits throughout the day, in which corrective actions will be taken to terminate any and all unsafe acts and/or conditions. Observations shall be reported to the project safety representative using a safety report on a daily basis.
7. Hazard communications will be in compliance with OSHA standards and regulations.
8. Contractors will hold weekly safety toolbox meetings, assist in incident investigations involving injuries, property damage, and fire,

and file and prepare the required safety/incident reports.

9. Attend safety meeting as required.
10. Contractors are responsible for providing tools and proper PPE for all jobs.
11. Each contractor must supply a list of contractor/subcontractor supervisors with the complete after hours phone numbers, which should be current and updated.
12. Each contractor will ensure that all field trailers are anchored in at least eight locations and secure all material that may become air borne during high winds.
13. Failure to adhere to all safety regulations may result in permanent removal from the site.

2.5 GENERAL SAFETY REQUIREMENTS FOR CONSTRUCTION SITES

- All areas (roof, sidewalk shed, walkway, etc.), especially those used by the public, shall be clean and free from debris, snow, water, equipment, materials, tools, etc. that may constitute a slipping, tripping, or other hazard.
- All equipment and tools shall be kept away from edges and openings at a minimum of 10 feet and secured when not being used.
- All openings or holes in the floor, hose lines, wire ropes, etc. shall be covered and identified at all times. Covers used to protect openings and holes in the floor shall be marked with the word "HOLE" or "COVER" (with fluorescent paint) to provide warning of the hazard. The cover shall be capable of supporting without failure at least twice the weight of employees, equipment, and material. All covers shall be secured to prevent displacement and be in compliance with CFR 1926.502 (i).
- Adjoining property shall be protected when the height of the building exceeds that of the adjoining property.
- Standpipes shall be connected to water sources and Siamese connection, and should be kept free from obstruction and marked with a red light and a sign reading "Standpipe Siamese connection."

- Valves shall be in place at each story below the construction floor.
- All stairwells must have handrails and sufficient lighting.
- Guards, shields, or barricades must surround all exposed, electrically charged, moving, or otherwise dangerous machine parts and construction equipment.
- Sufficient containers shall be in place for garbage and debris. Garbage and debris shall be placed in these proper containers for storage and removal and covered and secured when full. Combustible waste shall be stored separately in a labeled container and removed daily.
- **When exterior walls are not in place, stored material should be kept at least ten feet from the perimeter of the building. If the floor area is less than one thousand square feet, stored material may be kept not less than five feet back from perimeter of building.**
- Dangerous and hazardous areas shall be marked with warning signs or lights.
- In addition, the safety representative or construction manager (where applicable) shall use reasonable prudence to ensure that safety is maintained at the job site as job conditions and contractor's safety policy dictate.

PART III

FEDERAL SAFETY REQUIREMENTS/COMPLIANCE

- 3.1 Workplace Health Program
- 3.2 Posting Requirements
- 3.3 The Hazard Communication Standard
- 3.4 Competent Person
- 3.5 OSHA Inspection/Focused Inspection
- 3.6 Safety Complaints
- 3.7 Fall Protection
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- 3.9 Lockout/Tagout
- 3.10 Illumination
- 3.11 Struck-by and Fall/Flying Objects
- 3.12 Personal Protective Equipment (PPE)
- 3.13 Housekeeping Tips
- 3.14 Toilets & Washing Facilities
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- 3.18 Emergency Evacuation
- 3.19 Scaffolding
- 3.20 Concrete Hazards
- 3.21 Handtools – Power
- 3.22 Cranes
- 3.23 Confined Space

3.1 WORKPLACE HEALTH PROGRAMS (AS REQUIRED BY OSHA)

WHAT IS "OSHA"?

O - Occupational
S - Safety and
H - Health
A - Administration

What is the Occupational Safety and Health Administration's mission?

OSHA's mission is to prevent work-related injuries, illnesses, and deaths. Since the agency was created in 1971, occupational deaths have been cut by 62% and injuries have declined by 42%.

Source: www.osha.gov



OSHA Poster

- The contractor shall furnish a health and safety plan as prescribed by OSHA 1926 Subpart C & D. The plan shall include, at a minimum, general company policies, fall protection plan, job safety analysis, personal protective equipment, general safety rules, accident reporting, general first aid practice, safety responsibilities of supervisors, disciplinary policy, and employee training.

- Contractor shall develop and submit their HASP to the safety representative for review. The HASP shall specifically address hazards to be encountered by the contractor during the installation of his/her work. The HASP shall be in compliance with the applicable parts of 29 CFR 1926 and 1910, OSHA standards for construction and general industry and any other applicable federal, state and local regulatory requirements.

Tishman bears no responsibility for either the quality of such plans or their enforcement. As required by law, each contractor is responsible for protecting the health and safety of their employees ensuring a safe and healthful place to work.

3.2.1 POSTING REQUIREMENTS

The following forms should be posted at each job site:

- OSHA poster
- OSHA Annual Summary
- Emergency Phone Numbers
- OSHA 300 Form

3.2.2 THE HAZARD COMMUNICATION STANDARD (CFR 1910.1200 (Hazardous Communication) (Toxic and Hazardous Substances)

The Hazard Communication Standard (HCS), as stipulated in section 1910.1200 of the Code of Federal Regulations, is comprised of four basic areas that must be complied with by the contractor:

- An HCS program must be written.
- A chemical inventory and Material Safety Data Sheets (MSDS) of all chemicals used on site must be made available to employees and ARTICLE 19/OSHA officials.
- All containers and pipes must be properly labeled.

- Employees must be trained on aspects of the HCS program.

The HCS should be used to inform employees of the contractor's responsibilities and obligations to the Standard and about potential hazards at the worksite. All employees should be trained on how to use MSDS files and chemical inventory, labeling, and how to identify potential physical and health hazards. The chemical inventory list and MSDS will be contained in binders on site and should be easily accessible to employees. All employees should know where the chemical inventory list and MSDS can be found and how they are filed and interpreted.

The Chemical Inventory List and MSDS files should include all chemicals used on the site. The chemical name, trade name, trade, and MSDS number should be easy to locate and written legibly. The MSDS is the document that discloses the physical and chemical properties of the product, as well as the known physical and health hazards and precautions for safe handling and use. The HCS states the trade secrets do not have to be disclosed, but all properties and hazards of the chemical must be stated in the MSDS.

All chemicals, waste containers, and pipes on the site must be labeled. Labels must identify hazardous materials, the appropriate hazard warning, name and address of the manufacturer or responsible party, and precaution regarding the chemical. All labels should be written clearly in English and should never be removed or defaced. Exemptions from labeling include food, food additive, drugs or cosmetics (flavors, fragrances, etc.) used for personal consumption. Tobacco products, pesticides as defined in the Federal Insecticide, Fungicide, and Rodenticide Act, distilled spirits not intended for industrial use, and wood products do not need to be labeled.

3.3 COMPETENT PERSON - AS DEFINED BY OSHA (CFR 1926.32 (f))

OSHA defines a competent person as "...one who is capable of identifying existing and predictable hazards in the surroundings or working conditions, which are unsanitary, hazardous or dangerous to employees, and who has authorization to take prompt corrective measures to eliminate them."

Currently, there is not a certification process for a "competent person" but it is recommended and highly desirable that the contractor's competent person, in addition to competency as defined by OSHA, should have attended a 10-hour or 30-hour OSHA course. The broker and carrier will be enlisted to furnish training of this nature when necessary to further this process.

3.4 OSHA INSPECTION/FOCUSED INSPECTION (CFR 1926.3)

OSHA may inspect the site at any time without advance notice to evaluate the safety of the site. Inspections may be made as a result of a fatality/catastrophe, a complaint, as a follow-up inspection, or as a federal or state routine inspection. Hostile attitudes from superintendents, managers, or foremen can result in fines and penalties. Inspectors must adhere to the code of conduct of federal employees. The Construction Manager's Superintendent or their designated alternate should receive the inspector and review his/her identification papers. Inspectors are not required to sign a waiver or release for entry into the job site. Before the start of the walk around inspection, assistants and foremen should perform a final check of all OSHA records, job site conditions, methods, materials, and equipment to determine that all are in compliance with OSHA regulations. The inspector is required to conduct an opening conference prior to the inspection, in which the nature, purpose, and scope of the inspection will be explained. An employer and employee representative will accompany the inspector throughout the inspection. Inspections may range from a few hours to a few weeks, and inspectors may receive complaints from employees about safety conditions. The employer has the right to defend himself against all allegations.

The closing conference is required to disclose apparent health and safety violations. Normally, citations are not issued during an inspection, but an "on site" citation may be issued by the inspector at the end of the inspection. All deviations from the inspection procedures by the inspector should be documented and contested within fifteen days.

3.5 SAFETY COMPLAINTS

OSHA gives employees the right to notify Federal/State Department of Labor to request an inspection if they believe that unfair and/or unhealthy conditions exist at the work site. Assistants and foremen should pass along all employee complaints to the Superintendent. The Superintendent shall contact and hear the details of the complaint without delay and investigate and correct the unsafe/unfair condition. All complaints should be documented and corrective action for violations should be ordered to the "controlling contractor," both verbally and in writing.

3.6 FALL PROTECTION

The contractor shall furnish a written fall protection plan for the scope of Unless otherwise contractually specified, it shall be the goal to achieve 100% fall protection (guardrails, safety nets, personal fall arrest systems, All conditions shall be controlled where there is a danger of employees or materials falling through floor openings, roof openings, holes, roof



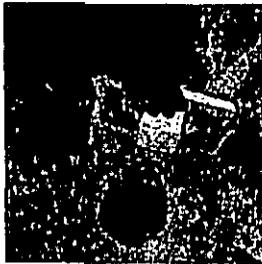
Orange Vertical Debris Nets



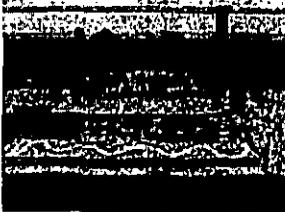
Perimeter Fall Protection



Standard Railing with Top Rail, Midrail and posts



Openings cover with cleat attached to prevent displacement



Labeled Cover



Runway with standard railings, toe board and debris net

perimeter edges, etc. The minimum requirements are:

- ▶ Guarding and/or covers shall only be removed after other means of fall protection are in place. The perimeter protection and floor and wall opening protection are to be maintained at all times. Notification of violations that are not rectified immediately will result in the removal of the supervisor responsible for the activity.

The perimeter floor and wall opening protection will include the installation of orange, four-foot-high, vertical debris nets along with perimeter floor and wall opening fall protection. Vertical debris nets are required in lieu of toe boards and are part of the guarding system. They shall be installed in accordance with the manufacturer's specifications.

- ▶ A standard railing shall consist of a top rail, an intermediate (midrail) rail, four-foot-high, vertical debris nets, and posts.
 - The upper surface of the top rail will be approximately 42 inches from the floor, platform, or ramp level.
 - The midrail shall be halfway between the top rail and the floor runway, platform, or ramp.
 - The toeboard 8-inch minimum height shall be securely fastened in place and have not more than one-fourth-inch gap between it and the floor level so that debris net cannot be installed. The Project Safety Representative will make this determination.
- ▶ Other types, sizes, and arrangements of railing construction are acceptable only by written approval from the Project Safety Representative.

Covered Floor Openings

- ▶ Floor openings covers shall be capable of supporting the maximum intended load and shall be installed to prevent accidental displacement.
- ▶ Covers shall be labeled "hole" or "cover" with a stencil and fluorescent paint.
- ▶ All floor openings that are more than three square feet require a protective cover and a standard railing with four-foot high debris nets.

Runways and Openings

- ▶ Wall openings from which there is a drop of more than three feet shall be guarded.
- ▶ Runways shall be guarded by standard railing or the equivalent on all open sides 19 inches or more above the floor or ground level. A toeboard shall be provided on each exposed side when tools, machine

parts, or materials are likely to be used along the runway.

- ▶ All open side floors, walkways, platforms, or runways above or adjacent to dangerous equipment and hazards shall be guarded with a standard railing and four-foot-high debris net.

3.7 ELECTRICAL GUIDELINES [(Subpart K) (CFR 1926.400, 402, and 403)]

All electrical work should comply with all federal, state, local and OSHA codes and regulations. All areas must be well illuminated and lock out/tag out plans must be developed and implemented. All electrical equipment must be continuously checked for possible external and internal defects. Damaged equipment must be removed promptly from the site.



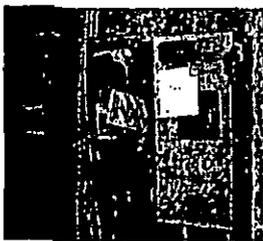
Electrical cords attached to a Ground Fault Circuit Interrupter

An assured grounding program must be established and maintained that covers all cord sets, receptacles that are not part of the building, and plugs that are available for use or used by employees. All grounding systems must be tested and recorded at intervals of less than three months and grounding conductors must be tested for continuity.

A ground fault circuit interrupter program may be used for receptacle branch circuits in lieu of an assured grounding program. The program will be for all 120 volt, single phase, and 15- to 20-ampere receptacle outlets that are not part of the permanent wiring of the building or structure and that are used by employees.

3.8 LOCKOUT/TAGOUT (CFR 1926.417)

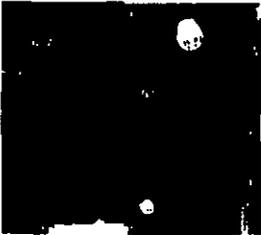
All machines and power sources must be locked out and tagged out before making an adjustment or repair. The machine shall be shut off and the employee should wait until the machine comes to a COMPLETE STOP and the main switch should be locked out. All elevated ramps and other mechanisms should be blocked so that they cannot operate. Lockout procedures will vary for individual jobs and machines but basic rules are:



Lockout/Tagout

- ▶ Contact supervisor to schedule a shut down and help locate switchers and power sources.
- ▶ Disconnect and tag the main control of the entire unit.
 - Tag shall include employee's name, date, and reason for taking the machine out of service.
- ▶ Padlock the controls.
 - Each employee using the machine should have their own padlock and key.

- Disconnect the plug of a portable unit and attach the tag.
- Bleed air and hydraulic lines.
- Perform necessary repair or adjustment.
- Replace all guards and safety devices.
- Remove lock and tag.
 - NOTE: If more than 1 worker is working on the machine, REMOVE ONLY YOUR LOCK AND TAG!
- When all is clear, restore power and test-run the equipment.
- Repeat lock out steps as necessary.



Illumination

3.9 ILLUMINATION (CFR 1926.56)

All areas where employees have access must be illuminated, such as stairs, ladders, passageways, etc. All areas should provide enough light to enable a person to read newsprint.

3.10 STRUCK-BY AND FALL/FLYING OBJECTS

Struck-by

The use of vehicles and equipment (concrete buggies, Ariel lifts, etc.) may present struck-by hazards if proper safety measures are not taken. There is a risk of being pinned between construction vehicles or walls, struck-by swinging backhoes, crushed beneath over turned vehicles or suspended loads.



Example of "caught in between"

- Use barricades, flag person, traffic signs when next to public roadways and walkways.
- Workers must be highly visible in all levels of lights. Use warning clothing, such as red or orange reflective vest.
- Do not exceed vehicles rated load or lift capacity.
- All vehicles/equipment must have adequate breaking equipment and reverse alarms.



Tag Lines help avoid "Struck By" conditions

- Do not drive vehicle/equipment in reverse with an obstructed view. Flag person with signage or hand signals should be used to assist movement.
- Drive vehicles/equipment only on roadways or grades safely constructed.
- Set parking brakes when vehicles/equipment are parked and chock the wheel when they are on an incline.
- Do not stand between operation vehicle/equipment and / or walls.
- Ensure proper training on vehicle/equipment (concrete buggies, Ariel lifts, etc.).
- For concrete construction, ensure adequate bracing and shoring are in place until concrete reaches sufficient strength. Ensure shoring on building perimeter is secured to prevent displacement.
- Do not place construction loads on concrete structure until a qualified person indicates it can support the load.
- Do not over load scaffolding (suspended and tubular frame) or work/walk surface.

Fall/Flying Objects

When you are beneath scaffolds, cranes, building perimeter, overhead work is being performed etc.; you are at risk from falling objects. Power tools, or activities like pulling, pushing, or prying, may cause objects to become air borne and create the risk of injury. Injuries can range from minor abrasion to concussion, blindness, or death. Here are some protective measures you can take to prevent such injuries:

General

- Wear hard hats
- Ensure materials are stacked to prevent sliding, collapsing, or falling.
- Use toe boards on elevated work surfaces (scaffolding, building perimeter, etc.)

Power Tools, Machines, etc.

- ▶ Where machines (air compressor, paint sprayer, etc.) or tools (chipping gun, impact drill, etc) may cause flying particles Use eye protection such as glasses, face shield, goggles etc.
- ▶ Inspect tool with moving parts to ensure protective guards are in place. Chop saw, circular saw, hand grinders are some tool examples.
- ▶ Make sure you are properly trained/certified for powder actuated tools.
- ▶ Never use compressed air to clean clothing.
- ▶ Ensure under ground utilities (electrical, water, communication lines, etc.) are identified prior to excavation and mechanical feeds (electrical, plumbing, duct work, etc.) are identified prior demolition of wall surfaces.

Crane and Hoist

- ▶ Avoid working underneath suspended loads.
- ▶ Provide barricades (fencing, Jersey barricade, danger tape) and/or signage for hazardous areas.
- ▶ *Do not exceed lifting capacity.*
- ▶ Inspect rigging for serviceability (nylon straps, wire rope chokers, lifting hooks, etc.).
- ▶ Provide guardrails/barriers for open hoist ways.

Overhead Work

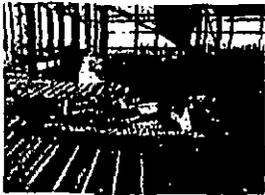
- ▶ Use toe boards, screens, nets, guardrails on scaffold, canopies on overhead work/walk platform.
- ▶ Secure material to prevent them from falling and keep unnecessary material and equipment from work/walk surface perimeter.
- ▶ Use barricades or control access zone below.

3.11 PERSONAL PROTECTION EQUIPMENT [CFR 1926.28, .95, .951(a)]

All employees must wear appropriate personal protective equipment (PPE) in all operations where they are exposed to hazardous conditions or where hazards with equipment may be reduced. Types of PPE are:

- ◆ **Head Protection:** hard hats, with a stamped expiration date (after this date they should not be used), should be worn in all areas where there is a possible danger of head injury from impact, falling or flying objects, or from electrical shocks or burns.
- ◆ **Hearing Protection:** used in areas where it is not possible to reduce the noise below OSHA Permissible Noise Exposure levels — plain cotton is not an acceptable protective device.
- ◆ **Eye and Face Protection:** used when operating machines, chemical agents, or any operation that presents a risk of physical injury to the eyes or face.
 - 100% eye protection shall be utilized.
 - It is the goal to achieve 100% eye protection for all workers. To achieve this goal, contractors shall encourage their employees to carry eye protection at all times.
- ◆ **Respiratory Protection:** required when performing work in hazardous or enclosed environments.
- ◆ **Personnel Fall Arrest System:** required where guardrail and netting does not and/or cannot provide protection as described in CFR1926.
 - 100% fall protection shall be utilized on all leading edges.

3.12 HOUSEKEEPING TIPS (see also CFR 1926.25 (Housekeeping), Subpart G (Signs, Signals, and Barricades), Subpart H (Materials Handling, Storage, Use, and Disposal))



Dehrts Net

All materials (tools, chemicals, etc.) should be kept in a neat and orderly manner to minimize damage, and returned to proper storage location after use.

- ◆ Stacked or blocked materials should maintain a limited height to reduce collapsing or sliding. Similar size or types of materials should be grouped together.
- ◆ Scrap material should be stored in orderly piles for disposal and should not interfere with construction work.
- ◆ Always keep ramps, ladders, runways, stairways, scaffolds, and all paths of travel clear.

- Avoid running hoses, power cords, welding leads, ropes, and other tripping hazards across traffic area.
- Always remove debris. Bend or remove nails. Remove greasy/oily rags, etc. from site area and store in appropriate place and/or labeled container.

This reduces fire hazards and accident potential.

3.13 TOILETS and WASHING FACILITIES AT CONSTRUCTION SITE (CFR 1926.51)

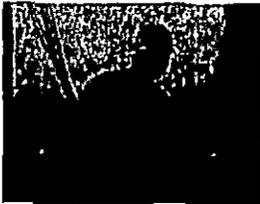
Facilities should be located no more than four stories or 60 feet above or below, nor more than 500 feet on the same level, from the work location of any person. Separate, clearly marked toilet facilities shall be provided for female employees.

| Number of Employees | Minimum Number of Facilities |
|---------------------|---|
| 20 or Less | 1 |
| 21 or 199 | 1 toilet seat and 1 urinal per 40 workers |
| 200 or More | 1 toilet seat and 1 urinal per 50 workers |

Adequate wash facilities shall be provided for employees engaged in operations with harmful chemicals. These facilities shall be in near proximity to the worksite.

3.14 DRINKING WATER (CFR 1926.51)

- An adequate supply of drinking water shall be provided in all places of employment.
- Potable drinking water containers shall be capable of being tightly closed and equipped with a tap.
- The common drinking cup is prohibited.
- Unused, disposable cups shall be kept in sanitary containers, and a receptacle shall be provided for used cups.



PPE Gear shown here: Hard hats, goggles, gloves and respiratory protection

3.15 FIRE PREVENTION AND TORCH USE [(Subpart F) CFR 1926.150 – 154]

- Obey all smoking regulations.
 - Flammable vapors cannot be seen but will ignite by lighting a match.

- Dispose of all flammable wastes and place in appropriate containers. **NEVER POUR FLAMMABLE LIQUIDS DOWN DRAINS OR SEWERS.** All gasoline operated tools and equipment must be turned off when refueling and a funnel shall be used to prevent spillage.
- Know how to activate and locate a fire alarm, fire extinguisher, and fire exits.
 - NOTE: There are different classes of fires that require the use of specific types of fire extinguishers.

| Fire Class | Cause(s) | Fire Extinguisher |
|-----------------|---------------------------------|------------------------------------|
| Class "A" Fires | Rubbish, paper, rags, etc. | water, soda-acid, carbon dioxide |
| Class "B" Fires | flammable liquids, oils, grease | carbon dioxide, dry chemical, foam |
| Class "C" Fires | electrical equipment | carbon dioxide, dry chemical |

Fire extinguishers should be inspected regularly and kept clean and accessible. Hoses, horns, and dispensing components should be checked for blockage.



Accessible fire Extinguisher

- Immediately remove clothes that come in contact with oil, kerosene, naphtha, or any flammable liquid.
- Temporary standpipe risers shall be used as a means of general fire protection for the structure. Siamese connections at street level shall have signage and a red light (maintained 24hrs) for designation for local fire department.
- All flame-producing tools and devices shall have an adequate fire protection, a fire watch, and a Hot Work Permit. The fire watch shall ensure the area of concern, is inspected during, and at the conclusion of, the operation for any fire and/or smoldering material.
- All fire extinguishers shall be inspected prior to use and in accordance to the manufacturer's recommendations.

3.16 STAIRS, GUARDRAILS, PASSAGEWAYS, AND LADDERS (Subpart X)

Stairs

During construction, stairs shall be provided on all structures that are two or more floors or more than 20 feet in height. Prior to the installation of permanent stairways, temporary stairs will be provided. Ladder access to all elevated platforms and upper levels will be held to a minimum and only used until temporary stairways are provided.

- Permanent stairway placement will follow other construction activities.
- All stairway parts shall be free of hazardous projections. Materials will not be stored or left under stairways and all debris and other loose material shall not accumulate.
- Permanent steel stairways having hollow pan-type treads and landings that are to be used prior to concrete placement shall have the pans filled with solid material to the level of the hosing.
- Temporary stairs shall not have a landing less than 30" wide in the direction of travel for every 12 feet of vertical rise. Wooden treads for temporary service shall be full width.
- Riser height and tread shall be uniform throughout any flight of stairs.
- A platform is necessary where a door opens directly into stairway; platform shall extend 20' beyond the swing of the door and be protected with a guardrail.

Guardrails

- All stairways will be provided with guardrails when having four or more risers.



Stairwells with Guardrails

| | | |
|-------------------|----------------------|---------|
| Top Rail: | 42" plus or minus 3" | 200 lbs |
| Mid Rail: | 1"x 6" | 150 lbs |
| Toe Board: | 1"x 6" | 50 lbs |

- Guardrails must support at least 200 pounds of pressure.
- Enclosed sides of stairs must have one handrail 30 to 34 inches in height.
- Stairs greater than 44 inches in width must have guard railing, not hand railings.
- Stairs greater than 88 inches in width must have one center guardrail in addition to side guard railings.
- Top rails must be a minimum of 42 inches above treads of floor surface.

Passageways

- Platforms six feet or more above ground and ramps or runways more than four feet above ground will be guarded by standard guardrail systems.
- A standard guardrail system will be used regardless of height when hazards exist below.

Ladders

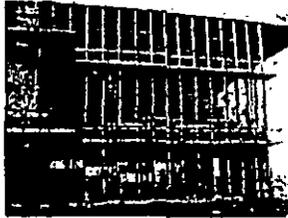
Where permanent or temporary stairways or suitable ramps are not provided, ladders to be used must meet the following guidelines:

- Pre-manufactured, portable, heavy-duty, rated wood, metal, or Fiberglas construction ladders must be in accordance with ANSI standards. All ladders must have proper certifications, ratings, and instructions permanently affixed.
- All damaged ladders are to immediately be red tagged and taken out of service and removed from the job site.
- Ladders are prohibited from being used on platforms, runways, and scaffolds.
- Ladders must extend at least 36 inches above the landing.
- Ladders are to be secured against displacement at all times.
- Metals ladders are not to be used when danger of electrical shock is present.

3.17 EMERGENCY EVACUATION (CFR 1926.35, CFR 1910)

- An audible signal system shall be used for notification of evacuation.
- Contractors shall instruct workers to meet at a pre-designated location for accountability.
- Notification of missing personnel must be furnished to CM safety representative and CM supervisor.

3.18 SCAFFOLDING [Subpart L (Scaffolds), Subpart R (Steel Erection)]



Scaffolding

No scaffold may be erected, moved, dismantled, or altered except under the supervision of a competent person. Scaffold must be inspected daily by the designated competent person.

- Scaffolds and their components must be capable of supporting without failure at least four times the maximum intended load.
- Scaffolds 6 feet or more in height must be provided with a standard guardrail system with the top rail at 42 inches above work surface. Where persons can pass under any such scaffold, a screen between guardrails and toe board must be provided (18 gauge one-half-inch wire mesh or equivalent).
- Overhead protection shall be provided for personnel on a scaffold exposed to overhead hazards.
- Scaffold classifications are:

| | |
|-----------------------|------------------|
| Light Duty Scaffold: | 25 PSF Live Load |
| Medium Duty Scaffold: | 50 PSF Live Load |
| Heavy Duty Scaffold: | 75 PSF Live Load |

- No employee shall ride on mobile scaffolds.
- Height of mobile scaffold shall not exceed four times its minimum base dimension.

Load limits for suspension scaffolds are:

| Maximum Number Workers | Work Load Limit |
|------------------------|-----------------|
| 2 | 500 lbs |
| 3 | 750 lbs |

3.19 CONCRETE HAZARDS [(Subpart Q) CFR 1926.700 - 706]

Cement can cause irritation, burns, drying, and cracking to the skin when contacted. Direct skin contact should be immediately followed by washing the area with fresh water. To minimize contact, long sleeves, full-length trousers, and waterproof gloves and boots should be worn. All clothing exposed to concrete should be rinsed with clean water. In addition, concrete contains chemical additives, which may create additional hazards. Employees should be advised of chemical additives and refer to the Material Safety Data Sheets (MSDS) for hazards. Wet concrete conducts electricity and all cords and tools should be grounded. Good lifting techniques (legs bent, do not twist at waist, ask for help, etc.)

should be used when working, wheeling, dumping, shoveling, and handling concrete.

Respiratory protection is required for all chopping, chipping, grinding, and dust-producing operation (ex. mixing of cement) of any concrete surface. **Respiratory protection shall have at a minimum NIOSH N95 classification.** Respiratory filters shall be changed in accordance to the manufacturer's recommendations.

All concrete pump pipe and hose connections shall be mechanically fastened to prevent displacement.

3.20 **HANDTOOLS – POWER** Subpart I (Tools- Hand and Power) Subpart J (Welding and Cutting, Gas Cylinders)

Power tools and gas cylinders can be hazardous when improperly used. There are several types of power tools, based on the power source they use: electric, liquid fuel, hydraulic, and power actuated. Employees should be trained in the use of all tools and should understand the potential hazards and safety precautions to prevent those hazards from occurring. The following precautions should be observed when using power tools:



Construction worker using a GFCI (Ground Fault Circuit Interrupter) with a power tool

- All electrical equipment and tools shall be protected by a portable GFCI (Ground Fault Circuit Interrupter).
- Work area should be well lighted.
- Read manufacturer's instructions prior to use. Do not attempt to circumvent safety features. Follow instructions for lubrication and changing accessories.
- All guards and safety switches are in place and working properly.
- Proper protective safety gear, such as eye and ear protection must be worn at all times. Proper apparel must be worn at all times. Loose clothing, ties, or jewelry can become caught in moving parts.
- Make sure stable footing is provided and maintain good balance.
- Tools should be used in well-ventilated areas.
- Tools should never be left unattended and should never be pointed at anybody.
- Tools must be maintained with care and should not be used in damp or wet locations. They should be kept sharp and clean and stored in a dry place when not in use for best performance.
- All portable electric tools and gas cylinders that are damaged must be tagged "DO NOT USE" and removed from the work area.
- Never carry a tool by the cord or hose.
- Never yank the cord or hose to disconnect the tool from the receptacle.
- Disconnect tools when not in use, before servicing, and when charging accessories, such as blades, bits, and cutters.
- All observers should be kept at a safe distance from the work area.

- ◆ Secure work with a clamp or vice, freeing both hands to operate tool. Never clamp a hand-held grinder in a vice.
- ◆ Avoid accidental starts. Do not hold a finger on the start button while carrying a plugged in tool.
- ◆ Never stand close to moving parts. Abrasive wheel tools may explode during start-up and an employee should not stand directly in front of the wheel until it reaches its full operating speed.
- ◆ Pneumatic tools that shoot nails, rivets, or staples and operate at pressures more than 100 pounds per square inch, must be equipped with a special device that prevents pulling the trigger until the safety device is manually released.
- ◆ Pneumatic power tools and hose connections shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected.
- ◆ Tools that require combustible, flammable gases must be in accordance with the Fire Department and requires a Fire Department permit 99% of the time.
- ◆ No welding, cutting, or heating shall be done where flammable paints, flammable compounds, or heavy dust exists. Sparks or heat transfer from the tool may introduce a fire hazard.
- ◆ Jacks must be set-up so that the base rests in a firm, level surface and is correctly centered.

Gas Cylinders (Program and Standards) (CFR 1926.350)



Gas Cylinders

- ◆ When stored, all compressed gas tanks must be valved shut at the tank and not at the device.
- ◆ Compressed gas cylinders will not be stored inside of ANY structure nor brought into a closed or confined space. Compressed gas cylinders shall not be stored in any structure without approval of TCC safety representative and/or local fire department requirements. Cylinders should be capped and secured in an upright position.
- ◆ When cylinders are moved they shall not be hoisted or transported by means of a magnet or choker slings. Cylinders when hoisted shall be secured on a cradle, slingboard, or pallet.
- ◆ The contractor shall furnish a list of compressed gas cylinder suppliers to the safety representative and ensure timely removal from the project as required and/or as per the direction of the safety representative.

- Empty cylinders shall be marked "EMPTY".
- Cylinders shall be kept away from sources of heat and out of the direct rays of the sun.
- Oxygen cylinders shall not be stored close to cylinders containing acetylene or other fueled gas. These tanks should be separated by a minimum of 20 feet or by a non-combustible barrier with at least a two (2) hour fire rating.

Welding, Cutting and Burning (Standard) (CFR 1926.350)

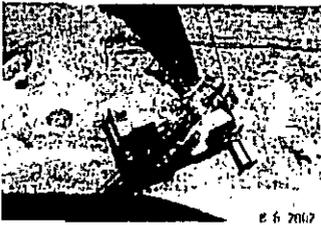


Hat, eye protection and gloves

- No welding, cutting, burning, or other spark- or flame-producing operation shall be permitted until the owner/ construction manager/ general contractor/ program manager has issued a flame/spark permit.
- A proper fire extinguisher is required to be positioned near each separate cutting and welding operation.
- Welding screens and shields must be used at all times.
- All hoses should be frequently inspected for leaks, worn places, and loose connections. Elevate hoses at least eight feet above the work area to allow passage of workers and equipment.
- If objects to be welded can not be moved and all the fire hazards can not be removed, a positive means shall be taken to confine heat, sparks, and slag, and protect the immovable fire hazard.
- Hot Work Permits shall be provided to the safety representative. Fire watch procedures shall be followed as per OSHA standard.
- All portable fire extinguishers used for fire protection shall have the classification at a minimum an ABC fire classification.

3.21 CRANES (CFR 1926 Subpart N)

- Employee shall comply with the manufacturer's specifications and limitations at all times.
- **The designated competent person shall inspect all machinery and equipment both prior to each use and during use. All deficiencies shall be repaired and defective parts shall be replaced before continued use.**
- ANSI standard hand signals shall be used at all times.



Controlled Access Zone for
Crane

- The swing radius of the crane shall be clearly marked and barricaded to prevent any person(s) from being struck or crushed by the crane.
- Combustible and flammable materials shall be removed from the immediate area prior to operations.
- Tag lines shall be used with all crane picks.
- Contractors shall ensure annual inspection is in place upon arrival of crane on site. All cranes shall be inspected in accordance to the manufacturer's recommendation.

3.22 CONFINED SPACE (CFR 1926.21, 1910.146)

- Confined space permit (vessel entry permit) shall be furnished to construction safety representative 24 hours prior to entry.
- Danger signs shall be posted in areas of confined space.
 - For example: "DANGER — PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER".

It is critical that no employee be exposed to hazards in confined spaces. The unfavorable ventilation in a confined space can cause the atmosphere to become hazardous. This standard has been developed to establish procedures and controls for employees who enter confined spaces that may contain hazardous atmospheres. These atmospheres are divided into four categories:

1. Flammable
2. Toxic
3. Asphyxiating
4. Irritant and/or Corrosive

These can exist in combinations.

Entry into a permit-required confined space (Permit Space) requires special training, procedures and equipment and shall not be attempted by personnel who are not familiar with these protocols. Any contractor intending to perform work inside a confined space shall provide to Tishman a copy of a written program that complies with the requirements of 29 CFR 1910. 146 (c) (OSHA).

The written program shall include provisions for implementing a permitting system and a copy of a blank permit form. Implementation of

the written program shall be the sole responsibility of the contractor. This shall include, but not be limited to, providing any type of air monitoring equipment needed to safely perform the work, making arrangements for rescues personnel and guarding of unattended confined spaces.

Tishman reserves the right to audit confined space entry work procedures to ensure compliance with applicable standards and the contractors' written plan.

Any contractor intending to perform confined space entry work shall provide prior notice to the Tishman General Superintendent.

A confined space has limited or restricted means of entry or exit, is large enough for an employee to enter and perform assigned work, and is not designed for continuous occupancy by the employee.

A permit-required confined space is one that meets the definition of a confined space and has one or more of the following characteristics:

1. Contains or has the potential to contain a hazardous atmosphere;
2. Contains a material that has the potential for engulfing an entrant;
3. Has an internal configuration that might cause an entrant to be trapped or asphyxiated by inwardly converging walls or by a floor that slopes downward and tapers to a smaller cross section;
4. Contains any other recognized serious safety or health hazards.

No one will enter a confined space unless a qualified person has completed a confined space entry permit.

The use of appropriate environmental and chemical monitoring devices, such as oxygen monitors, combustible gas meters, and toxic gas monitors are required prior to and during the entry.

An attendant named on the confined space entry permit shall remain outside the confined space at all times. He/she shall maintain continuous communication by voice, visual observation, radio, telephone or other equally effective means with all the entrants he/she is responsible for. If it is not possible for one attendant to maintain communications with each entrant, then other arrangements will be made to assure that the attendant is continuously aware of the location and condition of every entrant he/she is responsible for. The attendant must remain at his/her post until replaced by another qualified person.

No employee involved in a confined space operation shall perform any confined space function (qualified person, entrant, attendant, or rescue personnel) until he/she has been trained to the level required by the job function. Certification of this training must be presented to the Tishman Safety Representative.

SECTION IV FORMS

- SAFETY LOG
- SAFETY VIOLATION FORM
- HOT WORK PERMIT
- HAZARD CONTROL LOG



SAFETY LOG

SS MANGER: _____
CLIENT: _____
PROJECT: _____
LOCATION: _____

SSM LICENSE No: _____
DAY & DATE: _____
HOURS: _____
WEATHER: _____

WORK FORCE: _____

ACTIVITIES: _____

ACCIDENT:
NONE REPORTED _____ YES _____ (see attached report)

VIOLATION/STOP WORK ORDER/ SUMMONSES: _____

NETTING INSPECTION _____



SAFETY VIOLATION

CONTRACTOR _____

As per your contract, failure to comply with the safety requirements of the project will result the following amounts being deducted from the contract price.

- | | |
|---------------------------|--|
| 1. First Offense | Warning — No monetary deduction |
| 2. Second Offense | \$500.00 |
| 3. Third Offense | \$1000.00 |
| 4. Further Offense | \$2000.00 for any further offense |

ON _____ (DATE) @ _____

ON/IN _____ (LOCATION) _____

Your worker(s) were observed engaging in unsafe activities as defined by the Safety Requirements of the Project Specifically:

Site Safety Manager



HOT WORK PERMIT

CONTRACTOR: _____

FIRE WATCH: _____

LOCATION: _____

WORK BEING PERFORMED: _____

BEFORE OPERATION CHECK LIST

1. Remove combustible materials/flammable materials in the area
1. Place welding screens/blankets in place to protect Workers/equipment/material
2. Ventilation for welding fumes
3. Fire protection
4. Valid NYC certificate of fitness/welding license

PRECAUTIONS AFTER OPERATION

1. Secure all heat producing devices (valves, cylinders, torch)
2. Checked for any smoldering material
3. Visually check area/material for damage

Site Safety Manager



Tishman Hazard Prevention and Control Inspection Log

Date: _____

Project: _____

| | Hazard | Corrective Action | Location | Contractor Assigned Abatement |
|----|--------|-------------------|----------|-------------------------------|
| 1 | | | | |
| 2 | | | | |
| 3 | | | | |
| 4 | | | | |
| 5 | | | | |
| 6 | | | | |
| 7 | | | | |
| 8 | | | | |
| 9 | | | | |
| 10 | | | | |
| 11 | | | | |
| 12 | | | | |
| 13 | | | | |
| 14 | | | | |

* See Tishman Safety Manager for additional instructions





THE PORT AUTHORITY OF NY & NJ

World Trade Center Site
RULES and REGULATIONS

Effective January 1, 2006



FOREWORD

The World Trade Center (WTC) Site Rules and Regulations as set forth herein have been adopted in the interest of the safe, efficient, and environmentally sensitive operation of the WTC Site while it is under redevelopment.

The Manager of the WTC Site is authorized to act for the undersigned in connection with all Port Authority Rules and Regulations.

Steven Plate
Director
Priority Capital Programs
The Port Authority of New York and New Jersey

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IMPORTANT TELEPHONE NUMBERS

Port Authority Police
(212) 608-5111 or 5115

WTC Site Manager
(212) 435-5501

WTC Site Security
(212) 732-8415

WTC Site Safety Manager
(212) 435-5524

Copies of this booklet may be obtained
at the following location:

WTC Site Manager
Priority Capital Programs
The Port Authority of New York and New Jersey
115 Broadway, 5th Floor
New York, NY 10006

WTC Site Manager bulletins may be issued by the Site Manager
as necessary to implement these Rules and Regulations.

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PART A. General Conditions.

1. Use of Premises May be Denied or Withdrawn.

The WTC Site Manager or the persons designated to act in his or her stead, may deny permission to enter or remain on the WTC Site to persons who violate Port Authority rules or regulations, WTC Site policies or procedures, applicable laws, ordinances or regulations of other government bodies, or for such other reason as may be permitted by law.

2. Closed and Restricted Areas.

- a. No person shall enter or remain in any area posted as a closed area, or otherwise identified as closed, without permission of the WTC Site Manager, or the persons designated to act in his or her stead.
- b. No person shall enter or remain in any area posted as a restricted area, or otherwise identified as a restricted area, unless such person complies with any applicable restriction, or is given permission to enter or remain by the WTC Site Manager, or the persons designated to act in his or her stead.

3. Fences.

- a. The climbing of any fence, the marking or painting of any fence, the affixing of any sign or object to any fence, or the removal of any fence is prohibited.
- b. The foregoing does not apply to the Port Authority, or any person authorized to act on behalf of the Port Authority, or any person engaged in construction or maintenance activity at the World Trade Center Site pursuant to an agreement with the Port Authority or pursuant to an agreement with a lessee of the Port Authority.

4. Compliance with Orders.

No person shall refuse to follow the lawful order of any Port Authority employee including a Port Authority police officer.

5. Endangering Persons or Property.

No person shall do or omit to do any act if the doing or omission thereof unreasonably endangers persons or property.

6. Interference with Traffic or Activities.

No person shall unreasonably interfere with:

- a. Pedestrian or vehicular traffic.
- b. Use of any doorway, entrance, or exit; stairway or landing, entrance or exit thereof; elevator, entrance or exit thereof; escalator or landing thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area; sidewalk cut or sidewalk adjacent to a crosswalk.
- c. Entry to or exit from any vehicle.
- d. The formation of any line of persons waiting to enter or use any thing, place or service described in b. or c.
- e. Any reclamation, construction or maintenance activity.
- f. The duties of a flag person.
- g. Instructions or information found on or within a sign, pavement marking, or traffic signal.
- h. The storage of materials, equipment, supplies, vehicles, debris, waste, garbage, or refuse.

7. Duty of Individuals Involved in Accidents.

- a. Any individual involved in an accident at the WTC Site which results in death, personal injury or property damage shall provide his or her name and address, and if a motor vehicle is involved, display the relevant operator's license, vehicle registration and proof of insurance document, upon demand at the scene of the accident, to any injured person, any owner of damaged property, and, to any police officer, or employee of The Port Authority of New York and New Jersey, at, or who arrives at, the scene of the accident.
- b. The operator of a motor vehicle involved in an accident shall make a report of such accident in conformance with the law of the State of New York.

8. Animals.

- a. No animal shall be brought onto or remain on the WTC Site unless it is continuously restrained by a leash or harness or by a fully closed cage or carrier.
- b. Any person who has custody of an animal shall not permit the animal to urinate or defecate in any place other than in a roadway, and shall not permit the animal to do so if such action will interfere with traffic or pose a danger to the animal or any person or property.
- c. Any person who has custody of an animal that has defecated at the WTC Site shall collect the feces in suitable wrapping material for disposal as refuse.
- d. This section is not applicable to any disabled person to the extent such person is unable to comply therewith with respect to such person's service animal.
- e. This section is not applicable to law enforcement or search canines.

9. Defacing or Damaging of Property.

No person shall deface, mark, damage, or affix any thing or object to, any wall, post, surface, walkway, street fixture or any other property at the WTC Site.

10. Abandonment of Property.

No person shall intentionally abandon any property at the WTC Site.

11. Garbage Disposal.

a. Public Areas.

No person shall dispose of garbage, debris, or any refuse except by depositing such material in waste containers as shall be placed at the WTC Site for such purpose. If no waste containers are available, all garbage, debris, or refuse shall be carried from the WTC Site.

b. Closed and Restricted Areas.

- i. Each person is responsible for the garbage he/she generates and any other garbage within his/her area of control.
- ii. Each entity is responsible for the garbage generated within its area of control.
- iii. All garbage, debris, or refuse generated by persons individually or on behalf of others, including one or more entities, shall be disposed of by the person(s) generating such garbage, debris or refuse, or by the person(s) controlling the area within which the garbage, debris or refuse is located, or by the entity controlling the area.

- iv. Such garbage, debris, or refuse shall be disposed of in containers provided by the entity controlling the area. Such containers shall be emptied regularly to lawful disposal locations outside of the World Trade Center Site, at a frequency that prevents the attraction of rodents and other pests, odors, seepage, and overflow.

12. Alcoholic Beverages.

a. Public Areas.

No person shall drink, or carry an open container of, any alcoholic beverage in a public area

b. Closed and Restricted Areas.

Alcoholic beverages are prohibited within closed and restricted areas. No person shall drink, carry an open container of, or carry a closed container of, any alcoholic beverage in a closed and restricted area.

13. Personal Hygiene.

- a. No person shall spit, urinate or defecate except in toilet facilities.
- b. No person other than authorized persons shall bathe, shower, shave, launder, change clothes or remain undressed in any restroom, washroom, wash station, sink, or washing facility.

14. Touching.

The intentional touching of any person without his or her consent is prohibited.

15. Sitting, Lying Down, Sleeping.

- a. Public Areas.
 - i. Except for a person in a wheelchair, stroller, or other similar apparatus, or a person waiting for emergency medical assistance, no person may sit or lie down.
 - ii. No person may sleep at the WTC Site.
- b. Closed and Restricted Areas.
 - i. No person may sleep at the WTC Site.

16. Skateboarding, Roller-Skating, Bicycle Riding.

- a. Skateboarding, roller-skating, bicycle riding or use of a scooter or other similar motorized or self-propelled apparatus is prohibited.
- b. This section is not applicable to use of a wheelchair or similar apparatus by a disabled person, or to use of a motorized or self-propelled apparatus used in reclamation, construction or maintenance activity.

17. Noise.

- a. Noise Resulting from Activity other than Reclamation, Construction or Maintenance Activity.
 - i. No person may make or cause to be made any sound in excess of 86 dBA on the A weighted scale measured at 5 feet from the source of the sound.
 - ii. No person shall operate or use any personal radio, television, compact disk, tape recorder or other sound reproduction device in such manner that the sound reproduction device is audible to another person.

b. Noise Resulting from Reclamation, Construction or Maintenance Activity.

- i. Tenants, contractors, and subcontractors, or other parties performing reclamation, construction or maintenance activity, shall comply with all applicable federal laws and regulations with respect to noise control and mitigation, and shall act in conformance with all state and local laws and regulations with respect to noise control and mitigation which would be applicable if the WTC Site were owned and operated solely by a private party.
- ii. Environmental Performance Commitments Pertaining to Noise.
 - Tenants, contractors, and subcontractors, or other parties performing reclamation, construction, or maintenance activity, shall comply with all Environmental Performance Commitments pertaining to noise. A copy of the current Environmental Performance Commitments (EPCs) is available from the Port Authority Resident Engineer or Port Authority Program Manager responsible for the reclamation, construction, or maintenance activity.

18. Structures.

- a. Public Areas.
 - The erection of any table, chair, mechanical device or other structure is prohibited, except:
 - i. pursuant to a written permit issued by, or a written agreement with, the Port Authority, or Port Authority lessee; or

- ii. as provided in the section describing "Continuous Expressive Activity."
- b. Closed and Restricted Areas.

Construction and redevelopment activity at the WTC Site shall commence only after receiving Port Authority approval in the form of one of the following:

 - i. approved Tenant Construction Application (TCA) or Tenant Alteration Application (TAA),
 - ii. fully executed contract with The Port Authority of New York and New Jersey, or
 - iii. other fully executed agreement with The Port Authority of New York and New Jersey containing conditions for construction and/or redevelopment activity.

19. Distribution or Sales.

The following is prohibited, whether for free or for payment, unless conducted pursuant to a written permit issued by, or a written agreement with, the Port Authority:

- a. The distribution of any merchandise including, but not limited to, jewelry, foodstuffs, candles, and flowers.
- b. The provision of any service including, but not limited to, shoe shining.

20. Gambling and Contests.

The conduct of any actual or purported game of chance or skill is prohibited.

21. Continuous Expressive Activity.

- a. For the purpose of these regulations, "continuous expressive activity" refers to the following: Continuous expressive

- activity directed at passersby, including display of a sign to passersby, continuous distribution of literature to passersby, and continuous speech addressed to passersby.
- b. Continuous expressive activity is permitted at the following locations, subject to Section 21 d:
 - i. On the pavement adjacent to Church Street, 12.5 feet or less from the pavement curb.
 - ii. Within the location described as Location E in the diagram attached to these regulations as Exhibit A, when that location is not being used by persons engaged in activity authorized by a written permit issued by, or a written agreement with, the Port Authority.
 - iii. By a person engaged in coordinated continuous expressive activity as part of a group of 25 or more persons, within the locations described as Locations A through D in the diagram attached to these regulations as Exhibit A pursuant to Section 21 c herein.
- c. A person may engage in coordinated continuous expressive activity as part of a group of 25 or more persons only if a permit has been issued for that activity as set forth in Section 21 f herein, subject to the following restrictions:
 - i. A person may engage in coordinated continuous expressive activity as part of a group of 25 or more persons only in the following locations:
 - (A) Within the locations described as Locations A through D and 1 through 9 in the diagram attached to these regulations as Exhibit A.

- (B) Within the location described as Location E in the diagram attached to these regulations as Exhibit A, when that location is not being used by persons engaged in activity authorized by a written permit issued by, or a written agreement with, the Port Authority.
- (C) Coordinated continuous expressive activity by a group of 25 or more persons may not occur simultaneously in both (I) one or more of locations A through E on the diagram attached to these regulations as Exhibit A and (II) one or more of locations 1 through 9 on the diagram attached to these regulations as Exhibit A.
- ii. The number of persons within each of the locations available for coordinated continuous expressive activity, as designated on the diagram maintained by the WTC Site Manager, described as Locations A through E and 1 through 9 on the diagram attached to these regulations as Exhibit A may not exceed the maximum number of persons indicated for that area on Exhibit A.
- d. i. Notwithstanding Part A, Section 21 b i, continuous expressive activity is prohibited in, or within 10 feet of, any of the following: Doorway, entrance or exit; stairway or, entrance or exit landing thereof; sidewalk cut or crosswalk; elevator or entrance or exit thereof; escalator or landing, entrance or exit thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area;
- ii. Notwithstanding any other regulation, including Part A, Sections 21 b -c, continuous expressive activity is prohibited in, or within 10 feet of, any of the following: reclamation, construction or maintenance equipment or activity; a barrier marking or surrounding an area containing reclamation, construction or maintenance equipment or activity.
- iii. Interested persons may contact the WTC Site Manager at (212) 435-5501 for identification of the locations described in Sections 21 b -c which are not available at that time for use for expressive activity pursuant to Section 21 d i or 21 d ii.
- e. No person, while engaged in continuous expressive activity, shall:
- i. Distribute any merchandise including, but not limited to, jewelry, foodstuffs, candles, and flowers.
 - ii. Misrepresent through words, signs, leaflets, attire or otherwise, an affiliation or association with, or support from, any person, organization, group, entity or cause, including any affiliation with or support by The Port Authority of New York and New Jersey or a subsidiary thereof, or an organization or association of employees thereof, or a victim of the events of September 11, 2001, or any organization or association of victims.
 - iii. Erect any table, chair, mechanical device or other structure unless:
 - (A) It is used for the actual distribution or display of expressive material such as leaflets.
 - (B) It does not interfere with:
 - (1) Pedestrian or vehicular traffic flow.
 - (2) Use of any doorway, entrance or exit; stairway or, entrance or exit landing thereof; sidewalk cut or crosswalk; elevator or entrance or exit

thereof; escalator or landing, entrance or exit thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area; a barrier marking or surrounding an area containing reclamation, construction or maintenance equipment or activity.

(3) Entry to or exit from any vehicle.

(4) The formation of any line of persons waiting to enter or use any thing, place or service described in 2 or 3.

(5) Any reclamation, construction or maintenance activity.

iv. Sell or offer for sale, or exchange or offer for exchange, any item in return for payment at the WTC Site by soliciting and receiving cash or checks, by engaging in or offering to engage in a credit or debit card transaction, or by any other means, at any location other than the location described at Section 21 b ii.

v. Engage in any conduct not specifically addressed in this section that is prohibited in other sections.

f. Permit application procedures and restrictions:

i. A permit application shall be submitted in writing no later than thirty-six (36) hours preceding the commencement of the activities for which the permit is sought, and no earlier than seven (7) days preceding the commencement of the activities for which the permit is sought.

ii. Permit applications shall be submitted in person to the

WTC Site Manager, or the designee thereof, during the hours of 10:00 AM to 12:00 Noon and 1:00 PM to 5:00 PM, Monday through Friday, excluding holidays. An application for a permit to engage in activity occurring on a Saturday, Sunday or holiday shall be submitted before 12:00 Noon of the preceding business day.

iii. The permit application shall set forth the type, time, location and duration of activities to be conducted in four-hour increments, the name, address and telephone number of the person making the request (in the case of a group, it shall be sufficient to supply the name, address, and telephone number of the person who can be contacted if problems arise concerning the granting of the request). If a person making the application indicates an affiliation with an organization or group, the name, address of a local representative of the organization or group to act as a liaison will be requested; however, refusal to provide such information shall not be grounds for denial of a permit.

iv. A permit to use a location for any period(s) of the day shall be valid for a number of days as specified by the applicant, not exceeding seven (7) days, pursuant to a single application. An applicant seeking permits with different dates of expiration for a location and/or a period of time each day shall use a different application for each such permit.

v. A holder of a permit may continue to use the area(s) set forth in a permit, pursuant to these regulations, after expiration of the permit period only if a new permit application is submitted and no other permit has been granted to other applicants for such areas. Renewal applications shall be processed as if they

were new applications. All locations will be assigned on a first-come, first-served basis, without regard to renewal status. The use of space previously used pursuant to a permit is not guaranteed by acceptance of a renewal application.

vi. Permits will be granted on a first-come, first serve basis. An application will be denied only if the area requested is unavailable, the application is incomplete, or the application discloses that the activities to be performed thereunder will violate these rules.

vii. A permit will be issued, or the application denied, by the WTC Site Manager, or a designee thereof, no later than 5:00 PM of the day following submission of the application, excluding Saturdays, Sundays and holidays. The reason for the denial of an application shall be set forth in writing.

viii. Upon denial of an application for a permit, or the failure to issue a permit by 5:00 PM of the day following submission of an application, excluding Saturdays, Sundays and holidays, a person may submit a written appeal to the General Manager, WTC Site, or a designee thereof, setting forth the reasons why the application should not have been denied. An appeal shall be submitted in person to the WTC Site Manager, or a designee thereof, during the hours of 9:00 AM to 5:00 PM, Monday through Friday, excluding holidays. An appeal of a denial of an application for permit to engage in activity occurring on a Saturday, Sunday, or holiday shall be submitted before 12:00 Noon of the preceding business day. The WTC Site Manager, or designee thereof, shall cause the appeal to be delivered to the General Manager, WTC Site, or a designee thereof.

ix. A written decision denying the appeal, or issuing a permit, shall be made no later than 5:00 PM of the day following submission of the appeal, excluding Saturdays, Sundays and holidays. If no decision is issued by 5:00 PM of the day following submission of the appeal, excluding Saturdays, Sundays and holidays, the appeal shall be deemed to be denied on the basis of the original decision denying the application.

x. Any person whose application for a permit has been denied may seek review of such denial in a proceeding commenced pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.

xi. Upon the issuance of any permit, a badge indicating the area and time period in which the activity will take place will be issued for each area. Such badge must be worn on the upper left breast of the outermost garment and be clearly visible at all times during which the area is used. A person who obtains permission to use an area or areas on behalf of a group may obtain the badges for the members of the group for use by such persons actually engaged in expressive activity; however, the number of badges issued will not exceed the maximum number of persons who may engage in expressive activity at one time in the area or areas.

xii. Each time a person or group ceases use of a designated area for expressive activity, such action shall be reported to the WTC Site Manager or a designee thereof, and the badge or badges described herein must be returned so the availability of the area for use by another may be recorded.

xiii. For the purposes of this regulation, "holidays" refers to the following:

| | |
|-----------------------------|--------------------------|
| New Year's Day | January 1 |
| Martin Luther King, Jr. Day | 3rd Monday in January |
| President's Day | 3rd Monday in February |
| Memorial Day | Last Monday in May |
| Independence Day | July 4 |
| Labor Day | 1st Monday in September |
| Columbus Day | 2nd Monday in October |
| Veterans Day | November 11 |
| Thanksgiving Day | 4th Thursday in November |
| Day after Thanksgiving | 4th Friday in November |
| Christmas Day | December 25 |

if New Year's Day, July 4, Veterans Day or Christmas Day occur on a Saturday, the holiday is observed on the preceding Friday; if any of those holidays occurs on a Sunday, the holiday is observed on the succeeding Monday.

xiv. Emergency Conditions.

The WTC Site Manager, or the persons designated to act in his or her stead for general management purposes, may prohibit expressive activity at the WTC Site which would otherwise be permitted, or suspend or cancel a permit to engage in such activity, in the event of, and during the pendency of, an emergency condition, such as a snowstorm, fire, accident, or power failure, of such nature and character that the

conduct of permitted activities would cause a danger to persons or property during the pendency of such emergency condition.

22. Emergencies.

In the event of an emergency, telephone contact should be made immediately with:

Port Authority Police at the WTC Site - (212) 608-5111 or (212) 608-5115

23. Photography and Sound Recording Activity.

a. As used herein, "photography" refers to any method of recording or transmitting images including but not limited to, filming and videography, and digital image transmission or recording.

b. Public Areas.

Photography and sound recording activity in public areas is limited to the use of devices carried on or by the person or persons engaged in such activity.

c. Closed and Restricted Areas.

Photography and sound recording activity in closed and restricted areas is limited to activities which have been pre-approved by the Port Authority.

24. Lost and Found.

Personal property found within the WTC Site shall be delivered to the Port Authority Police Command Post at the WTC Site as soon as practical after the property is found.

25. Communications Requirements in Closed and Restricted Areas.

- i. A person who is not able to read and speak English may enter and remain in Closed and Restricted Areas of the WTC Site only if and when accompanied by an interpreter able to fluently read and speak English and the language of the person he or she is accompanying.
- ii. The interpreter must comply with all WTC Site Rules and Regulations.
- iii. Individuals not capable of reading and speaking in English shall be issued a WTC ID endorsed with a requirement that the holder be accompanied by an interpreter.

PART B. WTC Site Security.

1. Adherence to Security Procedures, Rules, and Regulations.

All persons entering the WTC Site shall comply with all applicable security policies, procedures, rules, and regulations, whether contained in these Rules and Regulations or communicated via the WTC Site Manager or his/her designee.

2. Manager's Right to Rescind Access to Closed or Restricted Areas of the WTC Site.

- a. The WTC Site Manager and his or her designee are authorized to suspend or revoke a permission or privilege to enter closed or restricted areas of the WTC Site, or permission to escort other persons into closed or restricted areas of the WTC Site, or permission to bring a vehicle into closed or restricted areas of the WTC Site, for any reason not contrary to law, including but not limited to, violations of WTC Site Rules and Regulations.
- b. Any person possessing a document or key or other item issued as evidence of permission or privilege to enter closed or restricted areas of the WTC Site without an escort, including a WTC ID or Vehicle Pass, or as evidence of permission to escort other persons into closed or restricted areas of the WTC Site, shall return such document to the WTC Site Manager or his or her designee upon expiration or receipt of notice that such permission or privilege has terminated or has been suspended or revoked.

- b. A WTC Vehicle Pass must be displayed in the driver's side windshield of a vehicle for which it was issued, in full view.
- c. WTC Site IDs and Vehicle Passes must be presented to PAPP, WTC Site Security, the WTC Site Manager or his or her designee upon request.

5. Responsibility to Update WTC Site IDs and Vehicle Passes.

- a. if the physical features of an individual change significantly, including but not limited to, a new hairstyle or color, the addition or removal of a beard or mustache, the addition or removal of eyeglasses, the individual must update the relevant information at the WTC Site Security Office.
- b. if an individual's personal information changes, including but not limited to name or appearance, address, or telephone number, the individual must update the relevant information at the WTC Site Security Office.
- c. if an individual's employment information changes, including but not limited to employer or company name, trade or union affiliation, company name, address, telephone number, and/or supervisor, the individual must update the relevant information at the WTC Site Security Office.
- d. For vehicle passes only, if vehicle information changes, including but not limited to name of owner, address, telephone number, company name and/or supervisor name, vehicle, vehicle color, license plate, insurance company or insurance/policy number/expiration date, the owner or lessee of the vehicle must update the relevant information at the WTC Site Security Office.

c. The WTC Site Manager, or his or her designee, may revoke, confiscate, retain, and refuse to return a document or key or other item issued as evidence of permission or privilege to enter closed or restricted areas of the WTC Site, including a WTC ID or WTC Vehicle Pass, or as evidence of permission to escort other persons into restricted or closed areas of the WTC Site upon the expiration, termination, suspension, or revocation of such permission or privilege.

3. Valid WTC Site Identification.

- a. Only persons and vehicles displaying a valid WTC Site ID and valid WTC Vehicle Pass, as applicable, will be allowed entry to closed and restricted areas of the WTC Site.
- b. WTC Site IDs and Vehicle Passes issued by WTC Site Security specifically for access to closed and restricted areas of the WTC Site are the only identification media valid for such access.

c. All WTC Site IDs and Vehicle Passes are the property of The Port Authority of New York and New Jersey.

d. All WTC IDs and Vehicle Passes must be validated at the point of entry to the Site each time a person or vehicle enters the WTC Site.

e. Any person who does not have a WTC Site ID must be escorted into the WTC Site by a person with escort privileges.

4. Responsibility to Display WTC Site IDs and Vehicle Passes.

- a. A WTC ID must be worn on the outside of the outermost garment, between the waist and neck.

6. Care of WTC IDs and Vehicle Passes.

- a. Care shall be used to secure and protect a WTC ID or WTC Vehicle Pass at all times, and to maintain a WTC ID or Vehicle Pass in the condition in which it was issued.
- b. A WTC ID or Vehicle Pass shall not be damaged or altered.
- c. A WTC ID or Vehicle Pass shall not be used by any person other than the person to whom it is issued.
- d. Any person who has knowledge that a WTC ID or Vehicle Pass has been lost, damaged or altered, or used by any person other than the person to whom it is issued, shall, without unreasonable delay, report such information to PAPD and/or WTC Site Security, and, submit the document in question, if in his or her possession, to PAPD or WTC Site Security.

7. Breaches of Security and Other Suspicious Activity.

- a. Any person who has knowledge of a breach of security shall immediately report such information to the PAPD.
- b. Any person who has knowledge of suspicious activity, a suspicious item or suspicious object, such as a vehicle, piece of equipment, container, or package, or an item located in a suspicious location shall immediately report such information to the PAPD.

8. Escort Privileges.

- a. An Escort Privilege may be issued to a person (an "Escorter") permitting the person to escort a person or persons without WTC ID to enter certain closed and restricted areas, as identified by the WTC Site Manager or his or her designee.

- b. No person without a WTC ID may enter any closed or restricted area unless accompanied by an Escorter and:
 - i. such person presents to WTC Site Security for inspection one or more pieces of valid government-issued photo identification as directed by WTC Site Security, and
 - ii. the accompanying Escorter follows the current procedures, as instructed by WTC Site Security, for identifying persons who have been issued Escorter's privileges.
- c. An Escorter shall at all times accompany and supervise any escorted person in a manner sufficient to insure that the escorted person does not engage in activity other than the activity for which the associated Escort Privilege is granted.
- d. An Escorter shall not allow any escorted person to circumvent or disable a fall protection system or any other safety device or interfere with any safety procedure.
- e. Only one person may escort each group, and only one group may be escorted by each Escorter.
- f. A group of five or more persons shall not be escorted into a closed or restricted area of the World Trade Center Site by any person, including an Escorter, unless the entry by escort of that group into such closed or restricted area of the World Trade Center Site has been approved in advance by the WTC Site Manager.
- g. An Escorter shall instruct any person under escort to wear personal protective equipment required by these Rules and Regulations or by the WTC Site Manager or his or her designee, and shall notify WTC Site Security in the event of refusal to follow such instructions by any person under escort.

9. Vehicle Pass Requirements and Procedures.

- a. No vehicle may enter any closed or restricted area of the WTC Site unless the driver presents a valid vehicle operator's license for the respective class of vehicle, vehicle registration, and proof of insurance document for the vehicle.
- b. No vehicle may enter any closed or restricted area of the WTC Site unless the driver and each occupant displays a valid WTC Site ID Badge.
- c. Drivers must observe all signals, signs, markings, and other traffic devices found within the closed and restricted areas of the WTC Site.
- d. Speed limits within the closed and restricted areas of the WTC Site are established by the WTC Site Manager and communicated by signage and in the Traffic Management Plan.
- e. Parking is prohibited within the closed and restricted areas of the WTC Site in areas designated as no parking areas by signs, pavement marking or striping.
- f. Obstruction of roadways, vehicles, equipment, walkways, ramps, doors, or gates is prohibited.

10. Deliveries.

- a. No delivery may be made to any closed or restricted area of the WTC Site unless such delivery has been arranged in advance and written notice of such deliveries has been given to WTC Site Security by the recipient of such delivery.
- b. No person may make a delivery to any closed or restricted area of the WTC Site unless the delivery satisfies the requirements of Part B, 3, 4, 9, and 10 a.

- c. No person may make a delivery to any closed or restricted area of the WTC Site unless the delivery person or persons, any delivery vehicle and any occupant thereof, is accompanied by the delivery recipient, or a person acting on behalf of the delivery recipient, who possesses a valid WTC ID, and who has been granted Escort Privileges for deliveries. Such Escorter shall accompany the delivery person or persons, any delivery vehicle and any occupant thereof, from the entrance to the respective closed or restricted area of the WTC Site, during delivery, and, upon the completion of the delivery, to the exit from the respective closed or restricted area of the WTC Site.

PART C. WTC Site Safety.

1. General.

- a. Tenants, contractors, subcontractors, and all others performing work at the WTC Site shall prepare and implement the programs, plans, and procedures required by the Port Authority to protect worker health and safety, and shall conform with federal, state, and local codes, rules, regulations, and ordinances, including those established by The Port Authority of New York and New Jersey with respect to worker and public safety.
- b. Individuals who do not follow the programs, plans, and procedures so set forth in Part C. Section 1. a. shall be subject to immediate removal from the Site and suspension or revocation of privileges to enter closed and restricted areas.

2. Personal Protective Equipment.

- a. Personal protective equipment appropriate to the hazard of the respective worksites shall be worn at all times in closed or restricted areas of the WTC Site, and shall at a minimum include but not be limited to:
 - i. hard hat
 - ii. reflective safety vest
 - iii. work shoe or boot
 - iv. safety glasses or goggles (when required or directed)
 - v. hearing protection (when required or directed)
 - vi. respirator (when required or directed)
- b. Additional personal protective equipment, as noted on signage around specific areas, or as required by each

employer to conform with federal, state, and local codes, rules, regulations, and ordinances, and to comply with programs, plans and procedures required by The Port Authority of New York and New Jersey, shall also be worn at all times by individuals in designated areas.

3. Traffic Management Plan.

- a. The WTC Site Manager shall establish a Traffic Management Plan for pedestrian and vehicular movement within closed and restricted areas of the WTC Site.
- b. Each occupant of closed and restricted areas of the WTC Site shall obtain and/or retain a copy of the current Traffic Management Plan provided in the WTC Security Office, and adhere to the current plan.

4. Hazardous Material/Chemical Management.

a. Materials Allowed

The following hazardous materials, as identified in 49 CFR Subchapter C, Part 172, shall be allowed onto the WTC Site if Part B, Section 10 has been met, and the driver presents shipping papers and a delivery receipt indicating the name of the contractor requesting the products, the quantity and type of material being delivered, and all of the information provided herein is verifiable by WTC Site Security upon delivery. In addition, prior to delivery, the contractor's safety manager shall be in possession of the appropriate Material Safety Data Sheet for the materials.

- Class 2 -- Oxygen, Flammable Gas, Non-Flammable Gas
- Class 3 -- Flammables, Gasoline, Combustibles, Fuel Oil
- Class 9 -- Miscellaneous

b. Materials Prohibited

- i. The following hazardous materials, as identified in 49 CFR Subchapter C, Part 172, and vehicles carrying the following hazardous materials, shall not enter the WTC Site without prior approval of the WTC Site Safety Manager and compliance with the procedures set forth herein.
 - Class 1 – Explosives, Blasting Agents
 - Class 2 – Inhalation Hazard
 - Class 4 – Flammable Solids, Spontaneously Combustibles, Dangerous When Wet
 - Class 5 – Oxidizers, Organic Peroxide
 - Class 6 – Inhalation Hazards, Poisons, Harmful/Stow Away from Food Stuffs
 - Class 7 – Radioactive
 - Class 8 – Corrosives

Dangerous Cargo

- ii. Vehicles with the placards indicating carriage of materials within the foregoing classes shall be detained at the entrance to the WTC Site until completion of the procedures set forth below.
- iii. The World Trade Center Site Safety Manager shall be notified of the arrival of such vehicles.
- iv. Upon notice to the World Trade Center Site Safety Manager of the arrival of such material for delivery to such contractor, the contractor's safety manager shall meet with World Trade Center Site Safety Manager to review the procedures to be followed for delivery, the contractor's safety manager shall bring with him the appropriate Material Safety Data Sheet for the materials to the meeting, and the contractor

shall follow those procedures to effect delivery as directed by the World Trade Center Site Safety Manager at the meeting.

c. Storage Guidelines

- Consistent with the requirements in U.S. OSHA 29 CFR 1910, Subpart Z: Hazard Communication, 29 CFR 1926 Subpart F: Fire Protection and Prevention, Subpart J: Welding and Cutting, and U.S. DOT 49 CFR, Subpart E, Part 172: Labeling, each contractor shall at a minimum comply with the following:
- i. Establish and maintain a secure hazardous chemicals storage location adequately sized, designed, and constructed for the type and quantity of materials to be stored. All chemicals shall be stored in appropriate containers compatible with their hazard class.
 - ii. Confine the storage of hazardous chemicals to the area assigned or work location. Hazardous chemicals cannot be stored in common areas, roadways, or established entry/egress routes.
 - iii. Each storage location shall be framed, sheathed, and roofed with approved fire-retardant treated lumber; fenced and roofed; caged; or otherwise securely enclosed. The entrance door shall be constructed in such a manner as to allow for the visual identification of the stored contents. The entrance door shall be lockable and remain locked at all times when not occupied, with keys provided to the WTC Site Manager, WTC Site Safety Manager, Port Authority Resident Engineer, and PAPD.
 - iv. The wall to floor seam of each storage location shall

be bermed with an appropriate and compatible absorbent material to capture any liquid in the event of a release.

v. Warning signs consistent with the labeling requirements of U.S. DOT 49 CFR: Part 172 shall be conspicuously posted at all entrances into the storage location. Smoking shall be prohibited within all chemical storage locations, and shall be signed accordingly.

vi. The contractor shall maintain on-site an adequate supply of spill response equipment, materials, and personnel protective equipment appropriate and compatible for the type and quantity of the chemical products in storage.

vii. The contractor shall maintain on-site a material safety data sheet (MSDS) for each chemical product stored. The contractor shall also ensure that workers are trained in the hazards and use of the product.

viii. The contractor shall select, issue, and train workers in the maintenance, use and storage of the personal protective equipment required when using the chemical products.

ix. The contractor shall provide worker training in the proper methods to respond to spills and releases from the storage area.

x. Compressed gas cylinders, flammable and combustible liquids, and all chemical products shall be stored and signed/labeled in accordance with their hazard class. The co-mingling of different hazard classes in storage is prohibited.

xi. When required, storage areas shall be protected from

vehicular impact by the use of "jersey barriers" or a similar impact resistant material.

xii. Enclosed storage facilities (i.e. trailers) used for the storage of flammable gases and liquids shall be properly ventilated by either mechanical or natural means based upon the characteristic of the chemical product being stored. If lighting is installed, explosion proof, intrinsically safe wiring is required.

xiii. The contractor shall select and provide the appropriate type, size, and number of fire extinguishers suitable for the fire hazards presented by the stored chemicals.

d. Storage Requirements

i. If stored in drums, all drums shall be raised off the ground.

ii. Flammable and combustible liquids, such as gasoline, kerosene, diesel, and mixed fuels shall be stored in either Type I or II approved metal safety storage cans with flashback protection.

iii. All fuel containers (drums, gas cans, etc.) shall be appropriately color-coded and permanently labeled as "Gasoline", "Kerosene", "Diesel", or "Mixed-Fuel".

iv. Flammable and combustible liquid cans shall be stored in approved fire cabinets with a quantity limited to 60-gals of flammable and 120-gals of combustible liquid per cabinet. No more than three storage cabinets shall be stored in one area.

v. A properly charged and maintained portable fire extinguisher with a rating of not less than 4-A:60B:C

shall be permanently mounted in a conspicuous location readily accessible within 50 feet of the storage location.

- vi. Compressed gas cylinders (CGC) shall be stored with their valve protection caps secured on the cylinder.
- vii. CGC shall only be stored vertically with 3-point contact maintained at all times.
- viii. Flammable gases and oxygen must be stored separately at least 20 feet apart, or together with a 5 foot high, 30 minute fire-rated wall separating them.

e. Incident Response

- i. Anyone with knowledge that a hazardous material and/or chemical release has occurred shall immediately contact PAPD at the WTC Command and provide the following information:

- (A) Incident location.
- (B) Description of incident.
- (C) Description of personal injury.
- (D) Description of fire condition.

- ii. Each contractor shall employ a call-in hazmat contractor and provide to the PA Resident Engineer, WTC Site Manager, and WTC Site Safety Manager, the name and contact information of such call-in hazmat contractor.

5. Firearms, Weapons, and Explosives.

No person shall carry, keep, store, handle, use, dispense, or transport, into or through the WTC Site, any firearm, weapon, explosive device or or explosive material which is not a hazardous material as identified under Part C, 4, without the prior approval of the WTC Site Manager and Port Authority Police.

PART D. WTC Site Reclamation, Construction, and Maintenance Activity.

1. General.

Reclamation, construction and maintenance activity at the WTC Site shall commence only after receiving Port Authority approval in the form of one of the following:

- a. approved Tenant Construction Application (TCA) or Tenant Alteration Application (TAA),
- b. fully executed contract with The Port Authority of New York and New Jersey, or
- c. other fully executed agreement with The Port Authority of New York and New Jersey containing conditions for construction and/or redevelopment activity.

2. Environmental Performance Commitments (EPCs).

No person shall engage in conduct that violates any applicable EPC. A copy of the current EPCs for a Port Authority project involving reclamation, construction, or maintenance activity, is available from the Port Authority Resident Engineer or Port Authority Program Manager assigned to the project. A copy of the current EPCs for a non-Port Authority project involving reclamation, construction, or maintenance activity, is available from the party responsible for the project. The identity of a party responsible for any project involving reclamation, construction, or maintenance activity, be sought from the WTC Site Manager.

3. Required Permits.

Each of the following required permits may be obtained through the Port Authority Resident Engineer or Port Authority Program Manager assigned to the activity.

- a. Confined Space
- b. Cutting & Welding
- c. Hot Work



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June 18, 2007

1. ABOVE GRADE, DATED JUNE 18, 2007
2. BELOW GRADE, DATED JUNE 18, 2007



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WTC SITE SECURITY REQUIREMENTS
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January 8, 2007

WTC Division I Security Article

Access to the WTC Site

All personnel, vehicles, equipment, and materials entering the site shall comply with the requirements described herein.

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 budging described herein shall be borne 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 screened so as to ascertain that they satisfy the requirements set forth in the "WTC ID Process-disqualifying Crimes" document dated June 2006 which is attached hereto as Attachment A. The Authority will conduct such screening only upon written request of the contractor on behalf of the individual. The screening is contingent upon the following:

- Every individual requesting access to the site must agree to have a background check.
- Every such individual shall be required to fill out and sign a background screening application and consent form.
- Individuals must be citizens of the US, lawful Resident Aliens, or otherwise lawfully permitted to work in the US.

The Authority shall conduct the 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 screening individuals shall 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 (ID) badge shall be issued by the Authority to the individual. The individual's access to the site shall be limited to the level deemed to be appropriate by the Authority.

As part of the individual budging and identification process each individual shall 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 destroyed when no longer needed. The individual is prohibited from the site *once the data is destroyed.*

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



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Personnel entering the site shall be required to present their individual identification badges for entry. The ID badges 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 will be randomly inspected.

Personnel who have not been screened and approved to enter the site as described above, either because the screening process has not yet been completed or because permanent ID badge 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 budging stations at or near the WTC Site. The Authority will issue a Temporary ID Badge to the individual upon the following conditions:

- The contractor requests the Temporary ID Badge on behalf of the individual. This request must be made by a permanently budged representative of the contractor who must accompany and vouch for the individual requiring the Temporary ID Badge.
- 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 US, a lawful Resident Alien, or otherwise lawfully permitted to work in the US.

The Temporary ID Badge will allow access to the site for a period not to exceed five (5) calendar days. Every user of a Temporary ID Badge shall be inspected, together with any packages, tools or equipment they intend to bring onto the site.

The contractor shall notify the Authority of personnel terminations or reassignments so that access credentials can be cancelled as soon as no longer needed. The Authority may, at any time for any reason, withdraw credentials allowing individuals access to the site.

B) Equipment and Vehicle Access

All equipment and vehicles, with their contents, entering the site shall have been inspected by the Authority prior to being allowed access to the site. Such inspection shall be for the purposes of validating that the equipment or 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 equipment or 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 "On-Site" and "Off-Site" Equipment and Vehicle Inspection Facilities. The On-Site facilities shall be located at the points of entry to the site. There are expected, but not guaranteed, to be four such On-Site points at all times. The Off-Site facilities shall be located as follows: 1) In New Jersey, at a location yet to be determined, but no farther than fifteen (15) miles from the New Jersey entrance to the Holland Tunnel, 2) In Brooklyn, at a location yet to be determined, but no farther than two (2) miles from the entrance to the Brooklyn Battery Tunnel, 3) at or near the New Jersey entrance to the George Washington Bridge; to be used only when requested by the contractor for permitted oversize loads. The Authority shall operate, relocate, and if necessary reconfigure, the Equipment and Vehicle Inspection Facilities to accommodate the work to the greatest degree feasible.

The contractor, in coordination with the Authority, shall be responsible for scheduling inspections of all equipment and vehicles requiring access to the site, regardless of where the inspection is to take place. All inspections shall be by appointment only and shall require a minimum of 48 hours notice to the Authority. Requests for inspection shall be made by the contractor in writing, 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).

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- 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 inspection of oversize loads are subject to the same requirements except that 72 hours notice shall be required.

The Authority shall process all such requests in the order received and shall assign to the contractor a time and place for the inspection most appropriate to the vehicle's route. The contractor shall be responsible to ensure that the item to be inspected presents itself, together with all required documentation, at the assigned location and time. Failure to do so will result in delays and may require rescheduling of appointment for inspection. If the Authority deems any particular vendor, supplier, contractor, or other entity to be consistently late for scheduled inspections it may institute any different requirements that it may deem necessary to avoid or mitigate delays.

On-Site inspections shall only be allowed upon satisfying all other requirements described herein and only for the following categories of vehicles:

- Concrete Delivery Trucks.
- Fuel and Water Tanker trucks.
- Local (originating within a 25 mile radius from site) high volume deliveries as approved by the Authority in advance.
- Empty dump trucks.
- Tractors with no load.
- Tractors with empty flat beds.
- Heavy construction equipment.
- Contractor vehicles not transporting materials onto the site.

In addition to the on-site inspection the Authority may require that concrete, fuel, water, and local delivery trucks be pre-inspected and sealed at their point of origin. In all cases, the contractor shall make request for pre-inspection and sealing sufficiently in advance as to allow the Authority adequate time to provide such service if it deems such to be necessary and appropriate.

All other vehicles must be inspected at the "Off-Site" locations.

For On-Site inspections the equipment or vehicle shall present itself at the assigned place within the allotted timeframe. Inspection shall include:

- Verification of equipment or vehicle and personnel identity and credentials.
- Physical inspection of the equipment or vehicle and its contents as deemed necessary by the Authority

Upon successful inspection the equipment or vehicle will be allowed direct entry to the site. If necessary due to personnel security requirements, an escort will be assigned.

For Off-Site inspections the vehicle shall present itself at the assigned place and time. Inspection shall include:

- Verification of submitted information.
- Physical inspection and imaging of the equipment or vehicle and its contents as deemed necessary by the Authority.

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- Verification of personnel identity and credentials.
- Sealing the load/vehicle, tagging with tracking GPS device and assignment of time and place for entry to site.

The vehicle shall then proceed to the site. Upon arrival at the assigned entry point it shall be re-inspected as follows:

- Verification of equipment or vehicle and personnel identity.
- Verification that arrival time and routing, as determined by the tracking information, matches expected parameters.
- Verification of seals.
- Physical inspection of the equipment or vehicle as deemed necessary by the Authority
Upon successful inspection the tags, seals, and tracking devices will be removed and it will be allowed direct entry to the site. If necessary due to personnel security requirements, an escort will be assigned.

C) Implementation

The preceding requirements are anticipated to be implemented as follows:

- Personnel Security Portals including turnstiles are expected to be operational in or around June 2007. At that time the ID badges will be used without biometric data.
- Personnel biometric data for site access is expected to be operational in or around the 4th quarter of 2007.
- Off-Site Equipment and Vehicle Inspection Facilities are expected to be operational in or around the 4th quarter of 2007.

D) Attachments

A WTC ID Process-disqualifying Crimes dated June 2006

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January 8, 2007

ATTACHMENT 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).

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(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.

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK

January 8, 2007

ATTACHMENT 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.

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

January 8, 2007

- *(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

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK

January 8, 2007

ATTACHMENT 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.

RIDER "S"
WTC SITE SECURITY REQUIREMENTS
WORLD TRADE CENTER – TOWER ONE
NEW YORK, NEW YORK

January 8, 2007

- (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.
 - *(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



RIDER "T"
MILESTONE DATES AND LIQUIDATED DAMAGES
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

July 12, 2007
(Revision #3)

TRADE: STRUCTURAL STEEL & METAL DECK (TOWER)

The following criteria defines the Liquidated Damages and the corresponding Milestone Durations included in the Lump Sum Trade Contract;

1. The substantial completion including bolting or welding the final tier of the **Structural Steel is 104 weeks and Metal Deck is 4 weeks thereafter**. The above durations include the initial mobilization, in the second quarter of the year 2008, (as referenced in Rider "A", Section "E", Item #4b-i thru iv) and conclude at the completion of Roof Steel (105th Floor) and exclude punchlist work. In the event that the Contractor has not completed the work as defined in the Contract Documents **liquidated damages in the amount of Ten Thousand Dollars (\$10,000.00) per day** shall be credited from the Lump Sum Amount.
2. The start of Liquidated Damages for the **First Steel Mast Section Of The Antenna** to be delivered to Dielectric in Raymond, Maine is January 1, 2009. In the event that the Contractor has not completed the work as defined in the Contract Documents **liquidated damages in the amount of Five Thousand Dollars (\$5,000.00) per day** shall be credited from the Lump Sum Amount.
3. The start of Liquidated Damages for the **Final Steel Mast Section Of The Antenna** to be delivered to Dielectric in Raymond, Maine is January 1, 2010. In the event that the Contractor has not completed the work as defined in the Contract Documents **liquidated damages in the amount of Five Thousand Dollars (\$5,000.00) per day** shall be credited from the Lump Sum Amount.
4. The start of Liquidated Damages for the complete erection of the **Steel Antenna, Steel Antenna Ring, and Steel Framing For Cooling Tower Chimneys is 22 weeks** after the start of the Antenna erection, excluding punchlist work. In the event that the Contractor has not completed the work as defined in the Contract Documents **liquidated damages in the amount of Five Thousand Dollars (\$5,000.00) per day** shall be credited from the Lump Sum Amount.



Ex. 4

July 18, 2007
(Revision #1)

RIDER "U"
ADDITIONAL PROVISIONS
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

TRADE: STRUCTURAL STEEL AND METAL DECK (TOWER)

July 18, 2007

CORPORATE GUARANTEE AGREEMENT

1. For value received, and in consideration of, and in order to induce 1 World Trade Center, LLC ("1WTC") to enter into Contract WTC-1001.07 (Contract dated, July 13, 2007), by and between 1WTC and DCM Erectors, Inc., a New York State corporation ("Contractor"), the undersigned, The Davis Construction Management Group Ltd., a corporation formed under the laws of the Province of Ontario, Canada; ASDA Holdings Ltd., a corporation formed under the laws of the Province of Ontario, Canada; Construction Integration Group Ltd., a corporation formed under the laws of the Province of Ontario, Canada; and Construction Integration Inc., a Delaware Corporation (collectively, "Guarantors"), hereby jointly and severally, and unconditionally guaranty to 1WTC (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to 1WTC under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to 1WTC, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantors further agrees to indemnify 1WTC against any losses 1WTC may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by 1WTC of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by 1WTC of any of its rights against Guarantors hereunder.

2. Guarantors have read and consent to the signing of the Contract. Guarantors further agree that Contractor shall have the full right, without any notice to or consent from Guarantors, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantors hereunder.

3. Guarantors hereby expressly waive all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agree that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantors regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by 1WTC against Contractor of any of 1WTC's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in 1WTC's favor in law, equity, or bankruptcy.

4. Guarantors further agree that their liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that 1WTC shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantors affirm that 1WTC shall not be

required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantors, and that Guarantors will, upon demand, pay IWTC any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantors will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Notwithstanding the foregoing, this Performance Guarantee Agreement cannot be pursued against Guarantors until thirty (30) days after the undersigned have received written notice from IWTC of a default by Contractor under the Contract. After receipt of such notice of default, the undersigned shall have an opportunity to cure such default by Contractor within such thirty (30) day period. The undersigned's obligations hereunder shall remain fully binding although IWTC may have waived one or more defaults by Contractor or extended the time for performance by Contractor. Notwithstanding anything contained herein to the contrary, the undersigned's obligations hereunder shall be no greater or less than the obligations of Contractor under the Contract and shall terminate when Contractor's obligations under the Contract are fulfilled.

5. Guarantors agree that they shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to their interests regardless of (i) the reorganization, merger, or consolidation of Guarantors into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantors, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantors to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantors, or adjudication of Guarantors as a bankrupt.

6. Guarantors further warrant and represent to IWTC that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantors' Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantors' Boards of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantors are a party or by or under which they are bound.

7. No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

8. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by the Guarantors herein, and the liability of the Guarantors hereunder, are joint and several, and the references to Guarantors shall be to each entity individually and to all collectively.

9. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been validly given or served (a) by delivery of the same in person to the intended addressee, or (b) by depositing the same with Federal Express or another reputable private courier service for next Business Day delivery, or (c) by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth below:

If to Guarantors:

110 East 42nd Street
Suite # 1704
New York, N.Y. 10017

If to 1WTC

Milo Riverso
Project Executive of 1 WTC
115 Broadway 10th Floor
New York, New York 10006

And to

Mike Mennella
Executive Vice President
Tishman Construction Corporation
666 Fifth Avenue
New York, New York 10103

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. All notices, demands and requests shall be effective upon such personal delivery, or one (1) Business Day after being deposited with the private courier service, or two (2) Business Days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) Business Days' prior written notice in accordance with the provisions hereof, each party hereto shall have the right from time to time to change its address to any other address.

10. This Performance Guarantee Agreement shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantors and shall not be discharged in whole or in part by the death or dissolution of Guarantors.

11. THIS PERFORMANCE GUARANTEE AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED UNDER THE INTERNAL LAWS (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) OF THE STATE OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.

12. Any and all amounts required to be paid by Guarantors hereunder shall be paid to 1WTC in United States currency at such place as 1WTC may, from time to time, in writing appoint.

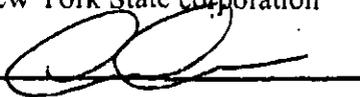
13. This Performance Guarantee Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument. Any signature page of this Performance Guarantee Agreement may be detached from any duplicate original of this Performance Guarantee Agreement without impairing the legal effect of any signatures thereon and may be attached to another duplicate original of this Performance Guarantee Agreement identical in form hereto but having attached to it one or more additional signature pages.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantors have executed this Performance Guaranty Agreement as of the day and year indicated below.

"GUARANTORS"

DCM ERECTORS, INC.
a New York State corporation

By: 

Name: Larry Davis

Title: President

Date: JULY 25/07

THE DAVIS CONSTRUCTION MANAGEMENT GROUP, LTD.
a corporation formed under the laws of the Province of Ontario

By: 

Name: Larry Davis

Title: President

Date: JULY 25/07

ASDA HOLDINGS LTD.
a corporation formed under the laws of the Province of Ontario

By: 

Name: Larry Davis

Title: President

Date: JULY 25/07

CONSTRUCTION INTEGRATION GROUP LTD.
a corporation formed under the laws of the Province of Ontario

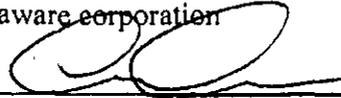
By:  _____

Name: Larry Davis

Title: President

Date: JULY 25/07

CONSTRUCTION INTEGRATION INC.
a Delaware corporation

By:  _____

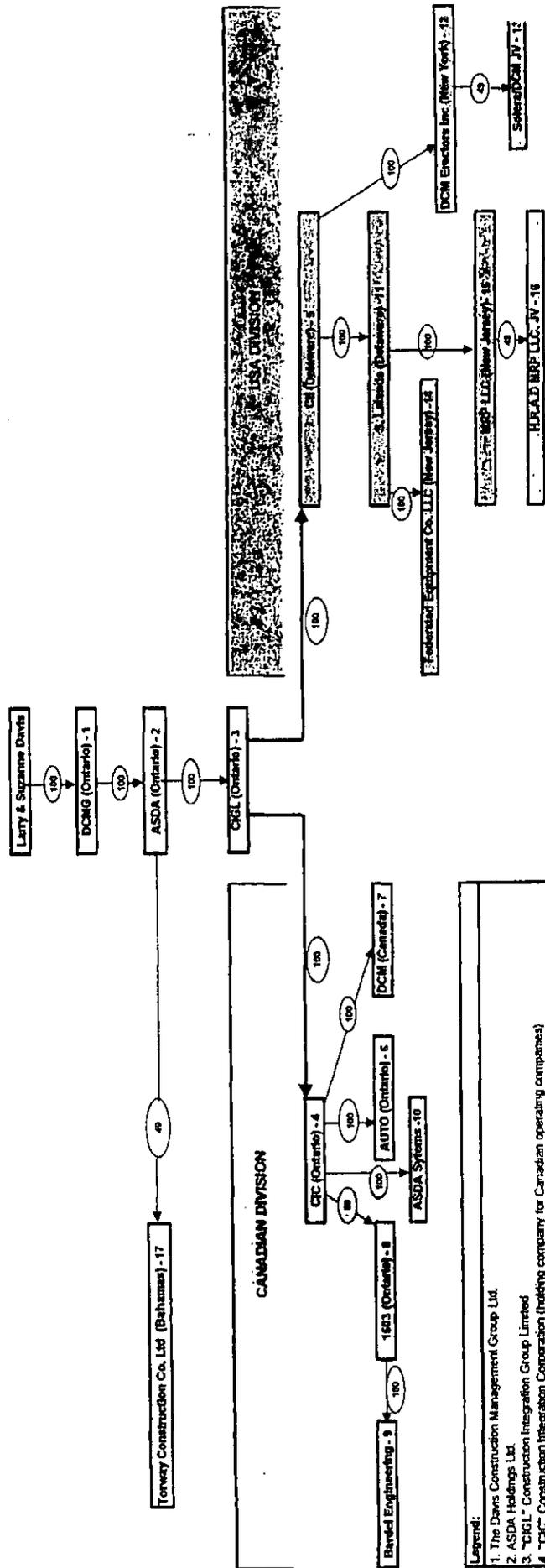
Name: Larry Davis

Title: President

Date: JULY 25/07

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THE DAVIS GROUP OF COMPANIES & RELATED ENTITIES
CORPORATE STRUCTURE
CANADA & UNITED STATES
JANUARY 1, 2007



- Legend:**
1. The Davis Construction Management Group Ltd.
 2. ASDA Holdings Ltd.
 3. "CIGL" Construction Integration Group Limited
 4. "CIGL" Construction Integration Corporation (holding company for Canadian operating companies)
 5. "CIGL" Construction Integration Inc. (holding company for US operating companies)
 6. "AUTO" Automated Steel Detailing Associates Ltd. (drafting services)
 7. DCM Erectors Inc. (Canadian construction company)
 8. 1503-664 Orylion Limited (owns land and building for Bardel operations)
 9. Bardel Engineering Ltd. (small steel fabricator)
 10. ASDA Systems & Networks Ltd. (HVAC services & maintenance)
 11. S. Lehnade Holdings Ltd (holding company for MRP and Federated)
 12. DCM Erectors Inc (New York - US construction company)
 13. Solestar/DCM Joint Venture (Minority business - installation of curtain wall)
 14. Federated Equipment Co. LLC (New Jersey - owns, builds and rents construction cranes and jumping systems)
 15. MRP LLC (New Jersey - steel fabrication plant)
 16. HR.A.D.MRP LLC Joint Venture (Minority business - general contractor)
 17. Torway Construction Co. Ltd (Bahamian company - Paradise Island, The Bahamas)



Blake, Cassels & Graydon LLP
Barristers & Solicitors
Patent & Trade-mark Agents
189 Bay Street
Suite 2800, Commerce Court West
Toronto ON M5L 1A8 Canada
Tel: 416-863-2400 Fax: 416-863-2653

July 25, 2007

Reference: 62048/2

VIA E-MAIL

Mr. Marty Adelman
Vice President
Tishman Construction Company of New York
170 Broadway
New York, NY 10038
U.S.A.

Re: The Davis Group of Companies

Dear Mr. Adelman:

We have acted on behalf of Larry Davis and The Davis Group of Companies and related entities. For the purpose of this opinion, we have relied solely, and without independent verification, on the corporate records and documents in our possession with respect to the ownership of the Davis Group of Companies.

1. Ownership

We have reviewed the attached corporate structure chart dated January 1, 2007 and wish to advise that we can confirm that the share ownership as shown on the chart is correct, save and except as follows:

We are unable to provide an opinion with respect to the share ownership of the following companies:

ASDA Systems & Networks Ltd.
Bardel Engineering Ltd.
1503464 Ontario Limited
H.R.A.D MRP LLC
Solera/DCM Joint Venture
Torway Construction Co. Ltd.

12126642.1

MONTREAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com



Page 2

2. Good Standing

We confirm that the following corporations are valid and subsisting as of the date hereof and have not been dissolved:

The Davis Construction Management Group Ltd.
ASDA Holdings Ltd.
Construction Integration Group Limited
Construction Integration Corp.
Construction Integration Inc.
Automated Steel Detailing Associates Ltd.
DCM Erectors, Inc. (Canada)
S. Lalande Holdings Limited
Federated Equipment Co. LLC
DCM Erectors, Inc. (New York)
MRP, L.L.C.

In this regard, we have relied solely upon a certificate of status/compliance/good standing for each of the above entities obtained from the relevant authority in the incorporating jurisdiction of such entity.

This opinion is provided solely for the benefit of the addressee of this opinion and may not be relied upon by anyone else or used for any other purpose, without our prior written consent.

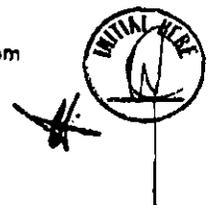
Yours very truly

Blakes, Cassels & Craydon LLP

GRS/nis

12128642.1

MONTREAL OTTAWA TORONTO CALGARY VANCOUVER NEW YORK CHICAGO LONDON BEIJING blakes.com





THE PORT AUTHORITY OF NY & NJ

Lillian D. Valenti
Director, Procurement

May 8, 2009

VIA FACSIMILE AND DHL NEXT DAY DELIVERY

Mr. Larry Davis
President
DCM Erectors Inc.
110 East 42nd St.
New York, NY 10017

FAX: (212) 599-1615

SUBJECT: STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE: FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING, METAL DECK & PRECAST CONCRETE WORK

CONTRACT NUMBER WTC 234.544

Dear Mr. Davis:

The Port Authority of New York and New Jersey ("Authority") hereby accepts DCM Erectors, Inc.'s ("DCM") Proposal dated May 8, 2009 for the above referenced work in the amount of Three Hundred Thirty Million Dollars and Zero Cents (\$330,000,000.00) inclusive of work covered by Work Package #20 Contract WTC 284.458 entitled Station Construction and Transit Hall Structures to Grade Contract Documents dated October 15, 2008 inclusive of Addenda Numbers 1, 2 and 3, dated November 17, 2008, December 19, 2008 and January 23, 2009 respectively ("Contract"), subject however to the following conditions:

1. Wherever in the contract booklet reference is made to subcontract # "WOTC-GC-2-KN086-020" or Contract # "WTC 284.458," that reference shall be changed to "WTC 234.544";
2. Wherever in the contract booklet reference is made to "Phoenix Constructors, JV," "PCJV," or "Contractor," that reference shall be changed to the "Authority";
3. Wherever in the contract booklet reference is made to "William DeCamp III," that reference shall be changed to "Steven Plate";
4. Wherever in the contract booklet reference is made to "Brian Reilly, phone # 646-467-7127," that reference shall be changed to "Edward Palmer, phone # 212-435-5104";
5. Wherever in the contract booklet reference is made to "Javed Qureshi," that reference shall be changed to "Edward Palmer."

One Madison Avenue, 7th Floor
New York, NY 10010
T: 212 435 8427



THE PORT AUTHORITY OF NY & NJ

The Authority requires you to furnish performance bonds and payment bonds in accordance with Article 10 entitled "Bonds" of the contract booklet as modified above.

The Contract as modified by this award letter, shall be the complete and exclusive statement of the agreement between the parties, notwithstanding the existence or occurrence of any other document, discussions, meetings, representations or agreements as of the date of acceptance of this Award Letter by DCM.

If the above meets with DCM's approval, please indicate DCM's concurrence by countersigning one original of this letter and returning it to Ms. Terry Flores, The Port Authority of New York and New Jersey, 1 Madison Avenue, 7th Floor, New York, NY 10010.

In order to ensure that payments are processed properly, please include the above referenced Contract Number on all payment invoices and correspondence.

Sincerely,

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

BY *Leticia D. Frank* *Steven Plate*
Director of Procurement

CORPORATE SEAL

ACCEPTED AND AGREED TO:
DCM ERECTORS, INC.

By: 
(Signature of Officer of DCM Erectors, Inc.)

LARRY DAVIS
(Type or Print Name of Officer of DCM Erectors, Inc.)

MAY 12 / 09
(Type or Print Date)

PHOENIX CONSTRUCTORS, JV

**GC
Subcontract**



| | |
|-----------------------|---------------------|
| Contractor Job Number | WTC-284.458 |
| Subcontract Number | WOTC-GC-2-KN086-020 |
| Date | May 08, 2009 |

CONTRACTOR: Phoenix Constructors, Joint Venture
115 Broadway, 18th Floor
New York, New York 10006
Attention: William T. DeCamp III
("Contractor")

SUBCONTRACTOR: DCM Erectors Inc.
110 East 42nd Street
Suite 1704, NY, NY 10017
Attention: Larry Davis
("Subcontractor")

WORK: Station Construction and Transit Hall Structure to Grade: Furnish, Fabricate & Erect Structural Steel, Intumescent Coating, Metal Deck & Precast Concrete Work. **Option C + Precast Concrete Alternate.**

PROJECT: Construction of the World Trade Center Transportation Hub Project (the "Project" or "WTC Hub"), New York City, NY
("Project")

OWNER: Port Authority of New York and New Jersey; "Authority" 115 Broadway, 10th Floor, New York, NY 10006
("Owner")

ARCHITECT-ENGINEER: Downtown Design Partnership
("Architect")

PRIME CONTRACT: WTC-284.458 (GC) Dated: 01/11/2006
("Contract")

SUBCONTRACT PRICE: Three Hundred, Thirty Million Dollars
(\$ 330,000,000.00)
("Price")

MONTHLY BILLING DATE: As indicated in Exhibit 2A
("Monthly Billing Date")

RETAINED PERCENTAGE: 10%; to be reduced as follows:
5% at 50% completion;
2.5% at 75% completion;
1% at substantial completion.
("Retained Percentage")

CHANGE ORDER OVERHEAD AND PROFIT: 10 % (of The PANYNJ's Engineer's Estimate of Associated Work)
("Profit Percentage")

PAYMENT AND PERFORMANCE BONDS: Required Not Required

(The above terms are incorporated by reference and are more fully explained below.)

Contractor, and Subcontractor, with offices at the addresses shown above, agree for themselves, their successors and assigns as follows:

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shall be set forth in the Change Order, which shall be accepted by Subcontractor. If the parties are unable to agree upon such adjustments, Contractor may elect to issue the Change Order to Subcontractor directing such work to be performed by Subcontractor and any adjustments to Price or time shall be subject to ultimate determination in accordance with this Subcontract; and Subcontractor shall, nonetheless, proceed immediately with the changed Work. Subcontractor shall keep a detailed account of the direct savings and direct cost due to the changed Work separately from its other accounting records and shall make such records available to the Contractor at Contractor's request. Failure to keep adequate and separate cost records of the changed Work, and to furnish same to Contractor upon its request, shall constitute an acceptance on Subcontractor's part of the Contractor's determination of the direct savings and direct cost of such changed Work. In no event shall Subcontractor proceed with changed Work without a Change Order issued pursuant to this Article 8 and Contractor shall not be liable for any additional costs incurred or delays encountered in the performance of such changed Work without such a written Change Order. Ref. Exhibit 8, Change Order Request Form and Contract Modification.

ARTICLE 9, NOTICES

All written notices provided for in this Subcontract or in the Contract Documents shall be deemed given if delivered personally to the party, sent by regular mail to the party at its address and to the attention of the representative specified herein. If sent by mail, the written Notice will be deemed to have been received three (3) days after the depositing of the Notice Letter with the U.S. Postal Service. Either party may from time to time, by notice to the other as herein provided, designate a different address and/or representative to which notices to it should be sent.

ARTICLE 10, BONDS

DCM Erectors, Inc. ("DCM") agrees to set forth a good faith effort to retain Payment and Performance Bonds through lower tier Subcontractor/Supplier/Vendor/Fabricator bonding and/or through DCM's own bonding capabilities.

At a minimum, DCM will provide Payment and Performance Bonds in the penal sum of approximately One Hundred and Twenty Million Dollars (\$120,000,000.00) from lower tier Subcontractors, Vendors, Suppliers and Fabricators (the "Sub Bonds") on the Bond Forms provided by Phoenix Constructors JV and in a manner that is acceptable to Phoenix Constructors JV and the Port Authority. In addition to the One Hundred and Twenty Million Dollars (\$120,000,000.00) referenced above, DCM agrees to provide additional Payment and Performance Bonds in the penal sum of Ten (\$10,000,000.00) to Thirty Million Dollars (\$30,000,000.00) (the "Initial DCM Bonds") on the Bond Forms provided by Phoenix Constructors JV and in a manner that is acceptable to Phoenix Constructors JV and the Port Authority.

DCM agrees to provide Phoenix and/or the Port Authority with the Sub Bonds within 30 days of the execution of this Subcontract and the Initial DCM Bonds within 120 days of the execution of this Subcontract. Failure by DCM to provide the Sub Bonds or the Initial DCM Bond may be just cause for the termination of DCM for all Work or any portion thereof, or the withholding of payment to DCM.

All actual premiums on such bonds shall be paid by Subcontractor, and are included in the Price. The Contractor shall reimburse the Subcontractor for any bonding premiums actually paid by the Subcontractor so long as they do not exceed the proposed value in the price. As a condition precedent to the associated reimbursement, the Subcontractor must provide sufficient evidence, in a manner that is satisfactory to the Contractor, that such premiums have been paid. Subcontractor agrees to notify its surety or sureties of increases in the Price and to take such action as is required to have the penal amount of the bonds furnished pursuant to this paragraph increased correspondingly.

ARTICLE 11, INSURANCE

Before commencing the Work and until completion and final acceptance thereof by Owner, Subcontractor shall obtain and maintain, at its expense, at least the insurance coverage specified in: Exhibit 11, Insurance Rider - Requirements and Example attached hereto; Exhibit 11, Owner's Contractors Insurance Program as required by the Prime Contract, Article 52, all

PHOENIX CONSTRUCTORS, JV

GC
Subcontract



| | |
|-----------------------|---------------------|
| Contractor Job Number | WTC-284.458 |
| Subcontract Number | WOTC-GC-2-KN086-020 |
| Date | May 08, 2009 |

CONTRACTOR: Phoenix Constructors, Joint Venture
115 Broadway, 18th Floor
New York, New York 10006
Attention: William T. DeCamp III ("Contractor")

SUBCONTRACTOR: DCM Erectors Inc.
110 East 42nd Street
Suite 1704, NY, NY 10017
Attention: Larry Davis ("Subcontractor")

WORK: Station Construction and Transit Hall Structure to Grade: Furnish, Fabricate & Erect Structural Steel, Intumescent Coating, Metal Deck & Precast Concrete Work. Option C + Precast Concrete Alternate.

PROJECT: Construction of the World Trade Center Transportation Hub Project (the "Project" or "WTC Hub"), New York City, NY ("Project")

OWNER: Port Authority of New York and New Jersey; "Authority" 115 Broadway, 10th Floor, New York, NY 10006 ("Owner")

ARCHITECT-ENGINEER: Downtown Design Partnership ("Architect")

PRIME CONTRACT: WTC-284.458 (GC) Dated: 01/11/2006 ("Contract")

SUBCONTRACT PRICE: Three Hundred, Thirty Million Dollars ("Price")
(\$ 330,000,000.00)

MONTHLY BILLING DATE: As indicated in Exhibit 2A ("Monthly Billing Date")

RETAINED PERCENTAGE: 10%; to be reduced as follows: ("Retained Percentage")
5% at 50% completion;
2.5% at 75% completion;
1% at substantial completion.

CHANGE ORDER OVERHEAD AND PROFIT : 10 % (of The PANYNJ's Engineer's Estimate of Associated Work) ("Profit Percentage")

PAYMENT AND PERFORMANCE BONDS: Required Not Required

(The above terms are incorporated by reference and are more fully explained below.)

Contractor, and Subcontractor, with offices at the addresses shown above, agree for themselves, their successors and assigns as follows:

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ARTICLE 1, Work

The term "Work" means: (i) the furnishing and performance of all labor and materials by Subcontractor, at or for the benefit of the Project which is within the general scope of this Subcontract and the Contract Documents [as specified in Schedule 1, and addenda and other documents and which include but are not limited to the plans, specifications (including, but not limited to, general, special and supplemental conditions), addenda and other documents and duly issued modifications thereto], or which can be reasonably inferred from the general scope of this Subcontract or the Contract Documents; (ii) unless specifically expressly excepted, the furnishing by Subcontractor of all labor, material, equipment, supplies, plant, tools, scaffolding, hoisting, temporary facilities, transportation, superintendence, inspections and temporary construction of every nature; (iii) that which is to be produced and supplied pursuant to this Subcontract; and (iv) the obligation of Subcontractor to visit the Project site, and to fully acquaint and familiarize itself with the site, surrounding and subsurface conditions and the character of the operations to be carried on at the site, and make such investigations as Subcontractor may deem fit or as may be prudent for Subcontractor to fully understand the facilities, physical conditions and restrictions attending the Work. All Work shall be completed strictly in accordance with the requirements of this Subcontract and the Contract Documents.

The Contract Documents are available for examination by Subcontractor at all reasonable times at the office of Contractor. Subcontractor represents and agrees that it has carefully examined and understands the Contract Documents relevant to the Work; has adequately investigated the nature and conditions of the Project site and locality; has familiarized itself with conditions affecting the difficulty of the Work; and has entered into this Subcontract based on its own examination, investigation and evaluation and not in reliance upon any opinions or representations of Contractor.

The Contract Documents are to be treated by Subcontractor as "scope" documents which indicate the general scope of the Work in terms of the architectural design concept, the overall dimensions, the type of structural, me-

chanical, electrical, utility, and other systems, and an outline of major architectural elements. As "scope" documents, the Contract Documents do not necessarily indicate or describe all items required for the full performance and proper completion of the Work. It is the intent of this Subcontract that Subcontractor is to furnish for the Price all items required for proper completion of the Work. Subsequently issued documents may more completely detail certain requirements of the Work, at the option of the Architect/Engineer, for the purpose of further defining the Work, but there is no obligation to issue such additional documents.

As a part of its obligation to provide and perform the Work, Subcontractor recognizes its responsibility to furnish a competent and adequate staff and use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work; (i) organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; (ii) keep an adequate force of skilled workers on the job to complete the Work in strict accordance with all requirements of the Contract Documents; (iii) maintain throughout the duration of the Work a competent superintendent and any necessary assistants, all of whom shall be acceptable to Contractor and shall not be changed without the consent of Contractor; (iv) enforce discipline and order among Subcontractor's employees and not to employ at the Project any unfit person or anyone not skilled in the task assigned; (v) provide supervision by experts in all aspects of the application of the materials, equipment or system being fabricated and installed; and (vi) submit to Contractor the names, responsibilities and titles of the principal members of Subcontractor's staff.

Subcontractor shall be bound to Contractor by the terms and conditions of the Contract Documents, as the same shall be applicable to the Work and this Subcontract, and hereby assumes toward Contractor all of the duties, obligations and responsibilities that Contractor has by the Contract Documents assumed toward the Owner. In that regard, Subcontractor's attention is specifically directed to the following clauses of Contract WTC-284.458(GC) (the Prime Contract) which are expressly incor-

porated in full in the Subcontract as set forth at length and attached hereto as Exhibit 1B, Applicable Prime Contract Requirements:

Exhibit 5, Subcontractor Qualification Package, Representations and Certifications, Background Qualification Questionnaire; Proposer Certifications and Notices, Article 2, Notification of Security Requirements & Article 2A, Protection and Security. Contract, Article 35, Authority and Duties of the Chief Engineer.

Contract, Article 37, Equal Employment Opportunity

Subcontractor hereby irrevocably grants Contractor a license to use all shop drawings, designs, and deliverables provided by Subcontractor on the Project for Contractor's purposes on the Project. Such license extends, without limitation to all shop drawings, CAD drawings, submittals to governmental or quasi-governmental authorities, product approvals, fabrication processes and the like, which are in any way necessary or desirable for the performance of the Work ("Granted Licenses"). This Subcontract shall constitute conclusive evidence of the granting to Contractor of the Granted Licenses by Subcontractor.

Mylars of the contract drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Subcontractor hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not.

This Agreement shall not be construed, however, to require the Subcontractor to obtain for the Authority the right to use any idea, design, method,

material, equipment or other matter which is the subject of a valid patent, unless such patent be owned by the Subcontractor or one of his employees, or his subconsultant or the subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not the Subcontractor's Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by Subcontractor or on its behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

Without the express written approval of the Authority's Director, which approval may be requested through the Contractor, the Subcontractor shall keep confidential, and shall require its subconsultants and employees to keep confidential:

- a) all information disclosed by the Authority or PATH or its consultants or contractors to the Subcontractor; or
- b) developed by the Subcontractor or its subconsultants in the performance of services hereunder.

The Subcontractor may be required to execute, and have its employees; subconsultants and their employees execute non-disclosure agreements as Contractor is directed by the Authority concerning intellectual property and proprietary information of the Authority, PATH and third persons. Disclosure of any such information shall constitute a material breach of the Agreement. The obligation of confidentiality shall not however pertain to information

- a) which is in the public domain;
- b) information lawfully received from a third party; or
- c) information, which must be disclosed under law, provided the Subcontractor give the Contractor reasonable notice to allow the Contractor to give the Authority's

General Counsel reasonable notice of the legal obligation or legal process.

The Subcontractor 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 Agreement, unless Contractor first obtains, on the Subcontractor behalf, the written approval of the Authority's Director. Such approval may be withheld if for any reason the Authority's Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

Under no circumstances shall the Subcontractor or its subconsultants communicate in any way with any contractors, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder, unless required by Law, except upon Contractor obtaining, on the Subcontractor's behalf, prior written approval and instructions of the Authority's Director, provided, however that data from manufacturers and suppliers of material shall be obtained by the Subcontractor when the Subcontractor find such data necessary unless otherwise instructed by Contractor at the direction of the Authority's Director.

ARTICLE 2, Price

Contractor shall pay to Subcontractor for the satisfactory performance and completion of the Work and performance of all the duties, obligations and responsibilities of Subcontractor under this Subcontract, the sum set forth above as the Price, subject only to additions and deductions as expressly provided in this Subcontract. To the extent that the Work is to be performed on a unit price basis, the Price shall be computed in accordance with the unit prices set forth in Exhibit 2A, Contractor's Pricing and Invoicing instructions, based on actual quantities determined in accordance with the Contract Documents and this Subcontract. The Price and all unit prices shown in Exhibit '2A shall be deemed to include all costs of Subcontractor's performance of the Work as set forth in the Contract Documents, including, but not limited to, the costs of labor, supervision, services,

materials, equipment, tools, scaffolds, hoisting, transportation, storage, insurance, taxes, and all overhead and profit.

ARTICLE 3, Progress Payments

In accordance with the Contract Documents, Subcontractor must submit a detailed schedule of values showing a proper cost breakdown (with a proper share of associated overhead and profit) of the price according to the various line items for Contractor approval. This cost will be loaded into the detailed schedule and will be used for preparation of a cashflow for the work under contract. This cost will be updated and issued as part of the monthly invoice process. A detailed earned value system will be used as the basis for supporting the Subcontractor's application for payment or supporting Contractor's applications for payments under the Contract Documents. The earned value system needs to be presented and agreed upon by both contractor and subcontractor prior to initial payment request. See also Exhibit 2A, Subcontractor's Pricing and Invoicing Instructions.

On or before each Monthly Billing Date, Subcontractor shall submit to Contractor, in such form and supported by such data (including bills of sale, applicable insurance and the Partial Release and Waiver attached hereto as Exhibit 3, Progress Payments) as Contractor may require, a progress payment application showing the value of the Work installed ("Completed Work"), plus the value of the material and equipment for incorporation in the Work suitably stored and insured (to the satisfaction of Contractor and Architect/Engineer) at the Project site or other approved location ("Stored Work"), as of such date if, and only if, the Contract Documents provide for payments to Contractor on that basis. Subcontractor shall also furnish to Contractor, with Subcontractor's first Application for Payment, a list of all companies, entities, and individuals supplying labor or materials for the performance of the Work ("Furnisher Information Schedule"). Such Furnisher Information Schedule shall be updated with every Application for Payment. The Contractor will attempt to make a progress payment to Subcontractor in accordance with Article 5, Payment Conditions, and Exhibit 2A "Subcontractor's Pricing and Invoicing Instructions," equal to the value of the Completed

Work and Stored Work as of the corresponding Monthly Billing Date, to the extent approved by Contractor and Owner on account of the Work, and so long as all other conditions of payment are met, and after deducting (a) all previous payments, (b) current retainage (meaning a reserve equal to the Retained Percentage times the allowed value of Completed Work and Stored Work, plus any additional reserve provided for herein) and (c) all charges or backcharges for services, materials, equipment, or other items furnished or otherwise chargeable to Subcontractor. In the event of any conflict between the Contract Documents and this provision (which incorporates Exhibit 2A in its totality), this provision shall govern. With regard to the foregoing, Subcontractor: (i) agrees that the Price shall be a non-recourse obligation; and (ii) waives Subcontractor's right to assert any claim, demand, right, or cause of action against Contractor for any portion of the Price (unless and to the extent that Contractor actually receives funds from the Owner attributable to the Work).

Contractor shall review each Application for Payment together with such supporting documents as required under Article 5 and Exhibit 2A of this Subcontract and as otherwise requested by Owner or Contractor. Contractor shall then approve, modify or reject, in whole or in part, such Application for Payment. Contractor reserves the right to advance the date of any payment (including final payment) due or to become due under this Subcontract if, in its sole judgment, it becomes desirable to do so.

Subcontractor shall not be entitled to any payment until this Subcontract has been properly executed and all documents and information to be furnished by Subcontractor have been supplied to Contractor.

Subcontractor will receive payment within twenty-one (21) days from the receipt of an approved invoice.

ARTICLE 4, FINAL PAYMENT

A final payment, consisting of the unpaid balance of the Price, shall be made within thirty (30) days after the last of the following to occur: (a) satisfactory completion of the Work by Subcontractor, (b) unqualified acceptance thereof by the Architect/Engineer and Owner, (c) full final payment by Owner to Contractor under the Contract Documents on account of the Work, (d)

furnishing of evidence satisfactory to Contractor that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished or incurred in connection with the Work, (e) delivery of all guaranties, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of Subcontractor or its suppliers or subcontractors and (f) delivery of a general release, in a form satisfactory to Contractor, executed by Subcontractor running to and in favor of Contractor and Owner, and such other parties as Contractor may require.

Acceptance by Subcontractor of Final Payment shall constitute a release of Owner and Contractor of and from all liability for all things done or not done or furnished or not furnished in connection with the Work, and for every act, omission, or neglect, if any, relating to or arising out of the Project. As a condition of final payment, Subcontractor shall also execute and deliver the Final Release and Waiver attached hereto as Exhibit 4, Full and Final Release and Waiver.

ARTICLE 5, PAYMENT CONDITIONS

Subcontractor will receive the payments made by Contractor and Subcontractor will hold such payments as a trust fund to be applied first to the payment of laborers, suppliers, subcontractors and others responsible for the Work for which such payments are made, including sufficient funds so that all taxes and insurance applicable thereto are also paid. Subcontractor shall first apply all progress payments as trustee to satisfy all obligations Subcontractor has incurred due to the Work.

Subcontractor shall, as often as requested by Contractor, furnish such information, evidence and substantiation as Contractor may require with respect to the extent and value of current progress and the nature and extent of all obligations incurred by Subcontractor in connection with the Work and all payments made by Subcontractor on account thereof. Subcontractor shall also furnish, as required by Contractor in its sole discretion, such partial or final lien waivers or releases as Contractor deems necessary to ensure that Subcontractor has paid all persons furnishing any labor, material, or services in furtherance of any Work furnished hereunder. If

required by Contractor, the furnishing of such lien waivers and releases shall be a condition precedent to any payment hereunder. Moreover, no prior failure of Contractor to require such releases and waivers shall limit Contractor's right to require them subsequently.

Contractor reserves the right to withhold, as an additional reserve and without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that Subcontractor (or anyone providing any of the Work hereunder) has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Work or has caused damage to the Work or to any other work on the Project; (b) to complete the Work if it appears that funds remaining in the Subcontract, including retainage and exclusive of backcharges, are insufficient to complete the Work; (c) to reimburse Contractor for any backcharges incurred as a result of any act or omission by Subcontractor hereunder; (d) to protect Contractor from the possible consequences of any other breach or default by Subcontractor hereunder; or (e) to secure Contractor with respect to any breach or default by Subcontractor or its affiliates, parent company and subsidiaries under any other agreement.

Payment hereunder shall not be evidence of the proper performance or progress of the Work and no payment shall be construed to be acceptance of defective, faulty or improper work or materials. To the extent that payment is requested for any Work which requires the preparation of construction documents which are maintained on electronic media, no payment shall be due until delivery of the data for such construction documents in a format which is acceptable to Contractor.

Subcontractor shall at all times cooperate, in the course of its performance of the Work and of the Contract Documents, with any lending entity or entities providing financing for the Project and shall agree in writing to all changes and modifications to the Contract Documents which are requested by such entity or entities that do not impose any substantial additional burdens on Subcontractor or materially reduce or limit Subcontractor's rights. Subcontractor shall supply such information and certifi-

cations as reasonably may be required from time to time by the aforesaid lending entity or entities in order that Owner can satisfy conditions to lender's obligations to make advances upon Owner's construction loan.

As an additional condition precedent to any payment (including, but not limited to, final payment) under this Subcontract, Subcontractor shall provide to Contractor on electronic media copies of all drawings, shop drawings, CAD documentation and discs, and other documents prepared by Subcontractor, or prepared at Subcontractor's direction, in connection with the performance of the Work, whether or not submitted to Contractor or Owner in connection with the Work.

ARTICLE 6, TIME

Time is of the essence in the Subcontractor's commencement, prosecution and construction of the Work. Therefore, Subcontractor shall be liable for consequential damages arising out of Subcontractor's breach of this Subcontract. The maximum amount of consequential damages that Subcontractor may be liable for are capped at the following amounts: For Option A: Five (5) Million Dollars; Option B: Three (3) Million Dollars; Option C: Eight (8) Million Dollars. Subcontractor shall: (a) submit to Contractor prior to or upon proposal a detailed, proposed schedule for the Work for Contractor's use in preparing an overall progress schedule and thereafter merged into the cost loaded schedule for the entire Work and its several parts under the Contract Documents to be incorporated as Form 2A.6, Contractor's Schedule; (b) begin the Work promptly upon Contractor's order to do so; (c) coordinate and perform the Work, and its several parts, diligently and promptly and in such order and sequence as Contractor may from time to time direct and as will assure its efficient and timely prosecution and will not delay completion of the entire Work and its several parts under the Contract Documents; and (d) furnish at all times sufficient, qualified and competent forces and supervision, and adequate, conforming and usable materials, equipment, plants, tools and other necessary things, to achieve progress according to Contractor's current cost loaded progress schedule, including any specific schedule for Subcontractor's Work attached hereto as Form

2A.6, Contractor's Schedule, and any revisions thereof by Contractor

Without limiting the generality of the foregoing and in recognition of the completion dates contained herein and in the Contract Documents, Subcontractor shall: (a) submit, with its proposed schedule, a submittal register (Article 20, and Exhibit 1D) showing the time required to prepare and approve shop drawings, to fabricate and deliver materials and equipment, and to install the Work, (b) order (for manufacture or purchase and delivery) all materials required for performance of the Work as soon as possible in order to avoid delays caused by strikes, transportation or unavailability; (c) furnish Contractor within thirty (30) days a list of major materials and equipment required for the Work, showing the name(s), address(es) and telephone number(s) of the supplier(s) and the date(s) on which such material and equipment is expected to be delivered to the Project site; (d) furnish Contractor, upon issuance, a copy of each major purchase order and subcontract (with price information deleted); (e) cause a qualified home office supervisory representative (while Subcontractor has forces at the Project site and for two weeks prior thereto) to attend weekly progress meetings; and (f) notify Contractor immediately by telephone and confirm in writing within seventy-two (72) hours, if Subcontractor finds that any item cannot be delivered as required to maintain Contractor's progress schedule. Subcontractor also agrees to be bound by such modifications to the Project schedule as are discussed at the weekly job progress meetings and are contained in the minutes of those meetings unless written objection is delivered in writing by Subcontractor within forty-eight (48) hours of the occurrence of such meeting.

The Work shall be performed during regular working hours except that, in the event of emergency or when necessary to perform the Work in accordance with the requirements of Article 6 of this Subcontract, Work shall be performed at Subcontractor's cost and expense (including Contractor's standby and other general conditions costs) on night shifts, overtime, Saturdays, Sundays, holidays and at other times, if permission to do so has been obtained in writing from Contractor. Without limiting the requirements of the preceding sentence,

if the progress of the Work or of the Project has been delayed by any fault, neglect, act, or failure to act of Subcontractor or any of its subcontractors or suppliers, Subcontractor shall work such overtime, at Subcontractor's cost and expense as aforesaid, as Contractor shall deem necessary or desirable to make up for all time lost and to avoid delay in the completion of the Work or the Project. The failure by Contractor to direct Subcontractor to engage in such overtime work shall not relieve Subcontractor of the consequences of its delay.

Contractor may direct acceleration of the Work in order that it may be performed in advance of the schedules, time requirements and Project requirements described in Article 6 hereof. If so directed, Subcontractor shall increase its staff or work overtime, or both. Subcontractor will not be entitled to additional compensation for work performed outside of regular working hours, except as authorized and accepted in writing by Contractor. Provided that Subcontractor is not in default under the Subcontract, and Contractor has issued the aforesaid authorization, there shall be added to the Price an actual out-of-pocket amount equal to: (i) additional wages actually paid, at rates which have been approved in advance in writing by Contractor; (ii) taxes imposed by law on such additional wages; and (iii) premiums for worker's compensation and liability insurance if required to be paid on such additional wages.

Written authorization for overtime which exceeds \$500.00 in any one week shall be invalid unless confirmed in advance in writing by Contractor's Project Manager, it being understood that Contractor's Superintendent shall not have authority to authorize such overtime which exceeds \$500.00 in any one week.

ARTICLE 7, EXTENSIONS OF TIME

If Subcontractor claims an extension in the completion time requirements by reason of a change in the Work, Subcontractor shall give Contractor written notice thereof within twenty-four (24) hours after Subcontractor's first knowledge of the occurrence of the conditions giving rise to such event. This written notice shall be given by Subcontractor before proceeding with the Work. No such request for an extension of time shall be valid unless written notice is given as required above. After delivering

written notice of a perceived cause of delay, Subcontractor shall proceed to execute the Work, even though the time extension has not been agreed upon.

Should Subcontractor be obstructed or delayed in the commencement, prosecution or completion of the Work without fault on its part, and by reason of causes which would entitle the Contractor to an extension of time under the Contract, then Subcontractor shall be entitled to an extension of time only to perform the Work which shall be equal to the extension of time to which the Contractor is entitled and granted by the Owner but no claim for extension of time on account of delay shall be allowed unless a claim in writing therefore is presented to Contractor with reasonable diligence but in any event not later than twenty-four (24) hours after the commencement of such claimed delay. The entitlement to an extension is absolutely conditioned upon Subcontractor's timely submission of the aforesaid written notice. Subcontractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material costs, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated including, but not limited to, causes that would entitle the contractor to an extension of time under the Contract except to the extent that Contractor is entitled to, and actually shall receive corresponding cost reimbursement, compensation or damages from Owner for the benefit of Subcontractor for any such delay, obstruction or hindrance. Subcontractor shall be responsible for the preparation and submission to the Owner of any such claim, and Contractor's sole obligation and liability with respect to any such claim shall be, at its sole discretion, to present it to Owner, and if and to the extent Owner recognizes such claim, and Contractor actually receives from Owner on account of such delay, obstruction or hindrance any cost reimbursement, compensation or damages, Contractor shall pay such amount, if any, to Subcontractor. Except as specifically provided above, Subcontractor agrees that the sole right and remedy therefore shall be an extension of time in accordance with the foregoing paragraph.

Moreover, Subcontractor shall not be allowed an extension of time unless Subcontractor has established to Contractor's satisfaction that the delay claimed by Subcontractor is to a portion of the Work on the critical path of the Work schedule and that Subcontractor could not have reasonably anticipated the delay.

ARTICLE 8, CHANGE ORDERS

Owner has reserved the right under the Contract Documents to require Contractor to make changes in the Work, including additions thereto and deletions therefrom. In the absence of a signed Change Order, if the Engineer directs, orders or requires any Work and the Contractor in turn, whether orally or in writing, directs, orders or requires the Subcontractor to perform that directed, ordered or required Work or a portion thereof which the Subcontractor deems to be Extra Work, the Subcontractor shall nevertheless comply therewith, but shall within three (3) working days give written notice thereof to the Contractor, stating why the Subcontractor deems it to be Extra Work, and shall moreover furnish to the Contractor time slips and memoranda as required by the Prime Contract (GC), Article 22, entitled, "Compensation for Extra Work". Said notice, time slips and memoranda are for the purpose of allowing the Contractor to comply with its obligation to provide such notice, time slips and memoranda to the Authority's Director within five (5) working days after the Contractor's receipt of the Engineer's order or requirement for such Extra Work. Failure of the Subcontractor to provide such notice, time slips and memoranda will be deemed to be a conclusive and binding determination on the Subcontractor's part that the direction, order or requirement of the Contractor does not involve the performance of Extra Work, and will be deemed to be a waiver by the Subcontractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips and memoranda being a condition precedent for the Contractor to assert such claims with the Authority on behalf of the Subcontractor.

Additionally, Contractor reserves the right under this paragraph to require Subcontractor to make changes in the Work, including additions thereto and deletions therefrom. Without notice to any surety and without invali-

dating this Subcontract, Contractor may from time to time, by written order ("Change Order") to Subcontractor, make changes in the Work to the same extent and in the same manner as may be required of Contractor by Owner under the Contract Documents. Subcontractor shall thereupon perform the changed Work in accordance with the terms of this Subcontract and the Change Order. In the event that Subcontractor is obligated hereunder to provide a payment or a performance bond, or both, under this Subcontract, the penal sum of such bonds shall automatically be deemed to be increased by any increase in the Subcontract Price.

Upon request of Contractor, and in time and manner sufficient to permit Contractor to comply with its obligations under the Contract Documents, Subcontractor shall submit a written proposal for any applicable Price and time adjustment attributable to the changed Work, detailed as Contractor or Owner may require, supported by and conforming to the requirements of the Contract Documents.

Where a Change Order is issued pursuant to a change required by the Owner, the price shall be adjusted by the net amount of any direct savings and direct cost (despite whether the work is performed on a Lump Sum, Time and Material, Cost Reimbursement, or Unit Price basis).

The Contractor shall have the authority to agree in writing with the Subcontractor upon a Lump Sum value for the Extra Work.

The inability of the Subcontractor and Contractor to reach an agreed upon Lump Sum does not relinquish the Subcontractor from their obligation to perform the Extra Work when directed by the Contractor. Furthermore, when such agreement is not made, and Extra Work is to be performed, the Contractor will direct the Subcontractor to perform the associated Extra Work and compensation for this Extra Work will be based on a Time and Material, Cost Reimbursable or unit price basis.

Furthermore, the time for performance of the Work may be adjusted according to the Contract Documents, subject, however, in each case to the following limitations: (a) the Price and time adjustments hereunder

shall be limited to the amount and extent of adjustments actually allowed Contractor under the Contract Documents (less, in the case of Price, any overhead, profit or similar markup allowed by Owner for Contractor's account); (b) when a Lump Sum has not been agreed upon, the Work affected by Change Order will in the sole discretion of the Contractor either be the subject of unit prices established under Exhibit 2A, in which case the Price adjustment shall be limited to the amounts obtained by applying such unit prices to the actual increase or decrease in the quantity of units due to the change, or will be handled on a Time and Material, Cost Reimbursable basis where the Subcontractor will be compensated in an amount equal to the direct cost in money for the labor and materials required for such Extra Work, plus such rental for equipment (other than small tools) required for such Extra Work subject to the limitations of the Contract Documents; and (c) the amount allowable for all overhead and profit shall be limited to the product obtained by multiplying a Profit Percentage, up to ten percent (10%), by The Port Authority of New York and New Jersey's Engineer's Estimate of the work associated with the Change Order. With regard to reimbursement for the performance of Extra Work, in the case of any conflict between the terms provided in this Article 8 and any terms of the contract documents including but not limited to the provisions of the Prime Contract Documents (WTC 284.458GC) including any modifications thereto, the more stringent terms shall apply.

As used in this Subcontract, Subcontractor's direct savings and direct cost shall mean and be limited to the actual amount of the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; bond premiums if and to the extent actually increased; and actual rent not greater than the rent charged in the locale or reasonable value of Subcontractor-owned equipment and machinery.

If the parties are able to agree upon the amount of the Price adjustment and the extent of any time adjustment, such adjustments

shall be set forth in the Change Order, which shall be accepted by Subcontractor. If the parties are unable to agree upon such adjustments, Contractor may elect to issue the Change Order to Subcontractor directing such work to be performed by Subcontractor and any adjustments to Price or time shall be subject to ultimate determination in accordance with this Subcontract; and Subcontractor shall, nonetheless, proceed immediately with the changed Work. Subcontractor shall keep a detailed account of the direct savings and direct cost due to the changed Work separately from its other accounting records and shall make such records available to the Contractor at Contractor's request. Failure to keep adequate and separate cost records of the changed Work, and to furnish same to Contractor upon its request, shall constitute an acceptance on Subcontractor's part of the Contractor's determination of the direct savings and direct cost of such changed Work. In no event shall Subcontractor proceed with changed Work without a Change Order issued pursuant to this Article 8 and Contractor shall not be liable for any additional costs incurred or delays encountered in the performance of such changed Work without such a written Change Order. Ref. Exhibit 8, Change Order Request Form and Contract Modification.

ARTICLE 9, NOTICES

All written notices provided for in this Subcontract or in the Contract Documents shall be deemed given if delivered personally to the party, sent by regular mail to the party at its address and to the attention of the representative specified herein. If sent by mail, the written Notice will be deemed to have been received three (3) days after the depositing of the Notice Letter with the U.S. Postal Service. Either party may from time to time, by notice to the other as herein provided, designate a different address and/or representative to which notices to it should be sent.

ARTICLE 10, BONDS

DCM Erectors, Inc. ("DCM") agrees to set forth a good faith effort to retain Payment and Performance Bonds through lower tier Subcontractor/Supplier/Vendor/Fabricator bonding and/or through DCM's own bonding capabilities.

At a minimum, DCM will provide Payment and Performance Bonds in the penal sum of approximately One Hundred and Twenty Million Dollars (\$120,000,000.00) from lower tier Subcontractors, Vendors, Suppliers and Fabricators (the "Sub Bonds") on the Bond Forms provided by Phoenix Constructors JV and in a manner that is acceptable to Phoenix Constructors JV and the Port Authority. In addition to the One Hundred and Twenty Million Dollars (\$120,000,000.00) referenced above, DCM agrees to provide additional Payment and Performance Bonds in the penal sum of Ten (\$10,000,000.00) to Thirty Million Dollars (\$30,000,000.00) (the "Initial DCM Bonds") on the Bond Forms provided by Phoenix Constructors JV and in a manner that is acceptable to Phoenix Constructors JV and the Port Authority.

DCM agrees to provide Phoenix and/or the Port Authority with the Sub Bonds within 30 days of the execution of this Subcontract and the Initial DCM Bonds within 120 days of the execution of this Subcontract. Failure by DCM to provide the Sub Bonds or the Initial DCM Bond may be just cause for the termination of DCM for all Work or any portion thereof, or the withholding of payment to DCM.

All actual premiums on such bonds shall be paid by Subcontractor, and are included in the Price. The Contractor shall reimburse the Subcontractor for any bonding premiums actually paid by the Subcontractor so long as they do not exceed the proposed value in the price. As a condition precedent to the associated reimbursement, the Subcontractor must provide sufficient evidence, in a manner that is satisfactory to the Contractor, that such premiums have been paid. Subcontractor agrees to notify its surety or sureties of increases in the Price and to take such action as is required to have the penal amount of the bonds furnished pursuant to this paragraph increased correspondingly.

ARTICLE 11, INSURANCE

Before commencing the Work and until completion and final acceptance thereof by Owner, Subcontractor shall obtain and maintain, at its expense, at least the insurance coverage specified in: Exhibit 11, Insurance Rider - Requirements and Example attached hereto; Exhibit 11, Owner's Contractors Insurance Program as required by the Prime Contract, Article 52, all

from companies and in form and substance acceptable to Contractor.

As a condition to any payment for the Work, Subcontractor shall furnish a certificate, satisfactory to Contractor, from each insurance company showing the required insurance to be in force and stating that the insurance will not be canceled or changed except upon at least thirty (30) days' written notice thereof to Contractor or as otherwise required by the Contract Documents. The certificate shall name Contractor, Owner and any other parties required by the Contract Documents as additional insureds under the policies required in Exhibit 11. The terms and conditions of insurance to be provided by Subcontractor are described in Exhibit 11. Neither Owner nor Contractor nor any other additional insureds, nor their agents, employees or assigns, shall be liable to Subcontractor or its agents, employees or assigns for any loss or damage covered by the insurance policies described in Exhibit 11. The failure of Subcontractor to obtain the insurance required therein prior to the commencement of the Work shall not be deemed a waiver of such requirements or of any rights or remedies that Owner or Contractor may have.

Subcontractor hereby acknowledges its obligation for any loss to its Work, including stored materials, paid for or not.

Subcontractor waives all rights against the Owner, Contractor, Architect/Engineer and any separate contractors for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work or Subcontractor's equipment, except such rights as Subcontractor may have to the proceeds of such insurance. Subcontractor shall require similar waivers from its subcontractors, suppliers, sub-subcontractors, agents and employees of any of them, by appropriate agreements, each in favor of the other parties enumerated herein.

ARTICLE 12, INDEMNITY

To the full extent permitted by law, and except where indemnity would be precluded by New York State General Obligations Law, Section 5-322-1, or by other applicable law, Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner, as well as any other parties which Contractor is required

under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost, expense, loss, damage or liability (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), of any nature, including but not limited to claims attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with breach of this Agreement or with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Subcontractor's defense and indemnity obligations hereunder shall include the duty to reimburse any attorneys' fees and expenses incurred by any indemnified party for legal action to enforce this indemnity. Subcontractor's obligation hereunder shall not be limited by the provisions of any worker's compensation or similar act.

Should Owner or any other person or entity assert a claim or institute a suit, action, or proceeding against Contractor involving the manner or sufficiency of the performance of the Work (including attorneys' fees), Subcontractor shall upon request of Contractor promptly assume the defense of such claim, suit, action or proceeding, at Subcontractor's expense. To the fullest extent permitted by law, Subcontractor shall indemnify and save harmless Contractor as well as anyone to be defended, indemnified and held harmless by Contractor and its or their agents, servants and employees, from and against any liability, loss, damage, or expense (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity) arising out of or related to such claim, suit, action or proceeding. Nothing in Article 12 shall be construed to require any indemnification which would make Article 12 void or unenforceable or to eliminate or reduce any indemnification or rights which the Contractor or any other party indemnified hereunder have by law.

ARTICLE 13, ASSIGNMENT

Upon the mutual agreement of the Authority and Phoenix, this subcontract and all its terms and conditions may be novated or assigned to the Port Authority of New York and New Jersey. No further novation or assignment shall take place except by mutual agreement between the Authority and the Subcontractor.

Furthermore, Subcontractor shall not assign this Subcontract, or any monies due or to become due hereunder, or subcontract any substantial part of the Work, without the prior written consent of Contractor. Approval shall be documented on Exhibit 13, Subcontractor Request Form. No assignment by Subcontractor of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Subcontractor under this Subcontract. If Contractor gives written consent to an assignment of this Subcontract, in whole or in part, Subcontractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Subcontractor from engaging subcontractors to perform a portion of the Work hereunder. However, Subcontractor shall be and remain as fully responsible for all persons directly or indirectly employed by such subcontractors as Subcontractor is for its own acts and omissions and those of its agents, servants and employees. Additionally, nothing herein shall prevent any guarantor or surety of Subcontractor from enforcing any right hereunder after acknowledgment of its obligation as guarantor or surety. Any attempted enforcement of such rights in the absence of an express acknowledgment shall constitute an admission by any guarantor or surety of its obligations under its agreement of guarantee or suretyship.

Before any subcontractor or supplier is employed by Subcontractor, the name of such subcontractor or supplier shall be submitted in writing to Contractor, and no subcontractor or supplier shall be employed unless acceptable to Contractor. Each subcontractor and supplier shall be bound by all Contract Documents to the same extent and with the same effect as if the subcontractor or supplier were the Subcontractor. Subcontractor shall cause its subcontractors and suppliers to comply with the Contract Docu-

ments. Subcontractor shall be responsible for all of the acts, work, material and equipment of its subcontractors and suppliers and all persons either directly or indirectly employed by any of them.

Subcontractor (and its successors and assigns) hereby assigns to Contractor all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Subcontractor for performance of any part of the Work which assignment will be effective upon acceptance by Contractor in writing and only as to those subcontracts and purchase orders which Contractor designates in writing. It is agreed and understood that Contractor may accept said assignment at any time during the course of construction prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by Subcontractor to Contractor and Contractor's assigns. Contractor may assign this Subcontract at any time without the consent of Subcontractor, or Subcontractor's payment and performance sureties or guarantors, if any.

ARTICLE 14, COMPLIANCE

Subcontractor shall, at its own expense, obtain all necessary licenses and permits pertaining to the Work and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof, including, but not limited to, those relating to safety, wages, discrimination and equal employment opportunity and pay any fines or penalties imposed for any violations thereof ("Legal Requirements"). Subcontractor shall promptly correct any violations of such statutes, ordinances, rules, regulations and orders committed by Subcontractor, its agents, servants and employees. Subcontractor shall receive and respond to, and shall defend, indemnify and save harmless Contractor and Owner, as well as anyone to whom Contractor is obligated, and their agents, servants and employees from and against any loss, liability, or expense arising from any such violations and any citations, assessments, fines, or penalties resulting therefrom. Without limiting the foregoing, Subcontractor will appear at hearings, proceedings and/or in court and consent to its substitution as a party defendant in

respect of all summonses and claimed violations arising out of or relating to the Work.

By executing this Subcontract, Subcontractor represents and warrants to Contractor that the Work, when completed, will comply fully with all applicable building and safety codes, regulations and construction requirements imposed or enforced by any governmental agencies and in existence on the date of execution of this Subcontract, without regard to any errors, omissions or deficiencies in the drawings and specifications; and Subcontractor shall furnish samples of all materials and component parts to be used as test specimens. Subcontractor shall furnish labor and facilities at the Project site as necessary in connection with testing and inspection services.

Except as otherwise expressly specified in the Contract Documents or elsewhere in this Subcontract, Subcontractor shall pay for all laboratory services, tests, testing laboratories, agencies, professional engineers, engineering inspections and reports required by the Contract Documents, the Architect/Engineer, or Contractor. Testing laboratories and professional engineers shall be subject to Contractor's prior written approval. Without limiting the provisions herein, the cost of testing laboratories, agencies, and/or engineers for the convenience of Subcontractor in its scheduling and performance of the Work, or related to remedial operations or possible deficiencies, shall be borne by Subcontractor.

The observations of or participation by Owner, Architect/Engineer, or Contractor in inspections or tests by persons other than Subcontractor shall not relieve Subcontractor from its obligations to perform the Work in accordance with the Contract Documents. Owner, Architect/Engineer and Contractor, upon request, promptly shall have access to the Work, whether at the Project, in storage or in manufacture or preparation. Subcontractor shall provide proper and safe facilities for such access and for inspection at the Project site, at the place of storage or elsewhere. Subcontractor has given a license to exercise self-help. If the specifications or any legal requirements require any portion of the Work to be tested or reviewed, Subcontractor shall give Contractor timely written notice of such test or review.

Subcontractor shall comply with and cooperate with other subcontractors, Contractor, Architect/Engineer, and Owner in complying with legal requirements, including but not limited to OSHA requirements. Among other things, Subcontractor shall be responsible for performing corrective work within abatement periods, appealing from decisions or orders, requesting extensions on abatement periods, and furnishing such information or evidentiary material as may be necessary or as may be requested by Contractor to fully protect the rights and interests of Owner, Architect/Engineer, and Contractor with respect to possible, threatened or pending proceedings or orders.

ARTICLE 15, SAFETY

Subcontractor agrees that the prevention of accidents to workers engaged upon or in the vicinity of the Work is its responsibility, even if Contractor establishes a safety program for the entire Project. Subcontractor shall establish and implement safety measures, policies and standards conforming to those required or recommended by governmental or quasi-governmental authorities having jurisdiction and by Contractor and Owner, including, but not limited to, any requirements imposed by the Contract Documents. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Work that Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of its responsibility therefore.

Subcontractor shall continuously protect the Work, other work, and the property of Contractor, Owner and others from damage, injury or loss arising in connection with the Subcontractor's performance of the Work. Neither Owner nor Contractor shall be responsible for any loss or damage to the Work or the property of Subcontractor, however caused, until after final acceptance thereof by Owner and final payment therefore. Likewise, neither Owner nor Contractor shall be responsible for loss of or damage (however caused) to materials, tools, equipment, appliances and other personal property of Subcontractor used in the performance of the Work. Subcontractor shall remove all snow

and ice as may be required or requested for the proper protection and prosecution of the Work. Subcontractor shall provide and maintain adequate protection against weather so as to protect the Work from injury or damage.

Subcontractor shall enforce Contractor's instructions regarding signs, advertisements, fires, smoking, alcoholic beverages, and the possession of firearms by any person at the Project site. Subcontractor, as necessary for the Work, shall provide flagmen, erect proper barricades and other safeguards, and post danger signs and other warnings as warranted by hazardous and existing conditions, and as specifically required by Exhibit 98 and 99, Specifications Sections 2-15; and Drawings.

Subcontractor shall promptly report in writing to Contractor and Subcontractor's insurance carriers all accidents arising out of, or in connection with, the performance of the Work, whether on or off the Project site, which caused death, bodily injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages occur, the incident shall be reported to Contractor immediately by telephone or in person.

Subcontractor shall provide to Contractor a signed certification (Safety Rider-Exhibit 15A, Part III) that it will work in accordance with the Contractor's Exhibit 15A Parts I and II, Health and Safety Plan or submit their own Health and Safety Plan in accordance with the Contract Documents for approval. If the Contractor does not approve the Subcontractor's individual Health and Safety Plan prior to the Subcontractor commencing work, it will be mandatory that the Subcontractor work in accordance with the Contractor's Health and Safety Plan. Furthermore, where applicable, the Subcontractor will work in compliance with Exhibit 15B: Conditions and Precautions for Work Within New York City Transit Right-of-Way and Exhibit 15C, NYC Transit Maintenance of Way Track Division Safety Rule Book. In addition, prior to proposal submission, the Contractor shall provide their Contractor's Job Safety Analysis and Supplemental Project Specific Safety Plan describing the hazards and controls anticipated on its specific job scope in accordance with Exhibit 15D. The Contractor's Job Safety Analysis and Supplemental Project Spe-

cific Safety Plan shall address tasks to be performed on the Project with attendant risk analysis and have appropriate controls and safeguards to prevent injury and illness. Contractor will review the Exhibit 15 Series safety requirements documents and those detailed in the Exhibit 1, Statement of Work, Exhibit 99, Drawings, and Exhibits 97 and 98 Specifications, prior to the start of the work. Any questions, comments or inquiries by Contractor as to the adequacy of this program must be completely addressed by Subcontractor before Work is started.

Subcontractor must complete the required Safety Orientation Program for all of its new Project workers. Documentation of this orientation is required for the Project in the format provided by Exhibit 15A. Weekly safety meeting with the workers of Subcontractor and its subcontractors of any tier are also required with evidence of the meeting results being supplied to Contractor.

Hard hats are required on the Project. Subcontractor must have a Safety Disciplinary Program and Contractor will use a safety disciplinary system with the Subcontractor.

Guardrails are to be provided by Subcontractor at all working places and other locations where persons or materials could fall more than six (6) feet. Where this cannot be physically achieved, suitable and sufficient fall protection devices that do not rely on individuals must be provided and used by Subcontractor to establish a safe place of work. Harnesses and personal protective equipment must be used by Subcontractor as a last resort. The decisions made and options implemented must be clearly detailed by Subcontractor in its written site specific Exhibit 15D, Contractor's Job Safety Analysis, and Supplemental Project Specific Safety Plan, and approved by the Contractor.

Free-standing scaffold towers used externally by Subcontractor must not be higher to the top platform level than three (3) times the minimum base dimension unless secured to a permanent structure. For internal use only, the height to platform may rise to 3.5 times the minimum base dimension. Wheels must be locked when towers are in use. No person is permitted to remain on a tower platform while a tower is being moved.

Powered cranes, hoists, aerial platforms and scissor lifts provided by Subcontractor must have a competent driver that is certified by a qualified third party. Additionally, the above items must be certified by a qualified third party as safe to use.

Subcontractor must comply in full with all applicable environment, health and safety ("EH&S") local and national legislation, including all OSHA regulations. In circumstances where there is a conflict between local or national legislation and this Article 15, the higher (more protective) requirement shall prevail.

All persons working for or under Subcontractor on suspended scaffolds/cradles/gondolas must wear and use appropriate fall prevention equipment so as to protect them effectively, at all times when they are at risk from any failure of any part of the scaffold/cradle/gondola, including its suspension system.

Holes, shafts and edges from or through which persons could fall a distance of more than 6 feet must be clearly marked by Subcontractor with signage or other means and must be adequately protected by covers or barriers provided by Subcontractor so as to prevent falls of persons and materials.

All temporary electrical circuits provided and used by Subcontractor must include a Residual Current Device, Earth Leakage Circuit Breaker or Ground Fault Circuit Interrupter at source.

Adequate lighting must be provided by Subcontractor to enable safe access to and egress from every place on a site where persons are liable to work. This is in addition to task lighting.

ARTICLE 16, CLEAN UP

With regard to this specific article, if a conflict between this article and the Exhibit 1 – Statement of Work exists, the Exhibit 1 – Statement of Work shall govern.

Subcontractor shall, at its own expense: (a) keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the Work by collecting and removing such debris from the job site on a daily or other basis requested by Contractor; (b) at the completion of the Work in each

area, sweep and otherwise make the Work and its immediate vicinity "broom-clean;" (c) remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Contractor at the completion of the Work; and (d) at final inspection clean and prepare the Work for acceptance by Owner. Subcontractor agrees to provide all cleaning and cleanup required under the Contract Documents pertaining to the Work to the extent such requirements are in excess of those contained in this paragraph.

ARTICLE 17, TEMPORARY FACILITIES

With regard to this specific article, if a conflict between this article and the Exhibit 1 – Statement of Work exists, the Exhibit 1 – Statement of Work shall govern.

In accordance with Exhibit 17, All Temporary Project Site Facilities, including but not limited to, storage, sheds, shanties, material storage rooms, field offices, power, hoists, scaffolding, cold weather protection, etc, and any necessary or utilized offsite field office rental or purchase, (all being referred to as "Temporary Facilities") required in performing the Work shall be furnished by, and at the sole expense of the Subcontractor.

Subcontractor agrees to furnish, at Subcontractor's expense, sufficient Temporary Facilities for the efficient performance of the Work. If on site, Subcontractor agrees to place its Temporary Facilities in locations designated by Contractor. When it becomes necessary, in the opinion of the Contractor, for Subcontractor to provide Temporary Facilities, Subcontractor will do so in an expeditious manner and at no additional cost. On site Temporary Facilities shall be equipped with fire extinguishers and shall be of fireproof material only, such as concrete, gypsum block, rated drywall, or sheet metal. All necessary offsite office space rental, lease or purchase, or other agreement relating to the utilization of Real Property, and any and all costs relating to such, shall be at the sole cost and expense of the Subcontractor and included in their Proposal if necessary.

ARTICLE 18, QUALITY

Subcontractor shall at all times provide first-quality, new materials (unless otherwise specified in Exhibit 98, Specifications, or Exhibit 99, Drawings, and the Contract Docu-

ments) and workmanship conforming to the Contract Documents requirements and be in accordance with the best standards of the construction industry where the Project is located. Subcontractor shall at all times provide proper facilities and an opportunity for the inspection of the Work by Contractor, Architect/Engineer and Owner and their representatives. Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor or Architect/Engineer, proceed to take down and remove all portions of the Work which Contractor or Architect/Engineer shall have condemned as unsound, improper, or in any way failing to conform to the Contract Documents or this Subcontract and shall replace the same with proper and satisfactory Work and make good all work damaged or destroyed thereby. Contractor's failure to discover or notify Subcontractor of defective or nonconforming Work at the time the Work, or any portion thereof, is performed or completed shall not relieve Subcontractor of full responsibility for replacement of the defective or nonconforming Work and all damages resulting therefrom. If the Owner elects to accept defective or nonconforming Work, Contractor may require an appropriate adjustment in the Price to the extent required of Contractor.

Subcontractor shall use all necessary means to discover and to notify Contractor in writing of any defect in any part of the Project upon which the satisfactory performance of the Work may depend, and to allow a reasonable amount of time for remedying such defects. If Subcontractor should proceed with the Work, Subcontractor shall be considered to have accepted and be responsible for such condition unless Subcontractor shall have been directed by Contractor to proceed over Subcontractor's written objection to Contractor.

ARTICLE 19, GUARANTEES AND WARRANTIES

Subcontractor warrants and guarantees the Work to the full extent provided for in and required by the Contract Documents. Without limiting the foregoing or any other liability or obligation with respect to the Work, Subcontractor shall, at its expense, make good any faulty, defective, or improper parts of the Work discovered within one (1) year from the date of acceptance of the Project by Architect/Engineer and Owner or within such longer period as may

be provided in the Contract Documents or Legal Requirements. Subcontractor warrants that all materials furnished hereunder meet the requirements of the Contract Documents and warrants that they are both merchantable and fit for the purposes for which they are to be used under the Contract Documents. No Guarantee Period shall be construed to limit any warranty given by Subcontractor hereunder.

Performance of the aforementioned guarantee obligations shall be deemed to be a material component of Subcontractor's contractual obligation to perform the Work. This Subcontract shall not be considered completely performed until all guarantee obligations hereunder are fully satisfied. Performance bonds required of Subcontractor shall include the performance of guarantee obligations and warranty obligations and shall not contain clauses limiting the time to sue upon said bonds for breach of the guarantee or warranty.

ARTICLE 20, SUBMITTALS

As defined by Exhibit 1D, Submittal Register and Transmittal Form and Exhibit 98, Specifications, and Exhibit 99, Drawings, the Subcontractor shall immediately prepare for Contractor approval within ten days of Contract Award, a comprehensive Submittal Register (Exhibit 1D), obtain and promptly submit, as defined by the Submittal Register, to Contractor shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports and engineering calculations, all as may be required by Exhibit 98, Specifications, and Exhibit 99, Drawings or as may be necessary or appropriate to describe the details of the Work. Approval of drawings or other submittals by Contractor or Architect/Engineer shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents or of its responsibility for the proper matching of the Work to contiguous work.

Subcontractor shall promptly submit all shop drawings and samples as to cause no delay in the Work or the progress of the Project. Subcontractor shall submit all shop drawings and samples through the Contractor to the Owner for the Architect/Engineer's review. By submitting shop drawings and samples, Subcontractor represents and warrants that it has determined and verified all materials, field measure-

ments, and field construction criteria pertaining thereto, has checked and coordinated this information with the Work and the Contract Documents, and that the Subcontractor shall fully guarantee and warrant the Work in accordance with this Subcontract and the Contract Documents. Any submission that, in Contractor's opinion, is incomplete, contains errors or has not been fully and properly checked, may be returned unreviewed by Contractor for revision and resubmission.

In reviewing shop drawings, Architect/Engineer need not verify dimensions and field conditions. Architect/Engineer will review shop drawings and samples only for conformance with the design concept of the Work and for general detailing. Architect/Engineer and Contractor's review shall not be construed as a complete check nor shall it relieve Subcontractor from its responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents. Architect/Engineer's or Contractor's review shall not relieve Subcontractor from responsibility for errors in shop drawings; responsibility for proper fitting of the Work, the necessity of furnishing any Work required by the Contract Documents which may not be indicated on shop drawings when reviewed; or the necessity of providing sufficient quantities of items.

ARTICLE 21, PERFORMANCE

The Work shall be performed and furnished to the satisfaction of Owner, Architect/Engineer and Contractor, but Subcontractor shall not thereby be relieved of its obligation to supervise the Work, using its best skill and attention, or its obligation to perform the Work as provided for herein. Subcontractor shall be bound by the interpretations and decisions of Architect/Engineer and Owner to the same extent as Contractor may be bound thereby under the Contract Documents. No certificate issued or payment made to Subcontractor nor any partial or entire use or occupancy of the Project site shall be an acceptance of any Work not in accordance with this Subcontract or the Contract Documents or be deemed evidence of proper performance of the Work, either in whole or in part, or be construed as an acceptance of defective workmanship or improper materials.

Subcontractor shall notify and obtain the approval of Contractor before the arrival of forces or delivery of materials and equipment to the Project site, before any substantial change in its forces, and before leaving the Project site for any reason.

Subcontractor shall promptly and carefully check all Contract Documents and notify Contractor of any discrepancies or conflicts before performing any Work, and Subcontractor shall be responsible for any extra costs resulting from its failure to do so. Subcontractor shall cooperate with Contractor and other subcontractors in the preparation of coordination drawings where required by Contractor. Subcontractor shall take field measurements and verify field conditions and compare such field measurements and field conditions with the Contract Documents before activities are commenced. Errors, inconsistencies or omissions discovered are to be reported to Contractor at once. Any work done by Subcontractor with respect to any portion of the Work affected by such error, discrepancy, conflict, misunderstanding, or variance will be at Subcontractor's own risk and Subcontractor shall bear all costs and loss arising therefrom.

If during the performance of Work the Subcontractor becomes aware of (a) unanticipated subsurface conditions or has cause to suspect the presence of such condition, (b) unanticipated asbestos or other hazardous material or has cause to suspect the presence of such materials or (c) elements of historical significance or archeological interest or has cause to suspect of such elements, then the Subcontractor shall immediately notify the Contractor verbally of such condition so that the Contractor is able to immediately notify the Authority. Such verbal notice is to be followed-up immediately with written notice specifying the nature, location, and impact on Work of such conditions. The Subcontractor shall immediately stop Work in and secure the area against injury to persons or damage to property pending further instructions from the Contractor.

If any salaried or hourly workers or equipment of the Subcontractor are necessarily kept continuously idle and wholly unoccupied at the construction site for a full day on which they would

be otherwise engaged in the performance of Work and if such idleness is not due to any cause within the control of the Subcontractor or its employees or its material suppliers, the Subcontractor shall give written notice to the Contractor immediately specifically stating that salaried workers or equipment have been kept idle under circumstances which might result in payment under the GC Prime Contract, Articles, 31, 103, 104, 105, 107 and/or 108 so that the Contractor is able to provide such notice to the Authority within twenty-four hours of the occurrence of such idleness pursuant to applicable GC Prime Contract Article.

The Subcontractor shall furnish, in the format provided by Exhibit 21B, Contractor's Standby Time Report, with such notice for all the days that have occurred, and shall in addition furnish with such notice, at the end of each additional day of such idleness, (a) a memorandum showing the name, payroll title, salary rate and employer of each of the salaried workers claimed to have been kept idle, and the rates and amounts of Workers' Compensation Insurance premiums, if any, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations and (b) a memorandum of the equipment claimed to be kept idle, together with the amount claimed as rental therefore. Said notice and memoranda are for the purpose of enabling the Contractor to provide to the Authority's Director verification of the Subcontractor's claim at the time and of enabling the Authority's Director to take such steps as may be necessary to remedy the conditions upon which the claim is based. The furnishing of such notice and memoranda shall be a condition precedent to payment under GC Prime Contract Articles 31, 103, 104, 105, 107 and/or 108.

In the case of all other types of claim other than for Extension of Time and the above Idleness, the Subcontractor shall give notice to the Contractor of such claim within 24 hours after occurrence of the act, omission or other circumstances upon which the claim is or will be based so that the Contractor is able to give such notice to the Engineer as soon as practicable, and in any case

within 48 hours. Such notice shall state as fully as practicable at the time all information relating thereto and will be supplemented with any further information as soon as practicable after it becomes or should become known to the Subcontractor, including daily records showing all costs which the Subcontractor may be incurring or all other circumstances which will affect the claim.

Neither Architect/Engineer nor Contractor nor Owner shall be responsible for: construction means, methods, techniques, sequences or procedures of Subcontractor; safety precautions and programs of Subcontractor; the acts or omissions of Subcontractor; or the failure of Subcontractor to carry out the work in accordance with the Contract Documents.

The Subcontractor shall confine operations at the Project site to areas permitted by law, ordinances, and permits and the Contract Documents and shall not unreasonably encumber the Project site with materials and equipment. Subcontractor shall not perform any portion of the Work outside the areas of the Project site owned or controlled by Owner or designated as part of the Project site in the Contract Documents unless Subcontractor gives thirty (30) days advance written notice to Contractor, and Owner is able to obtain permission from the appropriate parties to proceed with the Work or to permit access pursuant to Owner's agreements with the owners and/or tenants of said areas. Any work permitted outside of the Project site owned by Owner shall be scheduled in a manner as to cause or occasion a minimum of inconvenience or disturbance to or interference with the normal operations of the Owner, abutters and the public. Subcontractor shall prosecute such operations expeditiously and restore the affected area and other areas needed for access to their original conditions immediately upon completion of such operations unless otherwise specified.

ARTICLE 22, LIENS

To the extent not expressly prohibited by law, Subcontractor shall not suffer or permit any lien or other encumbrance to be filed or to remain of record as a claim against the building or the Project site or against any monies due or to become due for any Work performed or

materials furnished by, to or on behalf of Subcontractor, or any of its subcontractors or suppliers; nor shall Subcontractor suffer or permit any such lien or encumbrance to be so filed because of any claim or demand against, or any action or non-action of, Subcontractor or any of its subcontractors or suppliers. Subcontractor shall defend, indemnify and save harmless Contractor, Contractor's sureties and Owner from any lien or claim of lien filed or maintained by any laborer, materialman, subcontractor, or other person or entity directly or indirectly acting for, through, or under Subcontractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to Contractor or from Contractor to Subcontractor. Without limiting the foregoing, Subcontractor shall cause any such lien or claim of lien to be satisfied, removed, or discharged by bond, payment, or otherwise within such time as provided under the Contract Documents or ten (10) days from the date of receipt by Subcontractor of written notice from Contractor to Owner to remove the lien, whichever period is shorter.

ARTICLE 23, PATENTS

Subcontractor shall pay all royalties and license fees applicable to the Work. Subcontractor shall defend, indemnify and hold Owner, Architect/Engineer and Contractor harmless of, from and against any and all suits, demands and claims for infringement of any patent rights except to the extent that Owner may have assumed responsibility therefore under the Contract Documents. The foregoing exception shall be inapplicable if Subcontractor had or should have had reason to believe the design, process, or product infringed upon a patent and failed to give written notification to Contractor of same.

If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Subcontractor, his officers, agents, employees, or sub consultants, 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 Subcontractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Subcontractor 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 agreement 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 Subcontractor shall promptly and fully inform the Contractor in writing to allow the Contractor to promptly and fully inform the Chief Engineer in writing of any patents or patent disputes, whether existing or potential, of which the Subcontractor have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to the Subcontractor attention in connection with this Agreement.

ARTICLE 24, LABOR

Subcontractor shall employ labor that is compatible with the labor of other subcontractors; shall take all steps necessary to avoid labor disputes; and shall be responsible for any delays and damages to Owner caused by such disputes. Subcontractor agrees that where the Work is stopped, delayed, or interfered with by strikes, slow-downs, or similar interruptions or disturbances (including cases where Subcontractor's employees are engaged in a work-stoppage solely as a result of a labor dispute involving Contractor or others and not in any manner involving Subcontractor), Contractor shall have the rights and remedies provided for in Article 26. Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work, and Subcontractor shall, to the extent permitted by law, remove or cause to be removed from the Project any employee whose presence is detrimental to the orderly prosecution of the Work. Subcontractor shall not permit anyone under the age of 18 to perform the Work or

to have access to the Project site. Subcontractor shall comply with all instructions by Contractor relating to the ingress and egress of its employees, materialmen and suppliers to the Project and shall take all necessary steps to restrain and enjoin any illegal picketing, demonstrating, violence, or similar activity against Subcontractor at the Project. Subcontractor agrees that if any provision of the Contract Documents conflicts with any agreement among members of a trade association, or with a union or labor council which regulates the work to be performed by a particular trade, Subcontractor shall reconcile such conflict without delay or damage to Owner or Contractor. Nothing herein shall be deemed to limit Contractor's rights under Article 26 hereof.

Subcontractor agrees to conform its actions to the requirements of the GC Prime Contract, Article 37, Equal Employment Opportunity which is expressly incorporated in full in the Subcontract as set forth at length and attached hereto as Form 7.1, Equal Employment Opportunity certification.

Subcontractor assures that it will undertake an affirmative action program as required in GC Prime Contract Article 38.

Subcontractor shall pay its employees at least the prevailing rate of wage as is required pursuant to GC Prime Contract Article 39.

ARTICLE 25, DAMAGE

Contractor shall not be liable or responsible for loss or damage to the equipment, tools, facilities, or other personal property owned, rented, or used by Subcontractor, or anyone employed by or through Subcontractor, in the performance of the Work; and Subcontractor shall maintain such insurance and take such protective action as Subcontractor deems desirable with respect to such property. Contractor shall not be liable or responsible for any loss or damage to the Work, and Subcontractor shall be responsible for the correction or restoration of any such loss or damage to the Work, or to the work of Contractor or any other subcontractor, resulting from the operations of Subcontractor, or its subcontractors, agents, servants, or employees hereunder. Subcontractor shall take all reason-

able precautions to protect the Work from loss or damage prior to acceptance by Owner.

ARTICLE 26, DEFAULT

Should Subcontractor at any time:

- (a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder;
- (b) cause interference, stoppage, or delay to the Project or any activity necessary to complete the Project;
- (c) become insolvent;
- (d) fail to properly and promptly make payment for all materials and services provided in the performance of the Work; or
- (e) fail in the Contractor's opinion in the performance or observance of any of the covenants, conditions, or other terms of this Subcontract, then in any such event, each of which shall constitute a default hereunder by Subcontractor, Contractor shall, after giving Subcontractor written notice of default and seven (7) calendar days within which to cure said default, have the right to exercise any one or more of the following remedies:

(i) require that Subcontractor utilize, at its own expense, overtime labor (including Saturday and Sunday Work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default;

(ii) attempt to remedy the default by whatever means Contractor may deem necessary or appropriate, including, but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Subcontractor) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due or to become due to Subcontractor hereunder;

(iii) without waiving or releasing any rights or remedies against Subcontractor or its sureties, and either by itself or through others take possession of the Work, and all materials, equipment, facilities, plants, tools, scaffolds and appliances of Subcontractor relating to the Work, for the purposes of completing the Work and se-

curing to Contractor the payment of its costs (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) and other damages under the Subcontract and for the breach thereof, it being intended that Contractor shall, for the stated purposes, be the assignee of and have a security interest in the property described above to the extent located on the Project site (and Contractor may at any time file this Subcontract as a financing statement under applicable law); or

(iv) recover from Subcontractor all losses, damages, penalties and fines, whether actual, direct or consequential (including without limitation any increase in Contractor's cost of insurance resulting from Subcontractor's failure to maintain insurance coverages required hereunder), and all reasonable attorneys' fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's default.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Architect/Engineer and full payment therefore by Owner, Contractor shall promptly pay Subcontractor the undisbursed balance of the Price, if any. If the cost of completion of the Work, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Contractor, shall exceed the undisbursed balance of the Price, Subcontractor and its guarantors, surety, or sureties shall pay the difference within twenty-one (21) days of written demand from Contractor.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity. Subcontractor's guarantors, surety, or sureties agree to be bound to Contractor with respect to such remedies notwithstanding any provision of the bonds provided pursuant to Article 10 hereof.

Except as limited by this Subcontract, Subcontractor shall have the rights and remedies available at law or in equity for a breach of this Subcontract by Contractor. Any default by Contractor shall be deemed waived unless Subcontractor shall have given Contractor written notice thereof within five (5) days after the occurrence of such default. Subcontractor

shall be entitled to stop the Work or terminate this Subcontract **only** (a) on account of Contractor's failure to pay an amount to Subcontractor which is paid by Owner to Contractor under Subcontractor's Application for Payment that is approved in accordance with the Contract Documents and (b) where a good faith reason does not exist as to the withholding of such payments claimed by Subcontractor ("Contractor's Default"). Subcontractor shall not be entitled to stop the Work on account of a Contractor's Default unless such Contractor's Default shall have continued for more than ten (10) days after Contractor's receipt of written notice of such Contractor's Default from Subcontractor, specifying in detail the nature of the default and the steps necessary to cure the claimed default.

Subcontractor shall not be entitled to terminate this Subcontract except for a Contractor's Default which shall have continued for at least an additional thirty (30) days after (a) Subcontractor shall have stopped Work in accordance with this paragraph and (b) Contractor shall have received thirty (30) days written notice of Subcontractor's intention to terminate this Subcontract. Article 26 represents the Subcontractor's sole right to stop the Work or terminate this Subcontract.

Should any termination for default under Article 26 (iii) be determined to be invalid, improper or wrongful, such termination shall be deemed to have been a termination for convenience as provided in Article 28 below.

Subcontractor shall not be entitled to receive any further payment until the Work shall be wholly completed to the satisfaction of Contractor and shall have been accepted by Contractor and Owner, at which time, if the unpaid balance, if any, of the Price at the time of Subcontractor's default shall exceed the costs and expenses incurred in completing the Work and curing Subcontractor's default, such excess shall be paid to Subcontractor; but if such costs and expenses shall exceed such unpaid balance, then Subcontractor shall pay the difference to Contractor. Such costs and expenses shall include not only the cost of completing the Work to the satisfaction of Contractor and Owner and of performing and furnishing all labor, services, materials, equipment and other items required therefore, but also all losses, damages, costs and ex-

penses, whether actual, direct or consequential, including, without limitation, attorney's and legal fees and disbursements, sustained, incurred or suffered or to be sustained, incurred or suffered by Owner or Contractor by reason of or resulting from any default of Subcontractor.

ARTICLE 27, DISPUTES

In the event of any dispute between Subcontractor and Contractor arising out of or relating to this Subcontract, or the breach thereof, Subcontractor understands and agrees that the dispute shall be decided in accordance with Paragraph 35, Authority and Duties of the Chief Engineer, of Prime Contract WTC-284.458 (GC) and Subcontractor, its suppliers, subcontractors and its guarantors, surety, or sureties, shall be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by any decisions or determination made under the Contract Documents pursuant to said contract provisions. Subcontractor understands and agrees that the Chief Engineer of the Port Authority of New York and New Jersey is authorized under Paragraph 35 of Prime Contract Document WTC-284.458(GC) 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 the Prime Contract, and Subcontractor understands and agrees that it will be fully bound by this dispute resolution procedure and by the final determination of the Chief Engineer. By executing this Subcontract Subcontractor understands and agrees that it will be bound by Paragraph 35 of Prime Contract Document WTC-284.458(GC) which is attached hereto as Exhibit 1B and Subcontractor is requested to include the provisions of Exhibit 1B in all subcontracts for work, labor, services, materials or supplies it enters into in connection with the performance of this Subcontract. Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights. Subcontractor shall be solely responsible for the preparation of any information or testimony hereunder unless Contractor notifies Subcontractor in writing of its intention to provide attorneys and provide for the presentation of any case governed by this paragraph, in which case Subcontractor shall have the duty to cooperate with Contractor.

In the event of any dispute as to whether any item or portion of the Project Work is within the scope of the Work to be performed by Subcontractor or any dispute as to whether Subcontractor is entitled to an extra payment, Subcontractor shall continue to proceed diligently with the performance of the Work, this Subcontract, and any disputed Work, pending any resolution. The existence of a dispute shall not be grounds for any failure to perform by Subcontractor nor limit the right of Contractor to proceed to remedy any default by Subcontractor.

ARTICLE 28, EARLY TERMINATION

If Owner terminates the Contract or stops the Work for a reason other than the sole default of Contractor, Contractor may terminate this Subcontract or stop the Work for the same reason, and Subcontractor's rights and remedies, including the basis for payment of any unpaid portion of the Price, shall be limited to the corresponding rights and remedies available to Contractor under the Contract Documents, and controlled by Article 26 above. Should this Subcontract be terminated for default, Subcontractor shall assign all purchase orders and subcontracts to Contractor if Contractor, in its sole and absolute discretion, requests such assignments. Subcontractor agrees to incorporate such provisions in its agreements with suppliers and subcontractors to effectuate this Article 28. Nothing herein shall create any duty on the part of Contractor to accept the assignment of any purchase order or subcontract hereunder.

Further, in its sole discretion and without notice to any guarantors, surety, or sureties, Contractor may, at any time prior to final payment, terminate this Subcontract for its convenience upon the giving of written notice to Subcontractor. In no event shall Subcontractor be entitled to consequential damages or loss of profits on portions of the Work not yet performed. If terminated for convenience, Subcontractor shall be entitled to be paid all costs of all Work provided hereunder including reasonable and necessary costs of termination, as determined in accordance with the method set forth in Article 8 above, together with the Profit Percentage attributable to the costs so determined. Payment shall be made in accordance with and subject to the requirements of Article 4.

Without limitation, the following obligations, among others, of Subcontractor shall survive the termination of the Subcontract whether pursuant to this Subcontract: warranties and guarantees of Work performed; indemnity; payment of taxes, damages, losses and expenses; certifications; delivery of manuals, data on electronic media and as-built drawings; correction of Work performed; removal of liens; and cooperation with the construction lender.

ARTICLE 29, SETOFF

If Subcontractor is, or hereafter begins, performing any work for Contractor other than the Work under the Subcontract and the unpaid balance of the Price becomes insufficient to complete such Work or compensate Contractor for any damages or deficiencies by the Subcontractor in the performance of the other work, Subcontractor hereby consents and agrees to allow Contractor, in its sole discretion and judgment, to setoff any of Contractor's claims against any funds due, or which may become due, Subcontractor under any other agreement with Contractor, or any subcontract on any other project. No refusal or failure of Contractor to exercise its rights hereunder shall constitute the basis of any right or claim against Contractor.

ARTICLE 30, AGENCY FOR RENTAL OF CONSTRUCTION EQUIPMENT AND PURCHASE OF MATERIALS NOT INCORPORATED IN PERMANENT CONSTRUCTION

Subcontractor is referred to Clause "5" of Modification 1 to the Prime Contract, entitled "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated In Permanent Construction", and Clause "6" of Modification 1 to the Prime Contract, entitled "Exemption From New York and New York City Sales Taxes", the terms and conditions of which are incorporated by reference and made fully binding upon and applicable to the Subcontractor. Subject to Clauses "5" and "6" and to all other applicable provisions of the Prime Contract, Subcontractor is hereby authorized to act on behalf of the Authority, pursuant to the Agency arrangement for the rental of construction equipment and purchase of material not to be incorporated in the permanent construction, contained in Clause 5, as agent, for the limited and specific purpose only of rental of construc-

tion equipment or purchase of such material for the use on this Project in the performance of the Contract Work. Subcontractor's issuance of any forms of agreement for the rental of construction equipment or any purchase orders for such materials, for use on the subject Project shall be fully compliant with, and in accordance with, the aforesaid clauses of the Prime Contract.

ARTICLE 31, MISCELLANEOUS

(a) All matters relating to the validity, performance, or interpretation of this Subcontract shall be governed by the law of the State of New York without regard to its choice of law provisions, and any suit, action or proceeding between the parties arising out of this Subcontract shall be brought in Federal or State Courts in the County of New York, and Subcontractor submits itself to the exclusive jurisdiction of such courts.

In the event that any term, provision, or part of the Subcontract is held to be illegal, invalid or unenforceable, such term, provision, or part shall be deemed severed from the Subcontract and the remaining terms, provisions and parts shall remain unaffected thereby. Where the context requires, neuter terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa.

(b) This Subcontract, including any executed modifications, and the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof. Subcontractor agrees that any claims against Contractor, irrespective of an alleged breach by Contractor of the Contract Documents, shall be based, nonetheless, upon this Subcontract and the Price, and shall in no event be based upon an asserted fair and reasonable value of the Work performed.

(c) This Subcontract may not be changed in any way except as herein provided or by a writing signed by a duly authorized officer or agent of each party. No requirement of this Subcontract may be waived except in writing signed by a duly authorized officer of the waiving party. This provision may not be waived orally by Contractor.

(d) The provisions of this Subcontract and the Contract Documents are intended to supplement and complement each other. If, however, any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty on the Subcontractor shall govern.

(e) As to any claim which arises out of Subcontractor's performance which is also caused by the acts or omissions of any third party, Subcontractor's liability hereunder shall be joint and several.

(f) The failure of Owner or Contractor to insist upon performance or strict performance of any of the terms, covenants or conditions of this Subcontract or the Contract Documents shall not be deemed a waiver of any rights or remedies that Owner or Contractor may have; shall not be deemed to constitute an amendment of this Subcontract; and shall not be deemed a waiver of any subsequent breach or default by Contractor of any of the terms, covenants, or conditions of this Subcontract.

(g) Offsite Delivery Storage of Materials (*If Applicable*): If approved by The Port Authority of New York and New Jersey Engineer (PANYNJ) and the Contractor, monthly advances to the Subcontractor may include an amount not to exceed 85% of the material value of material stored off-site, as determined by The Port Authority of New York and New Jersey's Engineer, pending incorporation in the permanent construction provided that the following conditions are met:

Materials: To be eligible for partial payment, materials must meet have a minimum material cost of two hundred fifty thousand dollars (\$250,000.00), be materials that will be incorporated into permanent work, be in a condition that is ready for on-site installation without further fabrication or processing, and must be materials that will be stored for a minimum of 60 days.

Storage: Such materials must be delivered to and be stored in a bonded warehouse located in the continental United States unless otherwise approved by the Engineer. The storage facility must provide any and all special storage conditions, regardless of the uniqueness, required by the material that is being stored. All items must be stored in a manner consistent with

the manufacturers' recommendations in order to ensure that equipment and material are in no way damaged or impaired during the storage period and that all manufacturers' warranties remain unimpaired. All materials stored at an approved off-site location shall be individually marked and identified in a conspicuous manner "Property of the Port Authority of New York and New Jersey - Contract WTC-284.458GC."

Subcontractor shall arrange for the Contractor and the PANYNJ Engineer to have access to the site for inspection of material stored as requested.

The Subcontractor shall submit to the PANYNJ Engineer and the Contractor a warehouse receipt for the items stored. Such receipt shall be in the name of The Port Authority of New York and New Jersey and shall be in a form approved by The Port Authority of New York and New Jersey.

The Subcontractor shall have risk of loss for any materials stored off-site until the acceptance by the Authority at the Project Site.

As a prerequisite to making any payments under this clause, the Subcontractor shall furnish whatever documents evidencing transfer of title to materials to the Authority that the PANYNJ Engineer and Contractor requires, including bills of sale and affidavits of title in forms acceptable to the Engineer.

In light of the period of storage, there will be no retention made from the 85% of the material cost paid in advance of incorporation of the materials into the permanent construction.

The making of partial payments shall not be deemed to be final acceptance of materials, nor shall it relieve Subcontractor of responsibility for such materials.

Material Delivery and Storage Plan: A Material Delivery and Storage Plan must be submitted by the Subcontractor for acceptance and approval by the PANYNJ Engineer and the Contractor. All material must be delivered and stored off-site in a manner consistent with the approved plan. Such a plan shall include: (1) The name and location of the bonded warehouse, (2) A detailed description of the conditions of storage, (3) a detailed description of the material stored and duration of such storage, (4) any plans for inspection, and testing, and (5) a description of all fees associated with storage, inspections,

maintenance, testing, moving, and any other kinds of expenses associated with off-site storage.

In approving such plan, the PANYNJ Engineer will advise Contractor, who will in turn advise the Subcontractor of any requirements for the Engineer's presence during the movement of items to or from storage.

In any subcontract where off-site storage is necessary, Contractor shall provide for such storage in accordance with the approved plan through the scheduled on-site delivery date. Contractor also shall provide that such off-site storage shall continue past such date as may be needed and will obtain unit pricing for such storage in six-month units to allow for such extension.

Warranty associated with Storage of Materials: Notwithstanding any provision hereof to the contrary, the warranty, if any, for any items stored shall not commence until the Authority's acceptance of the item. Any use for testing, start-up or beneficial use prior to the acceptance date shall not constitute warranty start-up. Subcontractor shall maintain any item used in connection with beneficial use prior to the warranty start date as if the time were under warranty during that period."

IN WITNESS WHEREOF, the parties have duly executed this Subcontract as of the date first above written.

DCM Erectors Inc.

PHOENIX CONSTRUCTORS, JV

Subcontractor

By:

[Signature]
(Signature)

By:

[Signature]
(Signature)

Printed Name:

LARRY ADAMS

Printed Name:

STEVEN PLATE

Title:

PRESIDENT

Title:

DIRECTOR - WTCC

Date:

MAY 12 / 09

Date:

5/12/'09

Attest:

[Signature]

Attest:

[Signature]

Subcontractor Check ONE: Corporation Partnership/Joint Venture Individual

If your company qualifies as one or more of the business enterprise types listed below, please check the appropriate box(s) and list certifying agency(s) below:

- DBE (Disadvantaged Business Enterprise)
- SDVE (Small Disabled Veteran Enterprise)
- MBE (Minority Business Enterprise)
- WBE (Women Business Enterprise)
- SBE (Small Business Enterprise)
- N/A (Does not apply to your firm)

Certifying Agency(s):

If your company is a Minority Business Enterprise (MBE), please check the appropriate box:

- African American
- Hispanic
- Aleutian Indian
- Native American
- Asian

LICENSING: By executing this Subcontract, Subcontractor affirms that it holds the following contractor license(s) applicable to the Work as required by the state of New York.

State of _____ License No(s). _____ (If none required, enter "N/A")

License Classification(s): _____

Expiration Date: _____

Payments will not be processed without complete licensing information.

*Subcontractor's Federal Employer Identification No.:

(If no E.I. Number, enter business owner's Social Security No.) *Per IRS 3402(s), 31% of each payment is required to be withheld and remitted to the IRS if E.I. Number or Social Security Number is not provided. This withholding amount will be in addition to Subcontract retainage.

For _____ Use:

License Verified Not Required By: _____ Date: _____

SCHEDULE 1 — SUBCONTRACT DOCUMENTS

The Contract Documents referred to in Article 1 and elsewhere in this Subcontract consists of the Subcontract and the following:

The Contract Documents, sometimes referred to collectively as the "Subcontract," are listed below and shall constitute the Subcontract.

NOTE: Exhibits are not sequential. Only the exhibits listed are applicable to this Subcontract.

- Prime Contract WTC-248.458GC and all associated Modifications to such, including but not limited to Modification 1 to the Prime Contract executed by Phoenix Constructors JV and The Port Authority of New York and New Jersey - All requirements in the Prime Contract between Phoenix Constructors JV and The Port Authority of New York and New Jersey and associated Modifications are flowed down in their totality, as applicable to the Scope of Work.

- Exhibit 1, Statement of Work Conformed
- Exhibit 1B, Applicable Prime Contract Clauses
- Exhibit 1C, Special Terms & Conditions
- Exhibit 1D, Administrative Procedure w/ Applicable Forms
- Exhibit 2A, Contractor's Pricing
- Exhibit 2B, Tax Exempt Status
- Exhibit 2C, Contractor's Signature Authorization
- Exhibit 3, Partial Release and Waiver
- Exhibit 4, Closeout w/ Applicable Forms
- Exhibit 5, Subcontractor Survey and Resource Questionnaire and Applicable Forms
- Exhibit 6, Minority Women's Business Enterprise Subcontract Requirements
- Exhibit 7, Equal employment Certification
- Exhibit 8, Change Order
- Exhibit 9, Intentionally Omitted
- Exhibit 10, Performance and Payment Bonds
- Exhibit 11, Insurance Rider w/ Applicable Forms
- Exhibit 11A, Owner Controlled Insurance Program ("OCIP") w/ Applicable Forms
- Exhibit 12, Off-site Material Storage Log
- Exhibit 13, Subcontractor Request Forms
- Exhibit 14, Intentionally Omitted
- Exhibit 15A, Health and Safety Procedure w/ Applicable Forms
- Exhibit 15B, Conditions and Precautions for Work within NYC Transit Right of Way
- Exhibit 15C, NYC Transit Maintenance of Way Track Division Safety Rulebook
- Exhibit 15D, Job Safety Analysis and Supplemental Project Specific Safety Plan

- Exhibit 15E, Environmental Performance Commitments (EPCs)
- Exhibit 15F, Sustainability Requirements
- Exhibit 16, Hazardous and Toxic Substance Requirements
- Exhibit 17, Temporary Facilities
- Exhibit 18, Quality Control w/ Applicable Sample Exhibits
- Exhibit 19A, Confidential Information w/ Applicable Forms
- Exhibit 19B, Site Rules & Regulations
- Exhibit 19C, WTC PATH ID Guidelines for Subcontractors w/ Applicable Forms
- Exhibit 19D, Vehicle Access Requirements w/ Applicable Form
- Exhibit 20, Intentionally Omitted
- Exhibit 21A, Daily Report
- Exhibit 21B, Standby Report
- Exhibit 22, Notice of Completion
- Exhibit 96, Attachments
- Exhibit 97, Division 1 Specifications
- Exhibit 98, Division 2-18 Specifications
- Exhibit 99, Drawings, consisting of drawings listed on the index page of the drawings and the statement of work
- Exhibit 23-95, Intentionally Omitted
- General Contracting Services Contract WTC-284.458 (GC) with associated modifications



110 East 42nd Street, Suite 1710
New York, NY
10017
Ph. (212) 599-1603 Fax (212) 599-1615

April 5, 2010

Tishman/Turner Joint Venture an agent for:

Port Authority of New York and New Jersey
115 Broadway-11th Floor
New York, NY 10006

Attention: **Mr. Eddie Ho**
Project Manager

Re: World Trade Center Transportation Hub
New York, NY
Port Authority Contract WTC 234.544
DCM Erectors Contract 934

Gentlemen:

As requested in your 3/22/10 letter with reference to the contractual obligation to furnish performance and payment bonds, we offer the following:

1. We wish to clarify your letter by stating that the contract has provision for the bonds to be issued in two phases. First by DCM's subcontractors and second (120 days later) by DCM itself. In fact DCM has provided bonds for Owen, ADF, URSSA and Jersey Precast fulfilling our contract obligation for the phase one deliverable.
2. However the performance and payment bond required by DCM Erectors in the amount of \$10-30 million has not been provided at this time. We are actively seeking a bonding facility to complete this contractual requirement. Due to the current situation with the construction industry combined with other commercial considerations relating to the WTC project we are finding it challenging to obtain the required bond.

We will keep you informed should we have additional information or updates once they are available. Thank you for your patience with this situation.

Yours truly,
DCM Erectors Inc.

A handwritten signature in black ink that reads "Barry King". The signature is written in a cursive, flowing style.

Barry King
Senior Project Manager

cc Larry Davis DCM
Mark Pagliettini PA



100 Broadway, 5th Floor
New York, NY 10005
Ph: 646-556-6700
Fax: 646-556-6747

March 22, 2010

Mr. Barry King
Vice President
DCM Erectors
100 E42nd St
New York, NY 10017

Re: Performance and Payment Bonds

Dear Barry:

As a follow up to the PA's letter dated 12/10/09 and as discussed every week at our meeting, DCM has not furnished the bonds required by Contract. The PA continues to approve payment applications in good faith without having received the requisite bonds.

DCM must furnish the requisite bonds by 3/31/10 or advise in writing with the expected date. Failure to do so may constitute withholding future payments.

Your immediate attention and cooperation in this matter is appreciated.

Sincerely,

TISHMAN TURNER, JV

On behalf of the Port Authority of New York and New Jersey



Eddie Ho

Cc: M. Pagliettini, S. Leone, J. Lynch, E. Palmer – PA
EL, SC, BD, GM, CG, 05120



DCM Erectors
 110 East 42nd Street, Suite 1704
 New York, NY 10017
 Phone: (212) 599-1603
 Fax: (212) 599-1615

934-WTC PKG.20 TRANSMITTAL #99999.014

e-mail: mzilnik@dcmerectors.com Cell: 646-385-1599

| | | |
|---|--|---|
| Transmitted To | | Date: 5-Nov-09 |
| Jacqueline Alleyne The Port Authority of NYNJ 115 Broadway - 9th Floor New York, NY 10006 Tel: 212-435-5583, Fax: 212-435-5644 | | Our Contract No.: 934 |
| | | Your Submission No.: |
| | | Spec # NA Pkg. #NA |
| | | Transmitted Via: Hand |
| | | Submitted By: Michael H. Zilnik |
| The drawings listed below: <input checked="" type="checkbox"/> Are enclosed with this letter <input type="checkbox"/> Have been mailed to you under separate cover <input type="checkbox"/> Are herewith handed to you by messenger | | The drawings listed below are: <input type="checkbox"/> For your approval <small>Please return 1 copy marked "APPROVED" or "APPROVED AS NOTED"</small> <input type="checkbox"/> For use at job. <input checked="" type="checkbox"/> For your records |

| Item # | Drawing Number | Revision Number | Description | Remarks |
|--------|----------------|-----------------|---|------------|
| 1 | NA | | Original Performance & Payment Bonds for OWEN | For Record |
| 2 | | | Steel Company, Inc. | |
| 3 | | | | |
| 4 | | | | |
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Port Authority of NY & NJ

TRANSMITTAL

No. 00359

115 Broadway, 6th Floor
New York, NY 10006

Phone: 212-435-5104

Contract # - 234.544/DCM

PROJECT: Station Constructn/Structure To Grade

DATE: 10/14/2009

TO: DCM Erectors, Inc
110 East 42nd Street
New York, NY 10017

REF: DCM Contract 934 - Late
Payment
For Application dated August 25,
2009

ATTN: Barry King

| WE ARE SENDING: | SUBMITTED FOR: | ACTION TAKEN: |
|--|--|---|
| <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Approval | <input type="checkbox"/> Approved as Submitted |
| <input checked="" type="checkbox"/> Letter | <input type="checkbox"/> Your Use | <input type="checkbox"/> Approved as Noted |
| <input type="checkbox"/> Prints | <input type="checkbox"/> As Requested | <input type="checkbox"/> Returned After Loan |
| <input type="checkbox"/> Change Order | <input checked="" type="checkbox"/> Review and Comment | <input type="checkbox"/> Resubmit |
| <input type="checkbox"/> Plans | | <input type="checkbox"/> Submit |
| <input type="checkbox"/> Samples | SENT VIA: | <input type="checkbox"/> Returned |
| <input type="checkbox"/> Specifications | <input type="checkbox"/> Attached | <input type="checkbox"/> Returned for Corrections |
| <input type="checkbox"/> Other: | <input type="checkbox"/> Separate Cover Via: | <input type="checkbox"/> Due Date: |

| ITEM NO. | COPIES | DATE | ITEM NUMBER | REV. NO. | DESCRIPTION | STATUS |
|----------|--------|------------|-------------|----------|---------------------------------|--------|
| 01 | 1 | 10/14/2009 | | | DCM Contract 934 - Late Payment | OPN |

Remarks: The attached letter is sent for your review and comment.

CC:

Signed: _____
Ed Palmer



THE PORT AUTHORITY OF NY & NJ

October 14, 2009

DCM Erectors Inc.
110 East 42nd Street
New York, NY 10017

**REF: WTC TRANSPORTATION HUB – CONTRACT 234.544
DCM ERECTORS CONTRACT 934**

Dear Mr. King:

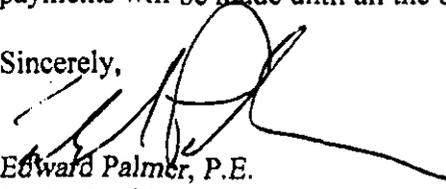
I am in receipt of your letter dated October 8, 2009 regarding late payment for application #4, dated August 25th, 2009, and have the following comments:

As noted during previous Progress Meetings, the Preconstruction Meeting and under Contract Article 10, "Bonds", DCM Erectors Inc. is required to provide Payment and Performance Bonds in the penal sum of approximately \$120 million from lower tier subcontractors ("Sub Bonds) and \$10-\$30 million ("Initial DCM Bonds"), within 30 days and 120 days of contract execution, respectively, and utilizing the bond forms provided in the contract documents.

Please refer to WTC 234.544 - Station Construction and Transit Hall Steel Structures to Grade - Progress Meeting #5, dated July 6th, 2009, Old Business item #4, where we requested that DCM formally submit its bonds "as is" after the unofficial draft ADF bond was reviewed by the Port Authority's Law Department. As you are aware, DCM only made a partial formal submission of the bonds for Jersey Precast, Owen and URSSA in mid-September, approximately two (2) months later than requested. In addition, we still have not received any formal Payment and Performance bond submissions from DCM, despite being well beyond the time requirements nor have we seen any formal submission of ADF's bonds to date. We believe that if the bonds were submitted when requested/required, we would have worked out all the current Payment and Performance bonding issues while still paying DCM under the contractual time period. As you are aware, during that time period, the Port Authority continued to make payments to DCM for \$13,540,396, not including the initial payment of \$9,600,000.

In an effort to continue the positive relationship between DCM and the Port Authority, we have agreed to release the August payment under the understanding that no additional payments will be made until all the bonding issues are resolved.

Sincerely,


Edward Palmer, P.E.
Senior Resident Engineer
WTC Transportation Hub

115 Broadway, 6th Fl
New York, NY 10006

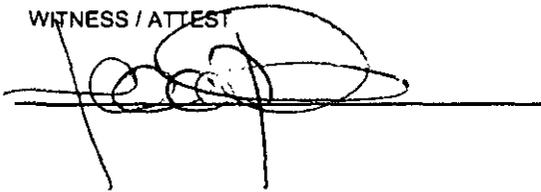
REF: WTC TRANSPORTATION HUB – CONTRACT 234.544
DCM ERECTORS CONTRACT 934

Bcc: R. Behnke, R. DeVito, J. Hillen, C. Lee, E. Lotfalla, M. Pagliettini, M. Philips,
Doc. Control.

2. Notwithstanding any other provision of this bond or the Contract, or otherwise, the Surety is not responsible for and shall not be held liable to the Obligor for any hazardous waste removal and the Surety shall not be held liable to, or in any other respect be responsible to, the Obligor by way of indemnity, claims or otherwise, or to any public authority or to any other person, firm or corporation, for or on account of any fines or claims by any public authority or for bodily injuries or property damage to any person or thing, including, but not limited to, injury or damage due to the release or threat of release of hazardous substances of any kind or damage to real estate or to the environment or clean-up costs or other damages of whatever kind or nature arising out of any act of commission or omission by the Principal, the Principal's agents, servants, employees, subcontractors or suppliers or any other person in connection with the performance of the Contract. This limitation applies regardless of when any such fine is assessed, claim is made, or injury, damage, release or threat of release occurs and without regard to any term or condition of the Contract.
3. The Surety hereby waives notice of any alteration or extension of time made by the Obligor.
4. Any suit under this bond must be instituted before the expiration of one (1) year from the date on which the Principal ceased to work on the Contract or such time period as otherwise permitted by relevant statute. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.
5. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligor named herein or the heirs, executors, administrators or successors of the Obligor.
6. Any claims must be presented in writing to Liberty Mutual Insurance Company to the attention of the Surety Law Department at the above address.

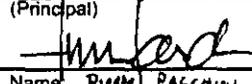
DATED as of this 9TH day of JULY, 20 09.

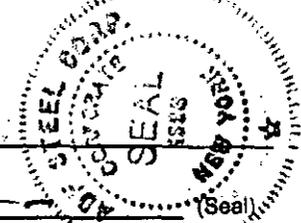
WITNESS / ATTEST



ADF STEEL CORP.
(Principal)

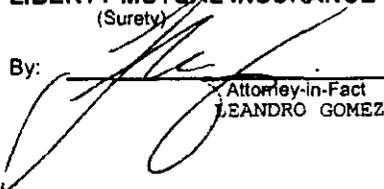
By:

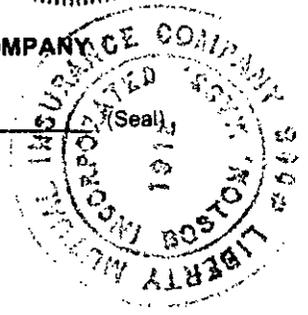

Name: Pietro PACCINI
Title: PRES AND. C.D.O.



LIBERTY MUTUAL INSURANCE COMPANY
(Surety)

By:


Attorney-in-Fact
LEANDRO GOMEZ





Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA. 19462-1644
Ph. (610) 832-8240

PAYMENT BOND

Bond Number: BDTO-220001-009

KNOW ALL MEN BY THESE PRESENTS, that we ADF STEEL CORP.

ADF STEEL CORP., as principal (the "Principal"),
and Liberty Mutual Insurance Company, a Massachusetts stock insurance company, as surety (the "Surety"),
are held and firmly bound unto DCM ERECTORS INC.

DCM ERECTORS INC., as obligee (the "Obligee"),
in the penal sum of SIXTY-SIX MILLION TWO HUNDRED AND FIFTY THOUSAND

Dollars (\$66 250 000),
for the payment of which sum well and truly to be made, the Principal and the Surety, bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal has by written agreement dated the 11TH day of MAY, 20 09,
entered into a contract (the "Contract") with the Obligee for ADF PROPOSAL ACCEPTED ON MAY 11TH, 2009
NO 2008-103 (REV. 6) IN REFERENCE TO THE CONTRACT-W.T.C.234.544 TRANSPORTATION HUB,
STATION CONSTRUCTION AND TRANSIT HALL W.P. #20, NEW YORK, N.Y.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly
make payment to all Claimants, as hereinafter defined, for all labor and material used or reasonably required for
use in the performance of the Contract, then this obligation shall be null and void; otherwise it shall remain in full
force and effect.

PROVIDED AND SUBJECT TO THE CONDITIONS PRECEDENT:

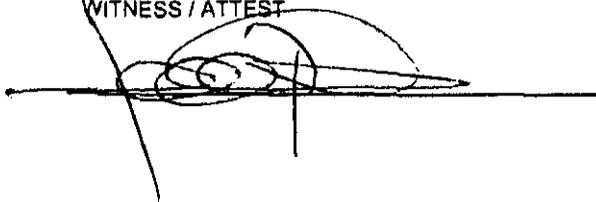
1. A "Claimant" is defined as one having a direct contract with the Principal or with a subcontractor of the Principal for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The Principal and the Surety hereby jointly and severally agree with the Obligee that every Claimant, who has not been paid in full before the expiration of a period of ninety (90) days (or such lesser or greater time period as otherwise permitted by relevant law) after the date on which the last of such Claimant's work or labor was done or performed, or materials were furnished by such Claimant, may sue on this bond for the use of such Claimant, prosecute the suit to final judgment for such sum or sums as may be justly due Claimant, and have execution thereon. The Obligee shall not be liable for the payment of any costs or expenses of any such suit.
3. No suit or action shall be commenced hereunder by any Claimant:
 - (a) Unless Claimant, other than one having a direct contract with the Principal, shall have given written notice to the Principal and the Surety within ninety (90) days (or such lesser or greater time period as otherwise permitted by relevant law) after such Claimant did or performed the last of the work or labor, or furnished the last of the materials for which said claim is made, stating with substantial accuracy the amount claimed and the name of the party to whom the materials were furnished, or for whom the work or labor was done or performed. Such notice shall be served by mailing the same by registered mail or certified mail, postage prepaid, in separate envelopes addressed to the Principal and Surety. The Principal may be served at any place where an office is regularly maintained for the transaction of business, or in any manner in which legal process may be served in the state in which the aforesaid project is located, save that such service need not be made by a public officer. The Surety may be served to the attention of The Surety Law Department at the above-listed address.
 - (b) Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the project, or any part thereof, is situated, or in the United States District Court for the district in which the project, or any part thereof, is situated, and not elsewhere.

(c) After the expiration of one (1) year (or such lesser or greater time period as otherwise permitted by relevant law) following the date on which the Principal provided the last labor and/or materials to the project. If the provisions of this paragraph are void or prohibited by law, the minimum period of limitation available to sureties as a defense in the jurisdiction of the suit shall be applicable.

- 4. Surety shall have no liability to any Claimant under this Bond for any amount unless it is due and owing to the Claimant by the Principal pursuant to the express terms of the contract between the Principal and Claimant or, if the Claimant does not have a direct Contract with Principal, pursuant to the terms and conditions of the Contract between the Claimant and the Subcontractor to the Principal. The Bond incorporates all of the Principal's contractual defenses, including but not limited to pay-if-paid provisions, whereby payment to the Claimant is subject to the condition precedent of the Obligee's payment to the Principal, and other limitations on amounts due under the contract between Principal and Claimant.
- 5. The amount of this bond shall be reduced by and to the extent of any payment or payments made in good faith hereunder, inclusive of the payment by Surety of mechanics' liens, which may be filed of record against such improvement, whether or not a claim for the amount of such lien be presented under and against this bond.

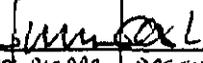
DATED as of this 9TH day of JULY, 2009.

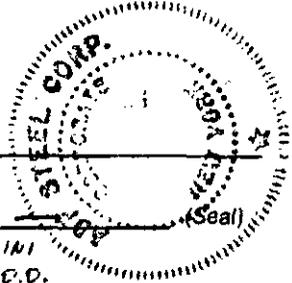
WITNESS / ATTEST



ADF STEEL CORP.
(Principal)

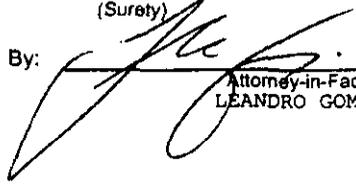
By:


Name: PIERRE PASCHINI
Title: PRES. AND C.E.O.



LIBERTY MUTUAL INSURANCE COMPANY
(Surety)

By:


Attorney-in-Fact
LEANDRO GOMEZ





Interchange Corporate Center
450 Plymouth Road, Suite 400
Plymouth Meeting, PA. 19462-1644
Ph. (610) 832-8240

RIDER ADDING ADDITIONAL OBLIGEE

This rider is to be attached to and form a part of surety bond number BDTO-220001-009, dated the 9TH day of JULY, 20 09 executed by LIBERTY MUTUAL INSURANCE COMPANY, a Massachusetts stock insurance company, as surety (the "Surety"), on behalf of ADF STEEL CORP.

_____ as principal (the "Principal"),
in favor of DCM ERECTORS INC.

_____ as obligee (the "Obligee").

WHEREAS, the Principal has by written agreement dated the 11TH day of MAY, 20 09 entered into a contract (the "Contract") with the Obligee for: ADF PROPOSAL ACCEPTED ON MAY 11TH, 2009 NO 2008-103 (REV. 6) IN REFERENCE TO THE CONTRACT-W.T.C. 234.544 TRANSPORTATION HUB, STATION CONSTRUCTION AND TRANSIT HALL W.P.#20, NEW YORK, N.Y.

WHEREAS, upon the request of the Principal and Obligee, the attached bond is hereby amended to add THE PORT AUTHORITY OF NEW YORK & NEW JERSEY at Treasury/Risk Management, 225 Park Ave. South, 12th floor, New York, NY 10003-FEDERAL TRANSIT ADMINISTRATION at One Boiling Green, New York, NY 10004-METROPOLITAN TRANSPORTATION AUTHORITY at 2 Broadway, New York, NY 10004 as additional obligee(s) [the "Additional Oblige(e)s"] to the bond, and the Obligee and Additional Oblige(e)s shall be joint and several beneficiaries of the bond and shall be collectively referred to as the "Bond Oblige(e)s".

PROVIDED, HOWEVER, there shall be no liability of the Surety under the attached bond to the Bond Oblige(e)s, either jointly or severally, unless and until the Bond Oblige(e)s, shall make payment to the Principal or to the Surety (should the Surety arrange for or undertake the completion of the Contract upon the default of the Principal), strictly in accordance with the terms of the Contract; and otherwise satisfy all terms and conditions and perform all of the other obligations to be performed under the Contract at the time and in the manner therein set forth; all of the acts of one Bond Oblige(e) being binding upon the other.

In no event shall the aggregate liability of the Surety to the Bond Oblige(e)s, either jointly or severally, exceed the penal sum of the attached bond, nor shall the Surety be liable except for a single payment for each and every breach or default. At the Surety's election, any payment due any Bond Oblige(e) may be made by its check issued to all Bond Oblige(e)s.

This change is effective the 9TH day of JULY, 20 09.

The attached bond shall be subject to all of its terms, conditions and limitations except as hereby modified.

IN WITNESS WHEREOF, said Principal, Surety, Obligee and Additional Oblige(e) have caused these presents to be duly signed and sealed this 9th day of JULY, 20 09.

[Signature]

(Principal) ADF STEEL CORP.

LIBERTY MUTUAL INSURANCE COMPANY
(Surety)

(Obligee) DCM ERECTORS INC.

(Additional Oblige(e)) THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

(Additional Oblige(e)) FEDERAL TRANSIT ADMINISTRATION

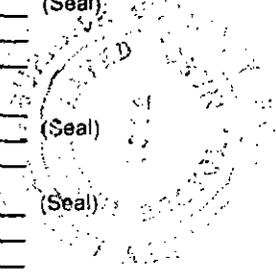
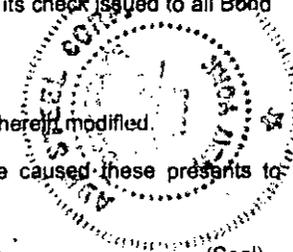
By: PIERRE PASCHINI (Seal)
Title: PRES. AND C.O.O.
Date: JULY 9, 2009

By: LEANDRO GOMEZ (Seal)
Title: Attorney-in-Fact
Date: 9TH OF JULY 2009

By: _____ (Seal)
Title: _____
Date: _____

By: _____ (Seal)
Title: _____
Date: _____

By: _____ (Seal)
Title: _____
Date: _____



(Additional Oblige)
METROPOLITAN TRANSPORTATION AUTHORITY

By: _____ (Seal)
Title: _____
Date: _____

(Additional Oblige)

By: _____ (Seal)
Title: _____
Date: _____

(Additional Oblige)

By: _____ (Seal)
Title: _____
Date: _____

(Additional Oblige)

By: _____ (Seal)
Title: _____
Date: _____

(Additional Oblige)

By: _____ (Seal)
Title: _____
Date: _____

(Additional Oblige)

By: _____ (Seal)
Title: _____
Date: _____

THIS POWER OF ATTORNEY IS NOT VALID UNLESS IT IS PRINTED ON RED BACKGROUND.

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

LIBERTY MUTUAL INSURANCE COMPANY
BOSTON, MASSACHUSETTS

POWER OF ATTORNEY

KNOW ALL PERSONS BY THESE PRESENTS:

That Liberty Mutual Insurance Company (the "Company"), a Massachusetts stock insurance company, pursuant to and by authority of the By-law and Authorization hereinafter set forth, does hereby name, constitute and appoint **LEANDRO GOMEZ, MICHAEL WEISS, ALL OF THE CITY OF TORONTO, PROVINCE OF ONTARIO**

, each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, and the execution of such undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents, shall be as binding upon the Company as if they had been duly signed by the president and attested by the secretary of the Company in their own proper persons.

That this power is made and executed pursuant to and by authority of the following By-law and Authorization:

ARTICLE XIII - Execution of Contracts: Section 5. Surety Bonds and Undertakings.

Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

By the following instrument the chairman or the president has authorized the officer or other official named therein to appoint attorneys-in-fact:

Pursuant to Article XIII, Section 5 of the By-laws, Gamet W. Elliott, Assistant Secretary of Liberty Mutual Insurance Company, is hereby authorized to appoint such attorneys-in-fact as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

That the By-law and the Authorization set forth above are true copies thereof and are now in full force and effect.

IN WITNESS WHEREOF, this Power of Attorney has been subscribed by an authorized officer or official of the Company and the corporate seal of Liberty Mutual Insurance Company has been affixed thereto in Plymouth Meeting, Pennsylvania this 12th day of February 2009

LIBERTY MUTUAL INSURANCE COMPANY

By Gamet W. Elliott
Gamet W. Elliott, Assistant Secretary



COMMONWEALTH OF PENNSYLVANIA ss
COUNTY OF MONTGOMERY



On this 12th day of February, 2009, before me, a Notary Public, personally came Gamet W. Elliott, to me known, and acknowledged that he is an Assistant Secretary of Liberty Mutual Insurance Company; that he knows the seal of said corporation, and that he executed the above Power of Attorney and affixed the corporate seal of Liberty Mutual Insurance Company thereto with the authority and at the direction of said corporation.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my notarial seal at Plymouth Meeting, Pennsylvania, on the day and year first above written.



COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Teresa Pastella, Notary Public
Plymouth Twp., Montgomery County
My Commission Expires Mar. 28, 2009
Member, Pennsylvania Association of Notaries

Teresa Pastella
Notary Public

CERTIFICATE

I, the undersigned, Assistant Secretary of Liberty Mutual Insurance Company, do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy, is in full force and effect on the date of this certificate; and I do further certify that the officer or official who executed the said power of attorney is an Assistant Secretary specially authorized by the chairman or the president to appoint attorneys-in-fact as provided in Article XIII, Section 5 of the By-laws of Liberty Mutual Insurance Company.

This certificate and the above power of attorney may be signed by facsimile or mechanically reproduced signatures under and by authority of the following vote of the board of directors of Liberty Mutual Insurance Company at a meeting duly called and held on the 12th day of March, 1980.

VOTED that the facsimile or mechanically reproduced signature of any assistant secretary of the company, wherever appearing upon a certified copy of any power of attorney issued by the company in connection with surety bonds, shall be valid and binding upon the company with the same force and effect as though manually affixed.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said company, this 9th day of July, 2009.



David M. Carey
David M. Carey, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, bank deposit, currency rate, interest rate or residual value guarantees.

To confirm the validity of this Power of Attorney call 1-610-832-8240 between 9:00 am and 4:30 pm EST on any business day.



ALLIED NORTH AMERICA

Allied North America Insurance
Brokerage of New York, LLC
390 North Broadway
Jericho, NY 11753

Remit Payment To:
Allied North America Insurance
Brokerage of New York, LLC
390 North Broadway
Jericho, NY 11753

----- INVOICE -----

Jersey Precast Corporation
853 Nottingham Way
Hamilton, NJ 08638

Invoice Date 08/03/09
Invoice No. 262444
Bill-To Code JERSEYPREC
Client Code JERSEYPREC
Inv Order No. 1*368125

Named insured: Jersey Precast Corporation

Amount Remitted: \$

Please return this portion with your payment.

Make checks payable to: Allied North America Insurance Brokerage of New York, LLC

| Effective Date | Policy Period | Coverage Description | Transaction Amount |
|----------------|----------------------------|--|--------------------|
| 08/03/09 | 08/03/09 to 08/03/13 | Hanover Insurance Company Policy No. BCY1906552 Class II Premium - Performance & Payme Subcontract P & P Bond Bond Amount \$6,600,000.00 Obligee: DCM Erectors, Inc Proj: Purchase Order No. WTC234.554-JERSEY-934-936, Work Package 20, World Trade Center Transportation Hub, Below Grade Steel, New York, NY Bond issued in 1 original and sent to Amir Ul Islam Premium includes a 36% time load surcharge | 79,492.00 |
| | | Invoice Number: 262444 Amount Due: | 79,492.00 |

DISCLOSURE STATEMENT:

For information on Compensation Protocols, please visit our website at
www.alliedna.com

**PREMIUMS DUE WITHIN THIRTY (30) DAYS
OF THE DATE OF THIS INVOICE
PLEASE PAY PROMPTLY THANK YOU!**

**THE SURETY IS ENTITLED TO BILL
ADDITIONAL PREMIUMS BASED ON CONTRACT
OVERRUNS AND MAY DO SO ON A
PERIODIC BASIS. A NOTICE WILL BE
SENT TO US/YOU AT LEAST 30 DAYS
PRIOR TO THIS OCCURRENCE.**

*Premiums Due and Payable on Effective Date



JERSEY PRECAST CORP., INC.
 OPERATING ACCOUNT
 853 NOTTINGHAM WAY
 HAMILTON TOWNSHIP, NJ 08638

MAGYAR BANK
 NEW BRUNSWICK, NJ 08903
 65-7091/2212

11565

8/17/2009

PAY TO THE ORDER OF **ALLIED NORTH AMERICA INSURANCE**

\$ **79,492.00

Seventy-Nine Thousand Four Hundred Ninety-Two and 00/100

DOLLARS

ALLIED NORTH AMERICA INSURANCE
 BROKERAGE OF NEW YORK, LLC
 390 NORTH BROADWAY
 JERICO, NY 11753-2110

MEMO JERSEYPREC

⑈011565⑈ ⑈1221270910⑈

789461⑈

JERSEY PRECAST CORP., INC. / OPERATING ACCOUNT
 ALLIED NORTH AMERICA INSURANCE

| Date | Type | Reference |
|----------|------|-----------|
| 8/3/2009 | Bill | 262444 |

| Original Amt. |
|---------------|
| 79,492.00 |

| Balance Due |
|-------------|
| 79,492.00 |

8/17/2009
 Discount
 Check Amount

| Payment |
|-----------|
| 79,492.00 |
| 79,492.00 |

MAGYAR OPERATIN JERSEYPREC

79,492.00

JERSEY PRECAST CORP., INC. / OPERATING ACCOUNT
 ALLIED NORTH AMERICA INSURANCE

| Date | Type | Reference |
|----------|------|-----------|
| 8/3/2009 | Bill | 262444 |

| Original Amt. |
|---------------|
| 79,492.00 |

| Balance Due |
|-------------|
| 79,492.00 |

8/17/2009
 Discount
 Check Amount

| Payment |
|-----------|
| 79,492.00 |
| 79,492.00 |

MAGYAR OPERATIN JERSEYPREC

79,492.00

Check Image

Item Reference: 11565

Amount: \$79,492.00

FRONT



JERSEY PRECAST CORP., INC.
OPERATING ACCOUNT
853 NOTTBOHAM WAY
HAMILTON TOWNSHIP, NJ 08638

MAGYAR BANK
NEW BRUNSWICK, NJ 08903
66-7001/2212

11565
8/17/2009

PAY TO THE ORDER OF **ALLIED NORTH AMERICA INSURANCE** \$ **79,492.00**

Seventy-Nine Thousand Four Hundred Ninety-Two and 00/100 DOLLARS

ALLIED NORTH AMERICA INSURANCE
BROKERAGE OF NEW YORK, LLC
300 NORTH BROADWAY
JERICHO, NY 11753-2110

MEMO JERSEYPREC

[Signature]

⑆011565⑆ ⑆221270910⑆ 789461⑆

BACK

Seq: 1
Dep: 000897
R/T: 011000138
Date: 08/19/09

Fac/Depositor only to
Account 004834466369
Cust: Allied North America Insurance Brokerage
AC: Master
Deposited by: **ALLIED NORTH AMERICA INSURANCE BROKERAGE OF NEW YORK, LLC**
NEW YORK, NY 10017
DO NOT WRITE ABOVE THIS LINE
FOR DEPOSIT ONLY
BROKERAGE OF NEW YORK, LLC
004834466369

⑆011565⑆ ⑆221270910⑆ 789461⑆

PRINTED ON RECYCLED PAPER



PERFORMANCE BOND

FORM: 10.2

Multiple Obligor Performance Bond

Bond No. BCY1906552 Premium Amount \$ 79,492.00

KNOW ALL MEN BY THESE PRESENTS,

That we, Jersey Precast Corporation

(Full Name and Address of Subcontractor)

853 Nottingham Way, Hamilton Township, New Jersey 08638

(hereinafter called the Principal), as Principal, and The Hanover Insurance Company

(Full Name and Address of Surety)

400 Atrium Drive, Somerset, New Jersey 08873

a corporation duly organized under the laws of the state of New Hampshire (hereinafter called the Surety), as Surety, are held and firmly bound unto:

Phoenix Constructors, JV and its Partners: Bovis Lend Lease LMB, Inc., Fluor Enterprises, Inc., Granite Construction Northeast Inc., and Skanska USA Civil Northeast Inc.

115 Broadway New York, NY 10006

and

Table with 2 columns: List Name(s) of Other Obligor(s), Address(es) of Other Obligor(s). Rows include The Port Authority of New York & New Jersey, Federal Transit Administration, and Metropolitan Transportation Authority.

(hereinafter called the Obligees)

in the sum of Six Million Six Hundred Thousand and 00/100 U.S. Dollars

(\$6,600,000.00), for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

Whereas, Principal has entered into Purchase Order dated June 15, 2009 for Work Package 20, World Trade Center Transportation Hub, New York, New York, Supply precast concrete work, Contract WTC-234.554-Jersey-934-936 by and between DCM Erectors, Inc., furtherance to DCM's Contract Modification Award Letter dated May 08, 2009 from The Port Authority of New York and New Jersey. This Purchase Order shall be a complete and exclusive statement of agreement between the parties. Stipulated and Agreed, DCM is the primary Obligor made part herein as if fully set forth herein.

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION



PERFORMANCE BOND

FORM: 10.2

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly and faithfully perform said Contract, within the time provided therein and any extension thereof that may be granted by the Obligees, and during the life of any guaranty required under said Contract, and shall also promptly and faithfully perform any and all authorized modifications of said Contract that may hereafter be made, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Whenever Principal shall be, and declared by Obligees, or any of them, to be in default, in breach, and/or to have failed to perform in any manner under the Contract, the Obligees having performed their respective obligations thereunder, the Surety shall promptly remedy the default by one of the following:

- 1. Fund Principal to complete the Contract in accordance with its terms and conditions.
2. Complete the Contract in accordance with its terms and conditions utilizing a subcontractor of obligee's discretion.
3. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Obligees of the best value bidder, arrange for a contract between such bidder and Obligees, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, and pursuant to the Contract, the amount set forth in the first paragraph hereof. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by Obligees to the Principal under the Contract and any amendments thereto, less the amount properly paid by Obligees to the Principal.
4. Pay to Obligees the full amount of the penal sum above stated.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligees named herein or the heirs, executors, administrators, successors or assigns of the Obligees.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract.

Sealed with our seals and dated this 3rd day of August 2009

Jersey Precast Corporation (Principal)

Gregory A. Reunion CFO (Attested by)

By: Al Amir ulislam (Title) PRESIDENT

SEAL

Theresa J. Foley (Attested by)

The Hanover Insurance Company

Fred Nicholson (Attorney-in-Fact)

Fred Nicholson

SEAL

*Attach Power-Of-Arrooney

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION

ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION

STATE OF New Jersey,
COUNTY OF Middlesex)

ON THE 3rd DAY OF August 2009, BEFORE ME PERSONALLY CAME Amir Ullstam TO ME KNOWN, WHO, BEING BY ME DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES AT _____, THAT (S)HE IS THE President OF Jersey Precast Corporation THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE ABOVE INSTRUMENT; AND THAT (S)HE SIGNED HIS/HER NAME THERETO BY ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION.

Ilse C. Sosa
Notary Public **ILSE C. SOSA**
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/3/2011

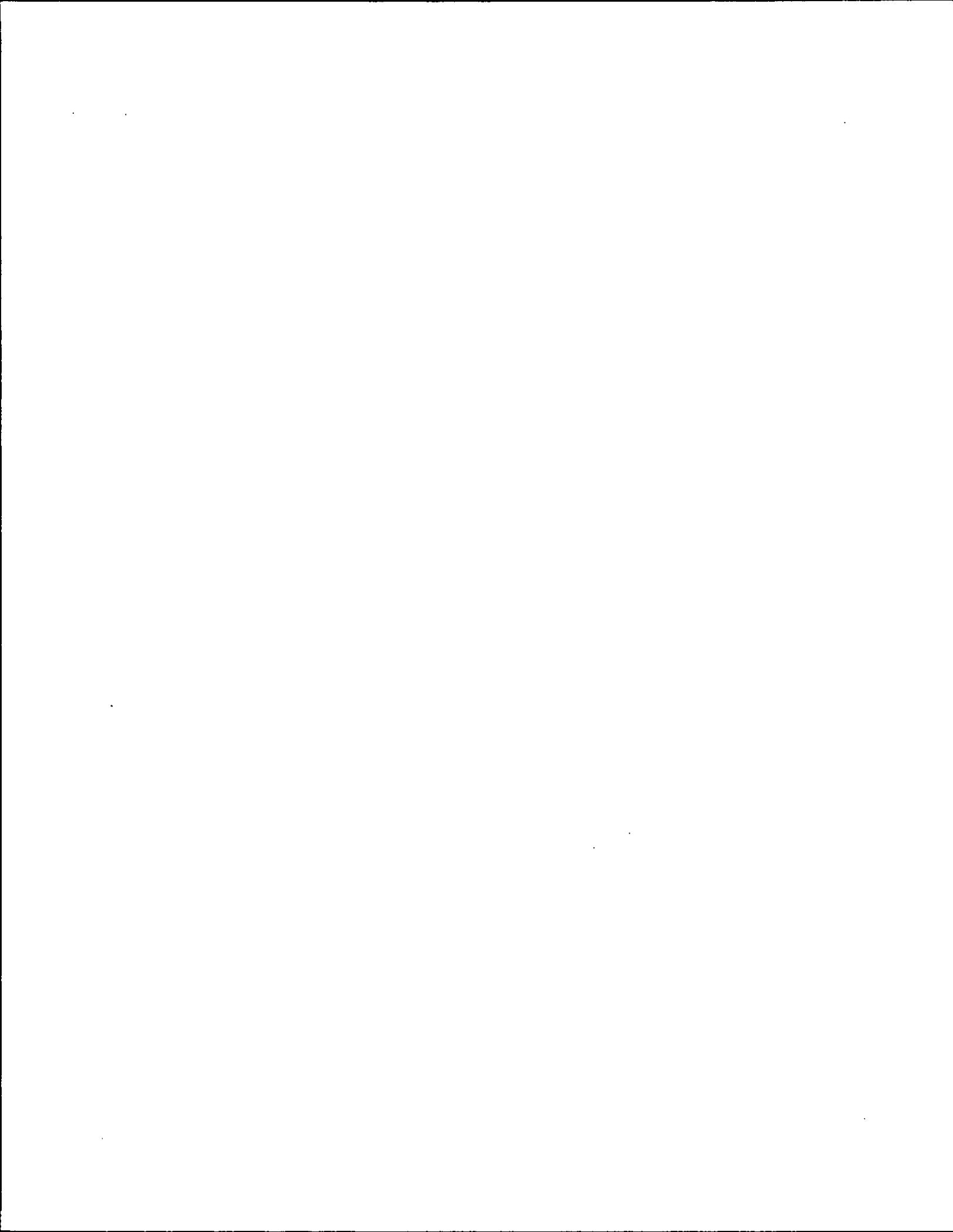
ACKNOWLEDGEMENT OF SURETY

STATE OF NEW YORK,)
COUNTY OF NASSAU,)

ON THE 3rd DAY OF August 2009, BEFORE ME PERSONALLY CAME Fred Nicholson TO ME KNOWN, WHO, BEING BY ME DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES AT Nassau County, New York THAT (S)HE IS THE ATTORNEY-IN-FACT OF The Hanover Insurance Company THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE ABOVE INSTRUMENT; THAT (S)HE KNOWS THE SEAL OF SAID CORPORATION; THAT ONE OF THE SEALS AFFIXED TO THE FOREGOING INSTRUMENT IS SUCH SEAL; THAT IT WAS SO AFFIXED BY ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION; AND THAT (S)HE SIGNED HIS/HER NAME THERETO BY LIKE ORDER.

DENISE CUCURULLO
Notary Public, State Of New York
No. 01CU4783740
Qualified In Nassau County
Commission Expires September 30, 20 13

Denise Cucurullo
Notary Public



THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint William A. Marino, James E. Marran, Jr., David W. Rosehill, Vincent A. Walsh, Nancy Schnee, David A. Goldstein, Theresa J. Foley, Fern Perry, Fred Nicholson, Michael Marino, Diane P. Alessi and/or Daryl LaForge

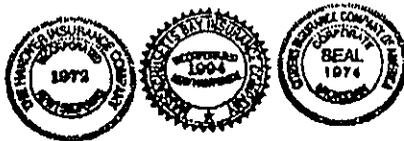
of Jericho, NY and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows: Any such obligations in the United States, not to exceed Twenty Million and No/100 (\$20,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this 5th day of January 2008.



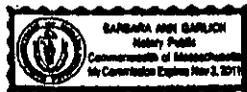
THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Mary Jeanne Anderson
Mary Jeanne Anderson, Vice President

Robert K. Grennan
Robert K. Grennan, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 5th day of January 2008, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 3rd day of August, 2008.

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Stephen L. Grant
Stephen L. Grant, Assistant Vice President



The Hanover Insurance Company, Bedford, New Hampshire
FINANCIAL STATEMENT AS OF DECEMBER 31, 2008

| ASSETS | 2008 |
|---|-----------------------------|
| Cash in Banks (Including Short-Term Investments)..... | \$ 185,470,946 |
| Bonds and Stocks..... | 3,284,254,490 |
| Other Admitted Assets..... | <u>981,445,993</u> |
| Total Admitted Assets..... | <u><u>4,451,171,429</u></u> |

| LIABILITIES, CAPITAL AND SURPLUS | |
|---|-----------------------------|
| Reserve for Unearned Premiums..... | \$ 855,011,462 |
| Reserve for Loss and Loss Expense..... | 1,598,443,164 |
| Reserve for Taxes..... | 0 |
| Funds held under reinsurance treaties..... | 8,291,579 |
| Reserve for all other Liabilities..... | 451,819,320 |
| Capital Stock - \$1.00 par..... | \$ 5,000,000 |
| Net Surplus..... | <u>1,532,605,904</u> |
| Policyholders' Surplus..... | <u>1,537,605,904</u> |
| Total Liabilities, Capital and Surplus..... | <u><u>4,451,171,429</u></u> |

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF WORCESTER

} s.s.:

Martin D. Kelly, Asst. Treasurer of The Hanover Insurance Company, being duly sworn deposes and says that he is the above described officer of said Company, and certifies that the foregoing statement is a true statement of the condition and affairs of the said Company on December 31, 2008.

MARTIN D. KELLY
Asst. Treasurer



PAYMENT BOND

FORM: 10.1

Multiple Obligees
Labor and Material Payment Bond

Bond No. BCY1906552 Premium Amount \$ NIL - Included in the cost of the Performance Bond

KNOW ALL MEN BY THESE PRESENTS,

That we, Jersey Precast Corporation

853 Nottingham Way, Hamilton Township, New Jersey 09638 (Full Name and Address of Subcontractor)

(hereinafter called the Principal), as Principal, and The Hanover Insurance Company
400 Atrium Drive, Somerset, New Jersey 08873 (Full Name and Address of Surety)

a corporation duly organized under the laws of the state of New Hampshire
(hereinafter called the Surety), as Surety, are held and firmly bound unto:

Phoenix Constructors, JV and its Partners: Bovis Lend Lease LMB, Inc., Fluor Enterprises, Inc., Granite Construction Northeast Inc., and Skanska USA Civil Northeast Inc.
115 Broadway
New York, NY 10006

Table with 2 columns: List Name(s) of Other Obligees(s), Address(es) of Other Obligees(s). Rows include The Port Authority of New York & New Jersey, Federal Transit Administration, Metropolitan Transportation Authority.

(hereinafter called the Obligees)

In the sum of Six Million Six Hundred Thousand and 00/100 U.S. Dollars (\$ 6,600,000.00), for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

Whereas, Principal has entered into Purchase Order dated June 15, 2009 for Work Package 20, World Trade Center Transportation Hub, New York, New York, Supply precast concrete work, Contract WTC-234.554-Jersey-934-936 by and between DCM Erectors, Inc., furtherance to DCM's Contract Modification Award Letter dated May 08, 2009 from The Port Authority of New York and New Jersey. This Purchase Order shall be a complete and exclusive statement of agreement between the parties. Stipulated and Agreed, DCM is the primary Obligees made part herein as if fully set forth herein.

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION
RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION



PAYMENT BOND

FORM: 10.1

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly make payment to all claimants as hereafter defined, for all (1) labor and material used or reasonably required for use in the performance of the Contract, (2) pension, welfare, vacation and any other supplemental employee benefit contributions payable under collective bargaining agreements with respect to persons employed upon said work, and (3) federal, state and local taxes and contributions required to be withheld or paid with respect to the employment of persons upon said work that may hereafter be made, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

- 1. A claimant is defined as one having a direct contract with the Principal or a subcontractor of the Principal, for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been paid in full, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Obligees shall not be liable for the payment of any costs expenses, and/o claims of any suit.
3. No suit or action shall be commenced hereunder by any claimant:
a. After the expiration of the minimum period of limitation permitted by any law controlling the construction hereof.
b. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, and not elsewhere.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract.

Sealed with our seals and dated this 3rd day of August 2009 (Day) (Month) (Year)

Jersey Precast Corporation (Principal)

Gregory A. Rubin CFO (Attested by)

By: M. Amirulislam (Title) PRESIDENT

SEAL

The Hanover Insurance Company (Surety)

Theresa J. Foley (Attested by)

Fred Nicholson (Attorney-in-Fact)

Fred Nicholson SEAL

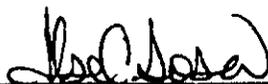
*Attach Power-Of-Army

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION

ACKNOWLEDGEMENT OF CONTRACTOR, IF A CORPORATION

STATE OF New Jersey,
COUNTY OF Middlesex.)

ON THE 3rd DAY OF August 2009, BEFORE ME PERSONALLY CAME Amir Utislam TO ME KNOWN, WHO, BEING BY ME DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES AT _____; THAT (S)HE IS THE President OF Jersey Precast Corporation THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE ABOVE INSTRUMENT; AND THAT (S)HE SIGNED HIS/HER NAME THERETO BY ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION.

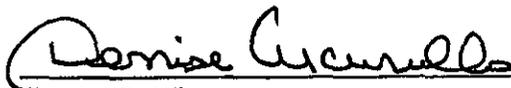


Notary Public **ILSE C. SOSA**
NOTARY PUBLIC OF NEW JERSEY
Commission Expires 2/3/2011

ACKNOWLEDGEMENT OF SURETY

STATE OF NEW YORK,)
COUNTY OF NASSAU,)

ON THE 3rd DAY OF August 2009, BEFORE ME PERSONALLY CAME Fred Nicholson TO ME KNOWN, WHO, BEING BY ME DULY SWORN, DID DEPOSE AND SAY THAT (S)HE RESIDES AT Nassau County, New York THAT (S)HE IS THE ATTORNEY-IN-FACT OF The Hanover Insurance Company THE CORPORATION DESCRIBED IN AND WHICH EXECUTED THE ABOVE INSTRUMENT; THAT (S)HE KNOWS THE SEAL OF SAID CORPORATION; THAT ONE OF THE SEALS AFFIXED TO THE FOREGOING INSTRUMENT IS SUCH SEAL; THAT IT WAS SO AFFIXED BY ORDER OF THE BOARD OF DIRECTORS OF SAID CORPORATION; AND THAT (S)HE SIGNED HIS/HER NAME THERETO BY LIKE ORDER.



Notary Public

DENISE CUCURULLO
Notary Public, State Of New York
No. 01CU4789740
Qualified In Nassau County
Commission Expires September 30, 20 13

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

POWERS OF ATTORNEY
CERTIFIED COPY

KNOW ALL MEN BY THESE PRESENTS: That THE HANOVER INSURANCE COMPANY and MASSACHUSETTS BAY INSURANCE COMPANY, both being corporations organized and existing under the laws of the State of New Hampshire, and CITIZENS INSURANCE COMPANY OF AMERICA, a corporation organized and existing under the laws of the State of Michigan, do hereby constitute and appoint William A. Marino, James E. Marran, Jr., David W. Rosehill, Vincent A. Walsh, Nancy Schnee, David A. Goldstein, Theresa J. Foley, Fern Perry, Fred Nicholson, Michael Marino, Diane P. Alessi and/or Daryl LaForge

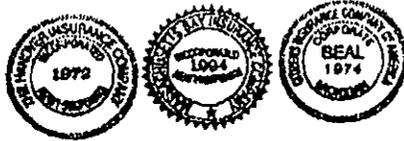
of Jericho, NY and each is a true and lawful Attorney(s)-in-fact to sign, execute, seal, acknowledge and deliver for, and on its behalf, and as its act and deed any place within the United States, or, if the following line be filled in, only within the area therein designated

any and all bonds, recognizances, undertakings, contracts of indemnity or other writings obligatory in the nature thereof, as follows: Any such obligations in the United States, not to exceed Twenty Million and No/100 (\$20,000,000) in any single instance

and said companies hereby ratify and confirm all and whatsoever said Attorney(s)-in-fact may lawfully do in the premises by virtue of these presents. These appointments are made under and by authority of the following Resolution passed by the Board of Directors of said Companies which resolutions are still in effect:

"RESOLVED, That the President or any Vice President, in conjunction with any Assistant Vice President, be and they are hereby authorized and empowered to appoint Attorneys-in-fact of the Company, in its name and as its acts, to execute and acknowledge for and on its behalf as Surety any and all bonds, recognizances, contracts of indemnity, waivers of citation and all other writings obligatory in the nature thereof, with power to attach thereto the seal of the Company. Any such writings so executed by such Attorneys-in-fact shall be as binding upon the Company as if they had been duly executed and acknowledged by the regularly elected officers of the Company in their own proper persons." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 - Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

IN WITNESS WHEREOF, THE HANOVER INSURANCE COMPANY, MASSACHUSETTS BAY INSURANCE COMPANY and CITIZENS INSURANCE COMPANY OF AMERICA have caused these presents to be sealed with their respective corporate seals, duly attested by a Vice President and an Assistant Vice President, this 5th day of January 2008.



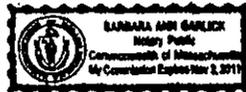
THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Mary Joanne Anderson
Mary Joanne Anderson, Vice President

Robert K. Grennan
Robert K. Grennan, Assistant Vice President

THE COMMONWEALTH OF MASSACHUSETTS)
COUNTY OF WORCESTER) ss.

On this 5th day of January 2008, before me came the above named Vice President and Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, to me personally known to be the individuals and officers described herein, and acknowledged that the seals affixed to the preceding instrument are the corporate seals of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, respectively, and that the said corporate seals and their signatures as officers were duly affixed and subscribed to said instrument by the authority and direction of said Corporations.



Barbara A. Garlick
Notary Public

My commission expires on November 3, 2011

I, the undersigned Assistant Vice President of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America, hereby certify that the above and foregoing is a full, true and correct copy of the Original Power of Attorney issued by said Companies, and do hereby further certify that the said Powers of Attorney are still in force and effect.

This Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of The Hanover Insurance Company, Massachusetts Bay Insurance Company and Citizens Insurance Company of America.

"RESOLVED, That any and all Powers of Attorney and Certified Copies of such Powers of Attorney and certification in respect thereto, granted and executed by the President or any Vice President in conjunction with any Assistant Vice President of the Company, shall be binding on the Company to the same extent as if all signatures therein were manually affixed, even though one or more of any such signatures thereon may be facsimile." (Adopted October 7, 1981 - The Hanover Insurance Company; Adopted April 14, 1982 Massachusetts Bay Insurance Company; Adopted September 7, 2001 - Citizens Insurance Company of America)

GIVEN under my hand and the seals of said Companies, at Worcester, Massachusetts, this 3rd day of August, 2009.

THE HANOVER INSURANCE COMPANY
MASSACHUSETTS BAY INSURANCE COMPANY
CITIZENS INSURANCE COMPANY OF AMERICA

Stephen L. Brink
Stephen L. Brink, Assistant Vice President



The Hanover Insurance Company | 440 Lincoln Street, Worcester, MA 01653
Citizens Insurance Company of America | 645 West Grand River Avenue, Howell, MI 48843

Financial Statement

**The Hanover Insurance Company, Bedford, New Hampshire
FINANCIAL STATEMENT AS OF DECEMBER 31, 2008**

| ASSETS | | 2008 |
|---|----|----------------------|
| Cash in Banks (Including Short-Term Investments)..... | \$ | 185,470,946 |
| Bonds and Stocks..... | | 3,284,254,490 |
| Other Admitted Assets..... | | 981,445,993 |
| Total Admitted Assets..... | | <u>4,451,171,429</u> |

| LIABILITIES, CAPITAL AND SURPLUS | | |
|---|----|----------------------|
| Reserve for Unearned Premiums..... | \$ | 855,011,462 |
| Reserve for Loss and Loss Expense..... | | 1,598,443,164 |
| Reserve for Taxes..... | | 0 |
| Funds held under reinsurance treaties..... | | 8,291,579 |
| Reserve for all other Liabilities..... | | 451,819,320 |
| Capital Stock ~ \$1.00 par..... | \$ | 5,000,000 |
| Net Surplus..... | | <u>1,532,605,904</u> |
| Policyholders' Surplus..... | | <u>1,537,605,904</u> |
| Total Liabilities, Capital and Surplus..... | | <u>4,451,171,429</u> |

COMMONWEALTH OF MASSACHUSETTS
COUNTY OF WORCESTER

} s.s.:

Martin D. Kelly, Asst. Treasurer of The Hanover Insurance Company, being duly sworn deposes and says that he is the above described officer of said Company, and certifies that the foregoing statement is a true statement of the condition and affairs of the said Company on December 31, 2008.

MARTIN D. KELLY
Asst. Treasurer

WTCC - Expedition Coordinators115 Broadway
9th Floor
New York, NY 10006Phone: 212 4355583
Fax: 212-435-5644**TRANSMITTAL****No. 00937****Contract # - 234.544/DCM****PROJECT:** Station Cnstructn/Structure To Grade**DATE:** 12/14/2009**TO:** Port Authority of NY & NJ
One Madison 151PRO
New York, NY 10010**REF:** Orig Performce-Pymnt
Bonds-URSSA**ATTN:** Terri Flores

| WE ARE SENDING: | SUBMITTED FOR: | ACTION TAKEN: |
|---|--|---|
| <input type="checkbox"/> Shop Drawings | <input type="checkbox"/> Approval | <input type="checkbox"/> Approved as Submitted |
| <input type="checkbox"/> Letter | <input checked="" type="checkbox"/> Your Use | <input type="checkbox"/> Approved as Noted |
| <input type="checkbox"/> Prints | <input type="checkbox"/> As Requested | <input type="checkbox"/> Returned After Loan |
| <input type="checkbox"/> Change Order | <input type="checkbox"/> Review and Comment | <input type="checkbox"/> Resubmit |
| <input type="checkbox"/> Plans | | <input type="checkbox"/> Submit |
| <input type="checkbox"/> Samples | SENT VIA: | <input type="checkbox"/> Returned |
| <input type="checkbox"/> Specifications | <input type="checkbox"/> Attached | <input type="checkbox"/> Returned for Corrections |
| <input checked="" type="checkbox"/> Other: Orig Performce-Pymnt Bonds-URSSA | <input checked="" type="checkbox"/> Separate Cover Via: Hand Del | <input type="checkbox"/> Duc Date: |

| ITEM NO. | COPIES | DATE | ITEM NUMBER | REV. NO. | DESCRIPTION | STATUS |
|----------|--------|------------|-------------|----------|----------------------------------|--------|
| 01 | 1 | 12/14/2009 | | | Orig Performce-Pymnt Bonds-URSSA | OPN |

Remarks: The attached documents are sent for your use.

CC:

Signed: _____
Jacqueline Alleyne

PAYMENT BOND

**Multiple Obligees
Labor and Material Payment Bond**

Bond No. 08967690

Premium Amount \$ DULY PAID

KNOW ALL MEN BY THESE PRESENTS.

That we, **URSSA S. COOP. CONSTRUCCIONES METÁLICAS**; Campo de los Palacios, 18 (APDO. 284) E01008 VITORIA-GASTEIZ (SPAIN).

(Hereinafter called the Principal) as Principal, and **FIDELITY AND DEPOSIT COMPANY OF MARYLAND**, 1400 American Lane - SCHAUMBURG, IL 60198-1056

a corporation duly organized under the laws of the state of Maryland

(Hereinafter called the Surety), as Surety, are held and firmly bound unto:

SOLERA/DCM J.V.
110 East 42nd Street
Suite 1704
New York, NY 10017

and:

| List Name(s) of Other Oblige(e)s | Address(es) of Other Oblige(e)s |
|---|---|
| The Port Authority of New York & New Jersey | Treasury / Risk Management 225 Park Ave. South, 12 th Floor New York, NY 10003 |
| Federal Transit Administration | One Bowling Green New York, NY 10004 |
| Metropolitan Transportation Authority | 2 Broadway New York, NY 10004 |
| DCM Erectors, INC | 110 East 42 nd street, Suite 1704 New York, NY 10017 |

(Hereinafter called the Obligees)

In the sum of SEVENTEEN MILLION NINE HUNDRED NINE THOUSAND NINE HUNDRED FOUR AND 00/100 U.S. Dollars (\$17,909,904.00), for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

WHEREAS, the Principal entered into a certain Contract dated June 22, 2009 with **SOLERA/DCM J.V.** for the Project Work Package 20, World Trade Center Transportation Hub, Below Grade Steel, New York, NY, DMC Contract Nr. 934-000, limited to the Purchase Order No. WTC-234.544-URSSA-934-935, supply engineering for missing connections, shop and erection drawings, material, paint primer, labor and equipment to fabricate and deliver Area 1 Path Hall roof steel consisting of arches, vierendeel truss and 4 columns and Area 2 decorative arches excluding any field work, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly make payment to all claimants as hereafter defined, for all (1) labor and material used of reasonably required for use in the performance of the Contract, (2) pension, welfare, vacation and any other supplemental employee benefit contributions payable under collective bargaining agreements with respect to persons employed upon said work, and (3) federal, state and local taxes and contributions required to be withheld of paid with respect to the employment of persons upon said work that may hereafter be made, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions :

1. A claimant is defined as one having a direct contract with the Principal or a subcontractor of the Principal, for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being constructed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been paid in full, may sue on this bond for the use of such claimant, prosecute the suit of final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Obligees shall not be liable for the payment of any costs expenses, and/or claims of any suit.
3. No suit of action shall be commenced hereunder by any claimant:
 - a. After the expiration of the minimum period of limitation permitted by any law controlling the construction hereof.
 - b. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, and not elsewhere.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract.

The rights of all Obligees shall be subject to the following conditions: (a) The Surety shall not be liable under this bond to the Obligees, or either of them, unless the Obligees, or either of them shall make payments to the Principal strictly in accordance with the term of set contract as to payments and shall perform all the other obligations to be performed under set contract at the time and in the manner therein set forth, (b) the aggregate liability of the Surety under this bond to the owners, as their interests may appear, is limited to the penal sum of this bond, (c) The Surety may, at its option, make any payments with us under this Bonds by check issued jointly to SOLERA/DCM JV.

Sealed with our seals and dated this 10th day of December, 2009.

URSSA S. COOP

(Principal)

(Title)
DIONISIO HERCHAN
FINANCIAL MANAGER
SEAL

By: _____

(Attested by)

Fidelity and Deposit Company of Maryland

(Surety)

By: _____
Vivian Carti
(Attorney-in-Fact)

(Attested by) Cynthia Farrell

PERFORMANCE BOND

**Multiple Obligor
Performance Bond**

Bond No. 08967690

Premium Amount \$ DULY PAID

KNOW ALL MEN BY THESE PRESENTS,
That we, **URSSA S. COOP. CONSTRUCCIONES METÁLICAS**; Campo de los Palacios, 18 (APDO. 284)
E01006 VITORIA-GASTEIZ (SPAIN).
(Hereinafter called the Principal) as Principal, and **FIDELITY AND DEPOSIT COMPANY OF MARYLAND**,
1400 American Lane - SCHAUMBURG, IL 60196-1056
a corporation duly organized under the laws of the state of Maryland
(Hereinafter called the Surety), as Surety, are held and firmly bound unto:

SOLERA/DCM J.V.
110 East 42nd Street
Suite 1704
New York, NY 10017

and:

| List Name(s) of Other Obligor(s) | Address(es) of Other Obligor(s) |
|---|---|
| The Port Authority of New York & New Jersey | Treasury / Risk Management 225 Park Ave. South, 12 th Floor New York, NY 10003 |
| Federal Transit Administration | One Bowling Green New York, NY 10004 |
| Metropolitan Transportation Authority | 2 Broadway New York, NY 10004 |
| DCM Erectors, INC | 110 East 42 nd Street, Suite 1704 New York, NY 10017 |

(Hereinafter called the Obligees)

In the sum of SEVENTEEN MILLION NINE HUNDRED NINE THOUSAND NINE HUNDRED FOUR AND 00/100 U.S. Dollars (\$17,909,904.00), for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

WHEREAS, the Principal entered into a certain Contract dated June 22, 2009 with SOLERA/DCM J.V. for the Project Work Package 20, World Trade Center Transportation Hub, Below Grade Steel, New York, NY, DMC Contract Nr. 934-000, limited to the Purchase Order No. WTC-234.544-URSSA-934-935, supply engineering for missing connections, shop and erection drawings, material, paint primer, labor and equipment to fabricate and deliver Area 1 Path Hall roof steel consisting of arches, vierendeel truss and 4 columns and Area 2 decorative arches excluding any field work, which is hereby referred to and made a part hereof as if fully set forth herein.

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly and faithfully perform said Contract, within the time provided therein and any extension thereof that may be granted by the Obligees, and during the life of any guaranty required under said Contract, and shall also promptly and faithfully perform any and all authorized modifications of said Contract that may hereafter be made, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Whenever Principal shall be, or declared by Obligees, or any of them, to be in default, in breach, and/or have failed to perform in any manner under the Contract, the Obligees having performed their respective obligations thereunder, the Surety shall promptly remedy the default by one of the following:

1. Fund Principal to complete the Contract in accordance with its terms and conditions.
2. Complete the Contract in accordance with its terms and conditions utilizing a subcontractor of obligee's discretion.
3. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Obligees of the best value bidder, arrange for a contract between such bidder and Obligees, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, and pursuant to the Contract, the amount set forth in the first paragraph hereof. The term "balance of the Contract price", as used in this paragraph, shall mean the total amount payable by Obligees to the Principal under the Contract and any amendments thereto, less the amount properly paid by Obligees to the Principal.
4. Pay to Obligees the full amount of the penal sum above stated.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligees named herein or the heirs, executors, administrators, successors or assigns of the Obligees.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract.

The rights of all Obligees shall be subject to the following conditions: (a) The Surety shall not be liable under this bond to the Obligees, or either of them, unless the Obligees, or either of them shall make payments to the Principal strictly in accordance with the term of set contract as to payments and shall perform all the other obligations to be performed under set contract at the time and in the manner therein set forth, (b) the aggregate liability of the Surety under this bond to the owners, as their interests may appear, is limited to the penal sum of this bond, (c) The Surety may, at its option, make any payments with us under this Bonds by check issued jointly to SOLERA/DCM JV.

Sealed with our seals and dated this 10th day of December, 2009

URSSA S. COOP

Penelope Brown (Attested by) By: *[Signature]* (Principal)

DIONISIO MERCAN
SEAL
FINANCIAL MANAGER

Fidelity and Deposit Company of Maryland
(Surety)

Cynthia Farrell (Attested by) By: *Vivian Carti* (Attorney-in-Fact)

Cynthia Farrell Vivian Carti

SEAL

ACKNOWLEDGEMENT OF PRINCIPAL

State of New York

County of New York

On 10th of December, 2009 before me personally appeared DONISIA PERCHON who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the New York that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(seal)

Signature Evangelina L. Dominick

EVANGELINA L. DOMINICK
Notary Public State of New York
01D04769474
Qualified in Westchester County
Term Expires January 31, 2011

ACKNOWLEDGEMENT OF SURETY

State of New York)

:ss:

County of New York)

On the 10th of December, 2009, before me personally came Vivian Carti to me known, who, being by me duly sworn, did depose and say the (s)he resides at New York, NY and that (s)he is the Attorney-In-Fact of Fidelity and Deposit Company of Maryland the Corporation described in and which executed the above instrument; that (s)he knows the seal of said Corporation; that one of the seals affixed by order of the Board of Directors of said Corporation; and that (s)he signed his/her name thereto by like order.



VALORIE M. SPATES
Notary Public, State of New York
No. 01SP8135425
Qualified in Queens County
Commission Expires Oct. 17, 2009 *2013*

**Power of Attorney
FIDELITY AND DEPOSIT COMPANY OF MARYLAND**

KNOW ALL MEN BY THESE PRESENTS: That the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, a corporation of the State of Maryland, by DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary, in pursuance of authority granted by Article VI, Section 2, of the By-Laws of said Company, which are set forth on the reverse side hereof and are hereby certified to be in full force and effect on the date hereof, do hereby nominate, constitute and appoint Vivian CARTI, Debra A. DEMING, Cynthia FARRELL, Thomas RHATIGAN and Evangelina L. DOMINICK, all of New York, New York, EACH its true and lawful agent and Attorney-in-Fact, to make, execute, seal and deliver, for, and on its behalf as surety, and as its act and deed, any and all bonds and undertakings, and the execution of such bonds or undertakings in pursuance of these presents shall be as binding upon said Company, as fully and amply, to all intents and purposes, as if they had been duly executed and acknowledged by the regularly elected officers of the Company at its office in Baltimore, Md., in their proper persons. This power of attorney revokes that issued on behalf of Betty CALIBERON, Vivian CARTI, Debra A. DEMING, Cynthia FARRELL, Thomas RHATIGAN, Evangelina L. DOMINICK, dated January 14, 2009.

The said Assistant Secretary does hereby certify that the extract set forth on the reverse side hereof is a true copy of Article VI, Section 2, of the By-Laws of said Company, and is now in force.

IN WITNESS WHEREOF, the said Vice-President and Assistant Secretary have hereunto subscribed their names and affixed the Corporate Seal of the said FIDELITY AND DEPOSIT COMPANY OF MARYLAND, this 26th day of March, A.D. 2009.

ATTEST:

FIDELITY AND DEPOSIT COMPANY OF MARYLAND



Gregory E. Murray

Gregory E. Murray Assistant Secretary

By:

David S. Hewett

David S. Hewett

Vice President

State of Maryland }
City of Baltimore } ss:

On this 26th day of March, A.D. 2009, before the subscriber, a Notary Public of the State of Maryland, duly commissioned and qualified, came DAVID S. HEWETT, Vice President, and GREGORY E. MURRAY, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, to me personally known to be the individuals and officers described in and who executed the preceding instrument, and they each acknowledged the execution of the same, and being by me duly sworn, severally and each for himself deposed and saith, that they are the said officers of the Company aforesaid, and that the seal affixed to the preceding instrument is the Corporate Seal of said Company, and that the said Corporate Seal and their signatures as such officers were duly affixed and subscribed to the said instrument by the authority and direction of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my Official Seal the day and year first above written.



Maria D. Adamski

Maria D. Adamski

Notary Public

My Commission Expires: July 8, 2011

EXTRACT FROM BY-LAWS OF FIDELITY AND DEPOSIT COMPANY OF MARYLAND

"Article VI, Section 2. The Chairman of the Board, or the President, or any Executive Vice-President, or any of the Senior Vice-Presidents or Vice-Presidents specially authorized so to do by the Board of Directors or by the Executive Committee, shall have power, by and with the concurrence of the Secretary or any one of the Assistant Secretaries, to appoint Resident Vice-Presidents, Assistant Vice-Presidents and Attorneys-in-Fact as the business of the Company may require, or to authorize any person or persons to execute on behalf of the Company any bonds, undertakings, recognizances, stipulations, policies, contracts, agreements, deeds, and releases and assignments of judgements, decrees, mortgages and instruments in the nature of mortgages,....and to affix the seal of the Company thereto."

CERTIFICATE

I, the undersigned, Assistant Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing Power of Attorney is still in full force and effect on the date of this certificate; and I do further certify that the Vice-President who executed the said Power of Attorney was one of the additional Vice-Presidents specially authorized by the Board of Directors to appoint any Attorney-in-Fact as provided in Article VI, Section 2, of the By-Laws of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND.

This Power of Attorney and Certificate may be signed by facsimile under and by authority of the following resolution of the Board of Directors of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND at a meeting duly called and held on the 10th day of May, 1990.

RESOLVED: "That the facsimile or mechanically reproduced seal of the company and facsimile or mechanically reproduced signature of any Vice-President, Secretary, or Assistant Secretary of the Company, whether made heretofore or hereafter, wherever appearing upon a certified copy of any power of attorney issued by the Company, shall be valid and binding upon the Company with the same force and effect as though manually affixed."

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed the corporate seal of the said Company,

this 10th day of December, 2009.

Gerald F. Halby

Assistant Secretary

FIDELITY AND DEPOSIT COMPANY

OF MARYLAND
3910 KESWICK ROAD, BALTIMORE, MD 21211-2226

Statement of Financial Condition
As Of December 31, 2008

ASSETS

| | |
|---------------------------------------|------------------------------|
| Bonds | \$ 148,232,979 |
| Stocks | 23,313,771 |
| Cash and Short Term Investments | 7,904,491 |
| Reinsurance Recoverable | 5,939,089 |
| Other Accounts Receivable | 38,307,386 |
| TOTAL ADMITTED ASSETS | \$ <u>223,717,718</u> |

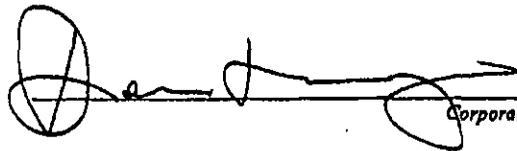
LIABILITIES, SURPLUS AND OTHER FUNDS

| | |
|---|------------------------------|
| Reserve for Taxes and Expenses | \$ 597,566 |
| Ceded Reinsurance Premiums Payable | 38,399,492 |
| Securities Lending Collateral Liability | 6,094,921 |
| TOTAL LIABILITIES | \$ 45,091,979 |
| Capital Stock, Paid Up | \$ 5,000,000 |
| Surplus | 173,625,739 |
| Surplus as regards Policyholders | 178,625,738 |
| TOTAL | \$ <u>223,717,718</u> |

Securities carried at \$38,306,550 in the above statement are deposited as required by law.

Securities carried on the basis prescribed by the National Association of Insurance Commissioners. On the basis of December 31, 2008 market quotations for all bonds and stocks owned, the Company's total admitted assets would be \$216,398,425 and surplus as regards policyholders \$171,306,445.

I, DENNIS F. KERRIGAN, Corporate Secretary of the FIDELITY AND DEPOSIT COMPANY OF MARYLAND, do hereby certify that the foregoing statement is a correct exhibit of the assets and liabilities of the said Company on the 31st day of December, 2008.



 Corporate Secretary

State of Illinois }
City of Schaumburg } SS:

Subscribed and sworn to, before me, a Notary Public of the State of Illinois, in the City of Schaumburg, this 14th day of March, 2009.



 Notary Public



**STATE OF NEW YORK
INSURANCE DEPARTMENT**

**CERTIFICATE OF SOLVENCY UNDER SECTION 1111 OF THE NEW YORK
INSURANCE LAW**

It is hereby certified that

**Fidelity and Deposit Company of Maryland
of Baltimore, Maryland**

a corporation organized under the laws of the State of Maryland and duly authorized to transact the business of insurance in this State, is qualified to become surety or guarantor on all bonds, undertakings, recognizances, guaranties and other obligations required or permitted by law; and that the said corporation is possessed of a capital and surplus including gross paid-in and contributed surplus and unassigned funds (surplus) aggregating the sum of \$178,625,738. (Capital \$5,000,000.) as is shown by its sworn financial statement for the year ended December 31, 2008, on file in this Department, prior to audit.

The said corporation cannot lawfully expose itself to loss on any one risk or hazard to an amount exceeding 10% of its surplus to policyholders, unless it shall be protected in excess of that amount in the manner provided in Section 4.118 of the Insurance Law of this State.



In Witness Whereof, I have here-
unto set my hand and affixed the
official seal of this Department
at the City of Albany, this 2nd
day of July, 2009.

Eric R. Dinallo
Superintendent of Insurance

By *Clark J. Williams*

Clark J. Williams
Special Deputy Superintendent

PERFORMANCE BOND

Multiple Obligor
Performance Bond

Bond No. 6632914 Premium Amount \$ 137,108.00

KNOW ALL MEN BY THESE PRESENTS,

That we, Owen Steel Company, Inc.

(Full Name and Address of Subcontractor)

727 Mauney Drive, Columbia, SC 28201

(hereinafter called the Principal), as Principal, and Safeco Insurance Company of America

(Full Name and Address of Surety)

2800 W. Higgins Road, Suite 1100, Hoffman Estates, IL 60195-5205

a corporation duly organized under the laws of the state of Washington
(hereinafter called the Surety), as Surety, are held and firmly bound unto:

DCM Erectors, Inc.
110 East 42nd Street, Suite 1704
New York, NY 10017

and

| List Name(s) of Other Obligor(s) | Address(es) of Other Obligor(s) |
|---|---|
| The Port Authority of New York & New Jersey | Treasury / Risk Management 225 Park Ave. South, 12 th Floor New York, NY 10003 |
| Federal Transit Administration | One Bowling Green New York, NY 10004 |
| Metropolitan Transportation Authority | 2 Broadway New York, NY 10004 |

(hereinafter called the Obligees)

Thirteen Million Seven Hundred Ten
in the sum of Thousand Seven Hundred Fifty and 00/100 (\$13,710,750.00) U.S. Dollars
(\$ _____), for the payment of which we, the said Principal and the said Surety, bind
ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

WHEREAS, the Principal entered into a certain Contract dated June 15, 2009
(Month, Day) (Year)

with DCM Erectors, Inc. to Furnish Structural Steel for the WTC Path Transportation Hub -
Area 2 Project in New York, NY
which is hereby referred to and made a part hereof as if fully set forth herein.

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION
RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION

PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly and faithfully perform said Contract, within the time provided therein and any extension thereof that may be granted by the Obligees, and during the life of any guaranty required under said Contract, and shall also promptly and faithfully perform any and all authorized modifications of said Contract that may hereafter be made, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Whenever Principal shall be, and declared by Obligees, or any of them, to be in default, in breach, and/or to have failed to perform in any manner under the Contract, the Obligees having performed their respective obligations thereunder, the Surety shall promptly remedy the default by one of the following:

1. Fund Principal to complete the Contract in accordance with its terms and conditions.
2. Complete the Contract in accordance with its terms and conditions utilizing a subcontractor of obligee's discretion.
3. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Obligees of the best value bidder, arrange for a contract between such bidder and Obligees, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, and pursuant to the Contract, the amount set forth in the first paragraph hereof. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by Obligees to the Principal under the Contract and any amendments thereto, less the amount properly paid by Obligees to the Principal.
4. Pay to Obligees the full amount of the penal sum above stated. The Surety as its option, may make any payments under said Bond by check issued jointly to original Obligor and other Obligees. No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligees named herein or the heirs, executors, administrators, successors or assigns of the Obligees.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract. Respective obligations means the performance of the original Obligor's obligations under the contract.

Sealed with our seals and dated this 28 day of October, 2009 (Day) (Month) (Year)

Wilma R. Bass (Attested by)

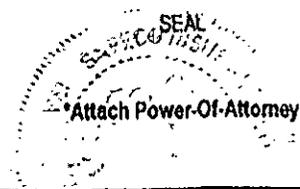
Owen Steel Company, Inc. (Principal)

By: Spencer L. Brown (TWA) Senior Vice President/Gen. Mgr. SEAL

Kimberly A. Grake (Attested by) Kimberly A. Grake

Safeco Insurance Company of America

(Surety) Kevin P. Adams (Attorney-in-Fact)



NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION

PAYMENT BOND

Multiple Obligor
Labor and Material Payment Bond

Bond No. 6632914 Premium Amount \$ 137,108.00

KNOW ALL MEN BY THESE PRESENTS,

That we, Owen Steel Company, Inc.

722 Mauney Drive, Columbia, BC 28201 (Full Name and Address of Subcontractor)

(hereinafter called the Principal), as Principal, and Safeco Insurance Company of America

2800 W. Higgins Road, Suite 1100, Hoffman Estates, IL 60195-5205 (Full Name and Address of Surety)

a corporation duly organized under the laws of the state of Washington
(hereinafter called the Surety), as Surety, are held and firmly bound unto:

DCM Erectors, Inc.
110 East 42nd Street, Suite 1704
New York, NY 10017

and

| List Name(s) of Other Obligor(s) | Address(es) of Other Obligor(s) |
|---|---|
| The Port Authority of New York & New Jersey | Treasury / Risk Management 225 Park Ave. South, 12 th Floor New York, NY 10003 |
| Federal Transit Administration | One Bowling Green New York, NY 10004 |
| Metropolitan Transportation Authority | 2 Broadway New York, NY 10004 |
| | |
| | |

(hereinafter called the Obligees)
Thirteen Million Seven Hundred Ten
in the sum of Thousand Seven Hundred Fifty and 00/100 U.S. Dollars
(\$ 13,710,750.00), for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs,
executors, administrators, successors and assigns, jointly and severally, firmly by these presents.
Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

WHEREAS, the Principal entered into a certain Contract dated June 15, 2009
(Month, Day) (Year)

with DCM Erectors, Inc. to Furnish Structural Steel for the WTC Path Transportation
Hub - Area 2 Project in New York, NY
which is hereby referred to and made a part hereof as if fully set forth herein.

LGN02M (R)4/2003 MW2000 Labor and Material Payment Bond — page 1

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION
RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION

PAYMENT BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly make payment to all claimants as hereafter defined, for all (1) labor and material used or reasonably required for use in the performance of the Contract, (2) pension, welfare, vacation and any other supplemental employee benefit contributions payable under collective bargaining agreements with respect to persons employed upon said work, and (3) federal, state and local taxes and contributions required to be withheld or paid with respect to the employment of persons upon said work that may hereafter be made, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

1. A claimant is defined as one having a direct contract with the Principal or a subcontractor of the Principal, for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been paid in full, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Obligees shall not be liable for the payment of any costs expenses, and/o claims of any suit.
3. No suit or action shall be commenced hereunder by any claimant:
 - a. After the expiration of the minimum period of limitation permitted by any law controlling the construction hereof.
 - b. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, and not elsewhere.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract. Respective obligations means the performance of the original Obligee's obligations under the contract.

Sealed with our seals and dated this 28 day of October, 2009
(Day) (Month) (Year)

William B. Bass
(Attested by)

Owen Steel Company, Inc.
(Principal)

By: [Signature]
Spencer L. Brown (Title)
Senior Vice President/Gen. Mgr.
SEAL

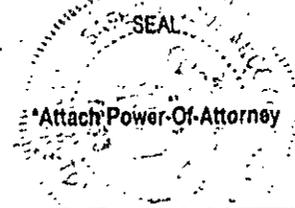
Kimberly A. Grake
(Attested by)

Kimberly A. Grake

Safeco Insurance Company of America
(Surety)

[Signature]
(Attorney-in-Fact)

Kevin P. Adams



POWER OF ATTORNEY

No. 9723

KNOW ALL BY THESE PRESENTS:

That SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA, each a Washington corporation, does each hereby appoint

*****KEVIN P. ADAMS; LINDA DOZIER; BRIAN J. LORIGAN; MICHAEL J. MITCHELL; MARTIN J. PURCELL; Philadelphia, Pennsylvania*****

its true and lawful attorney(s)-in-fact, with full authority to execute on its behalf fidelity and surety bonds or undertakings and other documents of a similar character issued in the course of its business, and to bind the respective company thereby.

IN WITNESS WHEREOF, SAFECO INSURANCE COMPANY OF AMERICA and GENERAL INSURANCE COMPANY OF AMERICA have each executed and attested these presents

this 25th day of September 2009

Dexter R. Legg

T. Mikolajewski

Dexter R. Legg, Secretary

Timothy A. Mikolajewski, Vice President

CERTIFICATE

Extract from the By-Laws of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA:

"Article V, Section 13. - FIDELITY AND SURETY BONDS ... the President, any Vice President, the Secretary, and any Assistant Vice President appointed for that purpose by the officer in charge of surety operations, shall each have authority to appoint individuals as attorneys-in-fact or under other appropriate titles with authority to execute on behalf of the company fidelity and surety bonds and other documents of similar character issued by the company in the course of its business... On any instrument making or evidencing such appointment, the signatures may be affixed by facsimile. On any instrument conferring such authority or on any bond or undertaking of the company, the seal, or a facsimile thereof, may be impressed or affixed or in any other manner reproduced; provided, however, that the seal shall not be necessary to the validity of any such instrument or undertaking."

Extract from a Resolution of the Board of Directors of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA adopted July 28, 1970.

"On any certificate executed by the Secretary or an assistant secretary of the Company setting out,

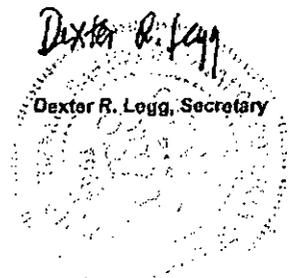
- (i) The provisions of Article V, Section 13 of the By-Laws, and
(ii) A copy of the power-of-attorney appointment, executed pursuant thereto, and
(iii) Certifying that said power-of-attorney appointment is in full force and effect,

the signature of the certifying officer may be by facsimile, and the seal of the Company may be a facsimile thereof."

I, Dexter R. Legg, Secretary of SAFECO INSURANCE COMPANY OF AMERICA and of GENERAL INSURANCE COMPANY OF AMERICA, do hereby certify that the foregoing extracts of the By-Laws and of a Resolution of the Board of Directors of these corporations, and of a Power of Attorney issued pursuant thereto, are true and correct, and that both the By-Laws, the Resolution and the Power of Attorney are still in full force and effect.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the facsimile seal of said corporation

this 28 day of October 2009





SAFECO INSURANCE COMPANY OF AMERICA

FINANCIAL STATEMENT — DECEMBER 31, 2008

| Assets | | Liabilities | |
|---|------------------------|--|------------------------|
| Cash and Bank Deposits..... | \$ 267,263,750 | Unearned Premiums..... | \$ 666,660,985 |
| *Bonds — U.S. Government..... | 13,359,352 | Reserve for Claims and Claims Expense..... | 1,577,767,461 |
| *Other Bonds..... | 2,153,906,395 | Funds Held Under Reinsurance Treaties..... | 430,979 |
| *Stocks..... | 281,831,749 | Reserve for Dividends to Policyholders..... | 2,164,985 |
| Real Estate..... | 0 | Additional Statutory Reserve..... | |
| Agents' Balances or Uncollected Premiums..... | 557,216,809 | Reserve for Commissions, Taxes and Other Liabilities..... | 935,283,360 |
| Accrued Interest and Rents..... | 34,037,369 | Total..... | \$3,138,407,771 |
| Other Admitted Assets..... | 444,517,784 | Special Surplus Funds..... | \$ 3,399,995 |
| | | Capital Stock..... | 5,000,000 |
| | | Paid in Surplus..... | 346,118,103 |
| | | Unassigned Surplus..... | 415,307,334 |
| Total Admitted Assets..... | \$3,957,233,208 | Surplus to Policyholders..... | 769,825,437 |
| | | Total Liabilities and Surplus..... | \$3,957,233,208 |



* Bonds are stated at amortized or investment value; Stocks at Association Market Values.
Securities carried at \$113,984,921 are deposited as required by law.

I, TIM MIKOLAJEWSKI, Vice-President of SAFECO Insurance Company of America, do hereby certify that the foregoing is a true, and correct statement of the Assets and Liabilities of said Corporation, as of December 31, 2008, to the best of my knowledge and belief.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said Corporation at Seattle, Washington, this 1st day of March, 2009.

T. Mikolajewski
Vice-President



THE GRAHAM COMPANY
INSURANCE BROKERS AND CONSULTANTS

THE GRAHAM BUILDING, ONE PENN SQUARE WEST, PHILADELPHIA, PA 19102
215.567.6300 1.888.478.4262

7/20/09 to - JCB -> to Process for Pmt.

| | | |
|----------------|--------------|-------------|
| INVOICE #58962 | | Amount Paid |
| Account Number | Invoice Date | |
| OWENSTE-01 | 7/13/2009 | |

Owen Steel Company, Inc.
Mr. David Zalesne
727 Mauney Drive
Columbia, SC 29201

PREMIUMS PAYABLE ON EFFECTIVE DATE OF POLICY
DETACH AND RETURN TOP PORTION WITH REMITTANCE

| | | | |
|--|-------------------------------------|-----------------------------------|--------------|
| Invoice #: 58962 | Date Paid: | Check #: | Amount Paid: |
| Performance & Payment Bond - OS | Policy #: 6632914 | Effective: 7/13/2009 to 7/13/2010 | |
| Company: Safeco Insurance Company of America | Acct Exec: Kevin Adams - Acct. Mgr. | | |

| Item # | Trans Eff Date | Due Date | Trans | Description | Amount |
|--------|----------------|-----------|-------|--------------|--------------|
| 199807 | 7/13/2009 | 7/13/2009 | NEWB | New Business | \$137,108.00 |

BOND TO DCM BRCTORS FOR STRUCTURAL STEEL FOR WTC PATH TRANSPORTATION HUB IN THE AMOUNT OF \$13,710,750

Total Invoice Balance: \$137,108.00

| Vendor # | Voucher # | Due Date | P.O. # | Invoice # | Invoice Date | | |
|--------------------------|--------------|----------|--------|-----------|--------------|------|------|
| 342150 | 43280 | 8/6/09 | | 58962 | 7/13/09 | | |
| One Time Vendor Name | | | | | Invoice Amt. | | |
| THE GRAHAM COMPANY 09-20 | | | | | \$137,108.00 | | |
| B/L Disln. | Gross # | Disc. | D/C | Prod. | Quantity | Rate | CBMT |
| 44200-200 | \$137,108.00 | | | | | | |
| 54800-20 | | | | | | | |

Prepared By JCB Date 7-30-09 Approved By _____ Date _____ 46302

053101121
08/11/2009
000002905456380

This is a LEGAL COPY of your check. You can use it the same way you would use the original check

6002/01/80 E494E1E2503
920672780

| | | | |
|--|--|---|---------------------------|
| OWEN STEEL COMPANY 727 MAINWAY DRIVE DOLLYVILLE, SC 29520 | | BB&T SOUTH CAROLINA 61-118-912 | 19784 |
| One hundred thirty-seven thousand one hundred eight and xx / 100 Dollars | | | |
| | | DATE 8/6/2009 | AMOUNT *****137,108.00 |
| TO THE ORDER OF | THE GRAHAM COMPANY THE GRAHAM BUILDING ONE HIGH SQUARE WEST PHILADELPHIA, PA 19102 USA |  | |
| ⑆00019784⑆ ⑆053201607⑆000512466764⑆ | | | |

00010185
20369

⑆19784⑆ 4⑆053201607⑆000512466764⑆ ⑆0013710800⑆

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⑆0920672780⑆

Thank You!
For Deposit Only
William A. Graham Company
William A. Graham & Co.
William A. Graham
The Graham Company
Acct. No. 40027870407

Do not endorse or write below this line.



110 East 42nd Street
Suite 1710
New York, NY 10017
Tel. (212) 599-1603 Fax (212) 599-1615

March 16, 2009

Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, NY 10006

Attention: Mr. Javed Qureshi, Contract Administrator

Reference: Commercial Proposal Submission - Best and Final Offer
World Trade Center Transportation Hub -Bid Package 20
RFP/Contract: W07C-GC1-2 KN0186-020 Station Construction and
Transit Hall Structure to Grade Furnish, Fabricate and Erect
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work
DCM Erectors, Inc Bid 801E054

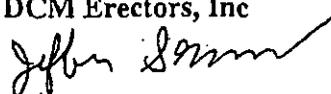
Gentlemen:

We are pleased to submit our Technical Proposal in original and three copies as requested. Our Technical Proposal consists of the following:

1. Item 6.1 - 2A Proposal Form Option A - Areas 1 & 2 - dated 03-13-09 - 20 pages
2. Item 6.1 - 2A Proposal Form Option B - Area 3 - dated 03-13-09 - 18 Pages
3. Item 6.1 - 2A Proposal Form Option C - Areas 1, 2 & 3 - dated 03-13-09 - 20 Pages
4. Aon Form 3 - OCIP Enrollment Form
5. Winston Sturge Resume
6. Lost Run data which affects our incidence figure data presented at March 12, 2009 Final Meeting (*Later*)
7. Article 18 - Scorecard Responses to QA - Requested Samples and Plans - 74 pages
8. Revised Schedule
9. Voluntary Alternates

Kindly contact the undersigned should you have any questions relative to this document.

Very truly yours,
DCM Erectors, Inc


Jeffrey S. Gannett
Vice President



STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST
COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

1.0 PAYMENT SCHEDULE

Full compensation to Subcontractor for full and complete performance by Subcontractor of all the Work, compliance with all terms and conditions of this Subcontract, and for Subcontractor's payment of all obligations incurred in, or applicable to, performance of the Work, shall be the sum of the lump sums and the value of the unit prices set forth below in paragraph 1.1 below. Phoenix Constructors JV will reimburse the Subcontractor solely for actual contractual Work performed on a monthly basis. Phoenix Constructors JV will utilize an Earned Value System (accepted work in place) for reimbursement in accordance with paragraph 3.0 entitled "Invoicing Instructions."

Prior to proposal and thereafter updated prior to contract execution, the subcontractor shall submit for approval by Phoenix Constructors JV:

- a Detailed Schedule of Values (Form 2A.5), in a format that is required by, and acceptable to Phoenix Constructors JV (when submitting this document prior to proposal, please submit within 2 days of such request being made by Phoenix),
- a Detailed Estimate Breakdown (Form 2A.7), (when submitting this document prior to proposal, please submit within 2 days of such request being made by Phoenix),
- an Earned Value System (Form 2A.8) which supports the method in which the work will be broken down and contracted, and which will be utilized to support future invoicing. The Earned Value System must utilize the Detailed Estimate which ultimately must roll up to Support the Schedule of Values (An Example of an Earned Value System has been provided in EXCEL Format in the enclosed CD),
- a Detailed Schedule (Form 2A.6) which contains enough detail to support the execution of the work and identify all interface points between contractor and all other Subcontractors (This form **MUST** be submitted prior to proposal with the detailed schedule attached. Thereafter, the subcontractor **MUST** submit a detailed cost loaded schedule within 5 days of Phoenix requesting the subcontractor to do so. This detailed cost loaded schedule will supersede the submission of the initial detailed schedule and will be updated prior to contract execution and on a monthly basis thereafter as indicated in clause 3.4 of this exhibit).



**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST
COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.**

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

The above referenced submittals are to be provided in addition to all other required submittals mandated by the Terms and Conditions of this Subcontract, and/or required to substantiate the Subcontractor's work actually performed.

Subcontractors and their respective employees, subcontractors, and suppliers must comply with all security requirements set forth in this Subcontract including Exhibit 19C "WTC PATH Identification Guidelines For Subcontractors;" and all additional security requirements imposed by The Port Authority of New York and New Jersey, Phoenix Constructors, or any additional party that Phoenix Constructors in their sole determination believes shall have the ability to request such requirements. The Subcontractor shall be solely responsible for all costs and/or expenses associated with the security, enrollment and identification procedures and requirements set forth within this Subcontract including but not limited to the actual Secure Worker Access Consortium (SWAC) enrollment cost of \$250.00 per individual and all associated costs associated with such enrollment. All security related costs must be included in the Subcontractors proposal.

Applicable Credits -- The applicable portion on ANY income, rebate, allowance, or other credit relating to any allowable cost or any Subcontractor work, which is received by, or accruing to the Subcontractor, shall be credited to Phoenix or the Government either as a cost reduction or by cash refund. This includes, but is not limited to the resale or reuse of any materials. Such a credit must be reflected in the associated price proposal for the value of the subcontracted work.

1.1 Firm Fixed Price

The undersigned, having examined this RFP/Contract Documents for this Work Package and having visited the job site and examined the conditions affecting the work, hereby proposes and agrees to furnish all labor, materials, equipment, and each and every item of cost to perform operations necessary to complete the work as required by subject RFP/Contract Documents, "Station Construction and Transit Hall Structure to Grade – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck and Precast Concrete Work.

The base price proposed as provided for in Paragraph A (Option C) below should assume that **all materials will delivered to the WTC Site and any interim storage will be at the Phoenix provided Marshalling Yard in accordance with Exhibit 1 Paragraph 3.57 entitled "Marshalling Yard," provided by the Subcontractor.**



STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST
COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

A. ALTERNATE OPTION BASE BID PROPOSAL: Work Areas 1+2+3

Work Package # 20, Furnish, Fabricate and Erect, Structural Steel,
Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work.

OPTION: C

SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION +
AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL

This base price proposed assumes that all materials will delivered to the
WTC Site and any interim storage will be at the ~~Phoenix provided
Marshalling Yard~~ in accordance with ~~Exhibit 1 Paragraph 3.57 entitled
"Marshalling Yard"~~: provided by the Subcontractor.

The total price for complete performance of all the tasks described in Exhibit 1
Statement of Work is

\$ Threehundredtwentymilliontwohundredfiftyninethousandsevenhundred
forty (\$320,259,740.00) dollars as indicated below. The Price is
firm and fixed for the duration of the Subcontract and is not subject to escalation
for any cause. The breakdown of this Total Price against individual pay items is
detailed below.

B. Alternate Option - Furnish, Fabricate and Install Precast Concrete Floor and
Walls instead of Cast in Place Concrete as indentified and depicted on the
Contract drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1,
S1413-1 & S1414-1

The total price for complete performance of all the tasks described in Exhibit 1
Statement of Work is

\$ Ninemillionsevenhundredfortythousandtwohundredsixty (in words)
(\$ 9,740,260.00) dollars as indicated below. The Price is firm and fixed
for the duration of the Subcontract and is not subject to escalation for any cause.
The breakdown of this Total Price against individual pay items is detailed below.

The Prices are firm and fixed for the duration of the Subcontract and is not subject to
escalation for any cause. The above prices shall be furnished in US dollars and are not
subject to change based upon currency fluctuations. Payment for actual quantities at
the Unit Price shall constitute full payment for the performance of the Subcontract and
covers all cost of whatever nature incurred by the Subcontractor in accomplishing the
Work in accordance with the provisions of this Subcontract.

Phoenix Constructors JV and Port Authority of New York and New Jersey has the
exclusive right at their discretion to select and choose any single or combination of



**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
 FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST
 COATING, METAL DECK & PRECAST CONCRETE WORK
 ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
 PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.**

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

different proposals from the same or more than one bidder for the award. The bidders must consider and have appropriate allowance in their proposals for coordination and review of connection details at the common boundary lines for adjacent work packages, of the Work Package #20, WP#21 & WP# 9 & 9X, In addition to coordination with other WTC site stakeholders, i.e., memorial, towers 1,2,3 & 4, VOEC...

NOTE ** This pricing format MUST be used**

All prices shall be furnished in US Dollars and are not subject to change based upon world currency fluctuations.

| Bid Breakdown Summary | | | A | B | C | D |
|-----------------------|---|----------|--------------|--------------------------|--------------|---------------|
| | | | Path Station | 1- Line Subway Box | Transit Hall | A+B+C |
| | DESCRIPTION | UM | | | | TOTAL |
| 1 | Total Weight of Permanent Steel | US Ton | 11,000 | 4500 | 9200 | 24,700 |
| 2 | Steel Material | Lump Sum | \$18,506,494 | \$12,662,338 | \$16,558,442 | \$47,727,274 |
| 3 | Steel Fabrication | Lump Sum | \$42,857,143 | \$8,766,234 | \$17,532,468 | \$69,155,845 |
| 4 | Intumescent Fire Resistant Coating | Lump Sum | \$17,532,468 | \$974,026 | \$2,922,078 | \$21,428,572 |
| 5 | Shipping and Handling FOB Job Site (deliver material to WTC site using Phoenix provided Marshalling Yard) | Lump Sum | \$5,844,156 | \$1,948,052 | \$4,870,130 | \$12,662,338 |
| 6 | Steel Erection Labor | Lump Sum | \$52,597,403 | \$30,194,805 | \$37,987,013 | \$120,779,221 |



RFP/CONTRACT NO.: W0TC-GC1-2-KN0186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST
COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.**

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | | | | |
|-----|---|-------------|---------------|--------------|--------------|---------------|
| 7 | Metal Deck and Studs Labor and Material | Lump Sum | \$1,948,052 | \$974,026 | \$1,948,052 | \$4,870,130 |
| 8 | Precast Concrete Labor and Material | Lump Sum | \$14,610,390 | \$N/A | \$1,948,052 | \$16,558,442 |
| 9 | Erection Equipment | Lump Sum | \$4,870,130 | \$1,948,052 | \$2,922,078 | \$9,740,260 |
| 10 | Temporary Construction | Lump Sum | \$2,922,078 | \$974,026 | \$1,948,052 | \$5,844,156 |
| 11 | Engineering | Lump Sum | \$2,922,078 | \$1,948,052 | \$974,026 | \$5,844,156 |
| 12 | Quality Control | Lump Sum | \$1,461,039 | \$1,461,039 | \$974,026 | \$3,896,104 |
| 13 | Cost to remove Path Hall Roof Crane Runway. | Lump Sum | \$1,461,039 | \$ N/A | \$ N/A | \$1,461,039 |
| 13a | Cost to remove Church Street Perch / Road Access. | Lump Sum | \$ N/A | \$ N/A | \$292,208 | \$292,208 |
| 14 | Total Bid Price | Lump Sum | \$167,532,468 | \$61,850,649 | \$90,876,623 | \$320,259,740 |

Instructions:

- i. Insert in line 1 the US tonnage of the permanent steel to be fabricated
- ii. Insert in line 2 thru 14 the US dollar value of the work described
- iii. Insert in line D the sum of columns A+ B+C for each row 1 thru 13a
- iv. Insert in row 14 the sum of total of rows 2 thru 13a each column A, B, and C
- v. Insert in cell 14D the sum of total of cells 2D thru 13a D. This shall be equal to the sum of total cells 14A thru 14C
- vi. The value in cell 14D must be equal to the Bid amount.



**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST
COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.**

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | |
|---|--|----------|----------------|
| A | ALTERNATE OPTION <u>Labor and Material</u> Precast Concrete Floor & Walls Instead of Cast in Place Concrete as indentified and depicted on the contract documents. Reference Drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1, S1413- 1, S1414-1 | Lump Sum | \$9,740,260.00 |
| B | Total Precast Alternate Option | Lump Sum | \$9,740,260.00 |

1.1.1 To assist in the analysis of this proposal, the following information is **REQUIRED TO BE COMPLETED** by the Bidders. Failure to comply with this shall be considered Non Responsive RFP.

| FOR ANALYSIS ONLY | | | |
|-------------------|---|-------------------|-----------------|
| No. | Description | Quantity | Unit of Measure |
| 1A | Permanent Steel – Special Shape Exposed Steel | 22,400,000 | LBS. |
| 1B | Permanent Steel – Standard Profile Steel and Built up Section. | 26,000,000 | LBS |
| 1C | Permanent Steel – 1-Line Steel | 900,000 | LBS |
| 2 | Temporary Supports System for Steel Erection | 3,000,000 | LBS |
| 3 | Metal Deck | 258,000 | SQ. Ft |
| 4 | Precast Concrete Floor Slab | 252,000 | SQ. Ft |
| 5a | Precast Concrete Slab Ducts, Type A1 to A5 | 103 | No. |
| 5b | Precast Concrete Slab Ducts, Type B1 to B5 | 102 | No. |
| 5c | Precast Concrete Slab Ducts, Type C1 to C5 | 210 | No. |
| 5d | Precast Concrete Slab Ducts, Type D1 to D5 | 104 | No. |
| 6 | Precast Concrete Wall Units | 41,000 | SQ. Ft |
| 7 | Precast Concrete Stair Units | 114 | No. |



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | |
|----|--|---------|--------|
| 8 | Intumescent Coating | 351,000 | SQ. Ft |
| 9 | Paint coating excluding area covered by Intumescent coating. | 590,000 | SQ. Ft |
| 10 | Alternate Option – Precast Concrete Floor & Walls | 42,000 | SQ. Ft |

1. In the case of Item No. 1A, 1B and 1C the quantity shall be the number of pounds of structural steel to be fabricated / erected; Line Item No.2 Temporary support system for steel erection; No. 3 square feet of Metal Deck to be installed; Line Item No.4 Total square feet of Precast Concrete Floor Slab Installed; Item No. 5a, 5b & 5c Total number of typical Precast Concrete Slab ducts (Sections identified as 5a, 5b, 5c & 5d) installed; Item No.6 Precast Concrete wall units in square feet; Item No. 7 Precast Concrete Stair units; Item No.8 total square feet of Intumescent Coating applied; No. 9 Total square feet of painted steel excluding steel covered by Intumescent coating. Item No.10 Alternate Option – Precast Concrete Floor & Walls.

2. ~~Option to Paragraph 1.1A – Option C:~~

~~Subcontractor's Own Storage Yard Option [Identify Add(+) or Deduct(-)] with respect to the Base Price:~~

| | | | | |
|--------------|---|----------------------------|---------------------|------------------|
| 1 | Provide a change in base cost to deliver all material to the WTC site using the Subcontractor's Own Storage Yard/Facilities. Provide the cost of trucking and number to loads. | Number of Loads | Lump Sum | \$N/A |
| 2 | Total Option Price | Lump Sum | Lump sum | \$N/A |

| | | | | |
|---|--|---|--|---|
| 1 | All material to the WTC site using the Subcontractor's Own Storage Yard/Facilities. Provide the number of trucks and number of loads anticipated to complete the Project | Number of Loads 1500 +300 WT +152WT Alt | | Number of Trucks 1500+300WT+152WT Alt |
|---|--|---|--|---|



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

3. In order to be eligible for the award of the structural steel work of this work package, the bidder must meet the following requirements:
 - A. The bid proposal must include Method Statement for Steel Fabrication including detailed information on all facilities to be used. Steel Erection methodology to include proposed temporary support structure, type and location of crane / lifting devices / sequence of steel erection, transferring load to permanent structure. The method statement to include basic steel erection sequence including milestone dates for compliance with the project schedule.
 - B. The bid proposal must include resumes of the Key Personnel allocated for this project including Project Manager, Shop & field Superintendents, Shop and Field Quality Control Managers, and person in-charge of Steel fabrication at the fabrication facility and Steel erection in the field.
 - C. Specification Sec. 07816 'Epoxy Intumescent Coating System' Page 4 Article 5. Submit at the time of the bid , the properties of the proposed product, on the manufacture's letterhead for each of the items listed below:
 - a) Tensile Strength: ASTM D638.
 - b). Bond Strength: ASTM D1002.
 - c). Compressive Strength: ASTM D695
 - d). Explosion: No delamination, no cracking when tested four bar over pressure test.
 - e). Hardness: ASTM D2240
 - f). Chemical Resistance: ISO2812-1
 - g). Water Absorption: ISO 2812-2
 - h). Flame Spread: Class A (Class 1) when tested in accordance with ASTM E84
 - i). Smoke Development: Class A (Class 1) when tested with ASTM e84



STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST COATING, METAL DECK & PRECAST CONCRETE WORK
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

The undersigned understands and agrees to comply with, and be bound by, the subcontractor's pricing and instructions and other RFP/ contract documents.

The Undersigned acknowledges the receipt of any addendum issued by listing all by number below: 1 Thru 21

Proposer:

Company Name: DCM Erectors, Inc.

By: (Officer) [Signature] (Larry Davis, President)

Address: 110 East 42nd Street, Room 1704, New York, NY 10017

Date of Proposal: April 28, 2009 Corporate Seal:

The undersigned understands and agrees to comply with and be bound by the subcontractors pricing and instructions and other RFP/ contract documents.

1.2 Supplemental Unit Rates, All-In Rates and Cost/Price Assumptions

No changes are authorized from the approved scope, unless they are approved in writing by Phoenix Constructors JV (i.e., co-signed amendment), prior to the time of execution.

When changes occur from the anticipated job site, the following unit rates will be used to negotiate changes which shall also be finalized through the PC as firm fixed price.

All pricing assumptions shall be clearly stated to allow a reviewer to assess the potential cost risks associated with the proposed design, and associated construction efforts.

1.2.1 Financial Terms – See Subcontract

2.0 FEDERAL COMPLIANCE

Subcontractor acknowledges the fact that the World Trade Center Transportation Hub Project is a Federally funded project and as such all Subcontractors/Vendors must comply with and must require all of their respective lower tier Subcontractors/Vendors to comply with the Federal Acquisition Regulation ("FAR") and Truth in Negotiations Act



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

("TINA"), including but not limited to FAR Part 31 entitled "Contract Cost Principles and Procedures," and FAR Part 15 entitled "Contracting By Negotiation."

Such compliance includes but is not limited to the disclosure of all costs, mark-ups and any other financial information used to develop the proposed Contract, Purchase Order, Change Order, and/or Modification price, if requested, and the provision of any and all information requested Phoenix Constructors Joint Venture in order to substantiate compliance with the Federal Acquisition Regulations and Truth in Negotiations Act.

In addition to complying and providing Phoenix with all documents necessary to substantiate compliance with the FAR and TINA, the Subcontractor/Vendor agrees that if requested by Phoenix Constructors JV, the Subcontractor/Vendor must provide "Cost and Pricing Data" as required by Federal Acquisition Regulation Part 15.403 entitled "Obtaining Cost and Pricing Data" and execute a "Certificate of Current Cost or Pricing Data" which certifies that the data provided is "current, accurate, and complete."

Subcontractor must fully complete and submit FORM 2A.1 prior to proposal submission.

3.0 INVOICING INSTRUCTIONS

- 3.1 Phoenix Constructors JV will reimburse the Subcontractor solely for actual, contractual Work performed on a monthly basis. Phoenix Constructors JV will utilize an Earned Value System for reimbursement in accordance with the information contained in this section entitled "Invoicing Instructions."
- 3.2 On a weekly basis the Subcontractor must perform a walk-through with appropriate Phoenix personnel to establish what work was actually performed during that respective week. On the Tuesday of every week, the Subcontractor must provide to their respective Contract Administrator a "Weekly Physical Progress Update" (See Form 2A.9) for the work performed during the previous week. The "Weekly Physical Progress Update" will be audited and verified for accuracy by appropriate Phoenix personnel and will be returned to the Subcontractor with comments. The "Weekly Progress Update" must be a cumulative report delineating all Work performed to date and specifically detailing the work performed for the respective week.
- 3.3 On a monthly basis Subcontractor shall submit to Phoenix Constructors, JV (PCJV) to the attention of the Contract Administrator an Invoice for the actual work performed that month. The invoice must be accompanied by all documentation required by Phoenix Constructors JV evidencing actual performance of Work, including but not limited to the documentation required by Section 3.4. The invoice must be submitted, on the following dates for each month, with earned cost through the end of the month:



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

- Work performed in Jan. '09 – Invoice must be submitted by Feb. 9, 2009
- Work performed in Feb. '09 – Invoice must be submitted by Mar. 9, 2009
- Work performed in Mar. '09 – Invoice must be submitted by April 13, 2009
- Work performed in April. '09 – Invoice must be submitted by May 11, 2009
- Work performed in May. '09 – Invoice must be submitted by June 8, 2009
- Work performed in June. '09 – Invoice must be submitted by July 13, 2009
- Work performed in July. '09 – Invoice must be submitted by Aug.10, 2009
- Work performed in Aug. '09 – Invoice must be submitted by Sept. 7, 2009
- Work performed in Sept. '09 – Invoice must be submitted by Oct. 12, 2009
- Work performed in Oct. '09 – Invoice must be submitted by Nov. 9, 2009
- Work performed in Nov. '09 – Invoice must be submitted by Dec.7, 2009

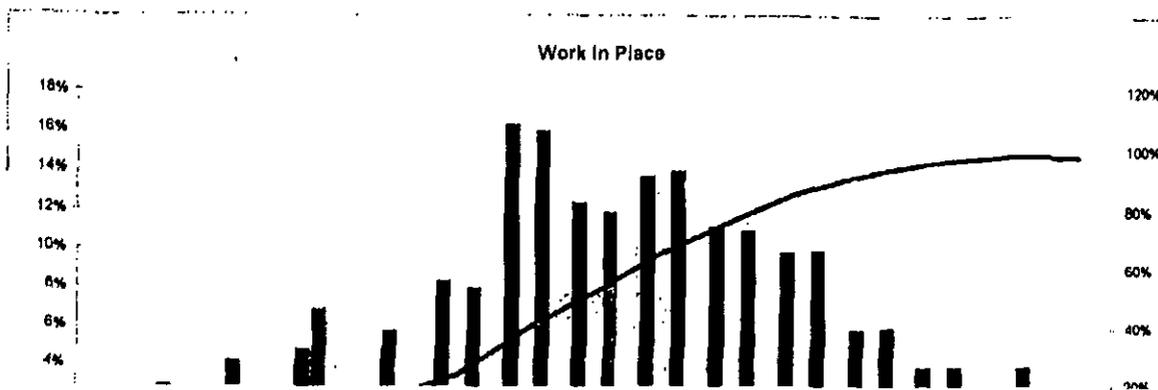
Updated schedules for subsequent years will be provided at a later date.

Phoenix will attempt to reimburse Subcontractor within 45 days from the receipt of an all inclusive, accurate invoice. Subsequent to the initial submittal by the Subcontractor, Phoenix will review the Invoice for accuracy. Any discrepancies or inaccuracies as determined solely by Phoenix will be returned to the Subcontractor for revision. Failure to provide an accurate invoice substantiated with all required documents can potentially delay the reimbursement of the Subcontractor's Invoice.

3.4 The Subcontractor's Invoice must be accompanied by all documentation required by Phoenix Constructors JV evidencing actual performance of Work, including but not limited to the following documents:

- Earned Value System (Enclosed Excel Format in CD) (Attach to Form 2A.8)
- A Monthly Progress Report (Form 2A.10)
- Graphical Representation Regarding Performance (Examples shown on the following two pages of the three graphical representations required) (Attach to Form 2A.11):

o Work in Place (Example Shown Below)



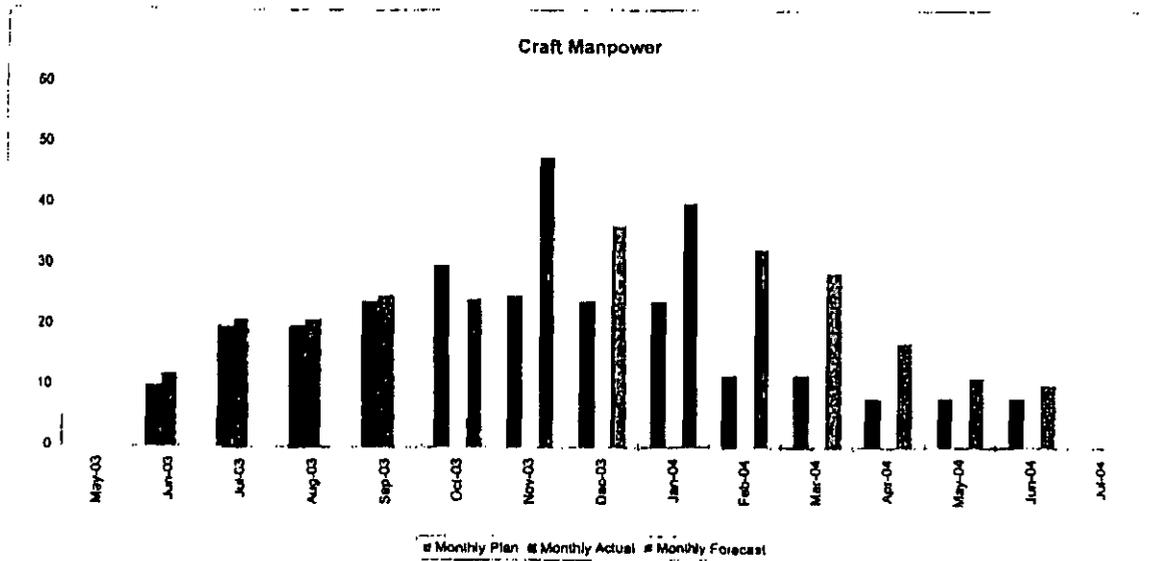


RFP/CONTRACT NO.: W0TC-GC1-2-KN0186-020

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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

- o Billings (Example Shown Below)
- o Craft Manpower (Example Shown Below)

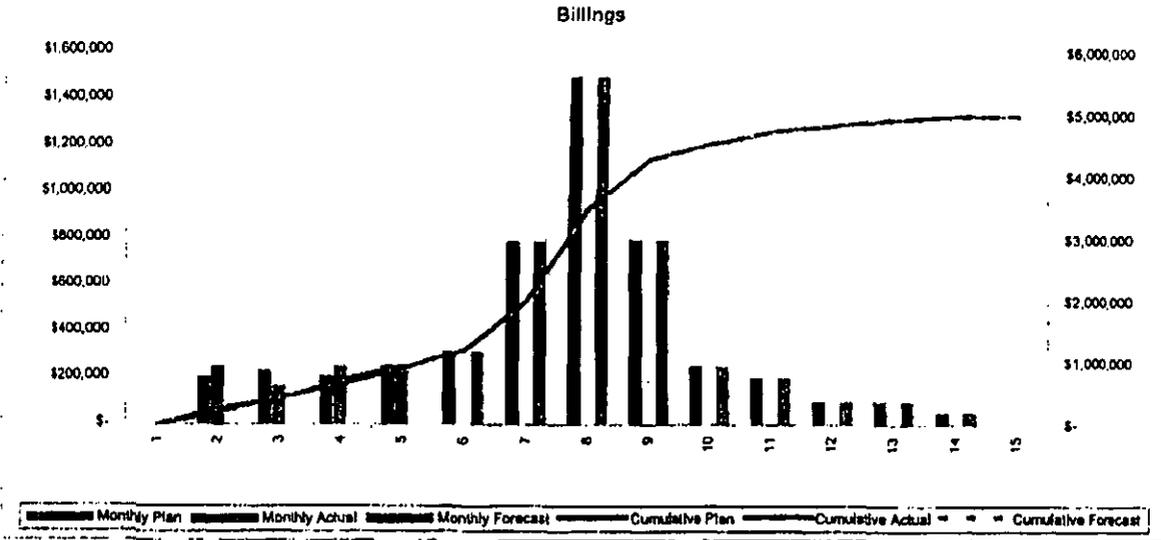


- o Billings (Example Shown Below)



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS



- Detailed Estimate Breakdown (Form 2A.7),
- Schedule of Values (Form 2A.5)
- Detailed Updated Cost Loaded Schedule (Form 2A.6)
- Furnisher Information Schedule (Form 2A.13)
- Explanation of Any Variances from Planned Performance vs Actual Performance (Schedule, Manpower, Progress, etc)
- Notarized Certified Payrolls (mandatory form provided in Exhibit 7) (including all second tier subcontractors),
- Partial or Final Releases (Exhibits 3 or 4), and
- WMBE Monthly Reports (Exhibit 6)

Subcontractor must submit the above requested material via e-mail to an email address to be provided at a later date.

- 3.5 PCJV shall advise the Subcontractor whether they agree with the amounts claimed, or ask for a meeting with the PCJV PM, PA PM, and the Subcontractor. During this meeting the value of the Invoice shall be agreed upon and signed off as approved.
- 3.6 Contractual retention, which is calculated per the terms of the Contract of amount invoiced, shall be identified on the face of each progress invoice and withheld



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

from amounts payable. Retainage of 10% of the contract value will be held on all contracts and on any future modifications unless otherwise stated in the contract. Retainage or Final payment cannot be released until all contract work is completed, punchlist items are completed and signed off by PCJV and the Owner, all warranty and required turn-over information has been received, the Owner has approved the release, all paperwork and forms requested by this Contract have been provided, and the subcontractor has complied with all of the Terms & Conditions of this Contract. Do not invoice retainage until released to do so by the Contract Administrator. Final retainage must be billed separate from base contract invoicing on an Application for Final Payment and Final Payment Release. All outstanding contract modifications must be executed, and all contract deliverables including but not limited to insurance and bond requirements must be provided in accordance with the forms of the Contract. Failure to provide any of the required deliverables will be just cause for retainage retention by PCJV.

- 3.7 Subcontractor's invoices shall be clearly marked with this Subcontract Number and the appropriate milestone description of activities and/or work related to the billing.
- 3.8 Subcontractor's invoices shall indicate the time period during which the Work was performed and for which the invoice is submitted.
- 3.9 Phoenix shall not be obligated to pay for invoice items not fully supported by approved progress measurements and any other such documentation as may be required. Phoenix reserves the right to make provisional payment on an invoice in dispute, pending audit and reconciliation of the total charge.
- 3.10 Subcontractor shall sign each invoice certifying that all Work covered by the invoice is complete and that the invoice is correct, authentic and the only one issued for the Work described therein.
- 3.11 Any payments made shall not be construed to be an acceptance of defective Work nor relieve Subcontractor of any of its obligations.
- 3.12 Invoices for Cost-Reimbursable Work shall be prepared and submitted as follows:
 - 3.12.1 Invoices for Labor shall be accompanied by Contractor approved daily reports or time sheets listing workers' names, classification, and straight time and overtime hours. Labor categories and rates must correspond to those set forth in Rate Schedule "A" of this Form 2A.2.



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- 3.12.2 Invoices for Subcontractor-Owned Equipment shall be accompanied by Contractor approved daily reports or time sheets listing the equipment type, number, size and hours. Equipment descriptions and rates must correspond to those set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110)
- 3.12.3 Invoices for Subcontractor Rented Equipment shall be accompanied by Contractor approved daily reports or time sheets listing equipment type, number, size and hours along with a copy of Subcontractor's rental agreement and invoice from supplier. The applicable markup as set forth in this Form 2A.3 shall be set forth separately.
- 3.12.4 Invoices for Materials shall be accompanied by field receiving documentation and a copy of Subcontractor's purchase order and invoice from supplier.
- 3.13 Each subcontractor **MUST** fully complete and sign the certified payroll provided in Exhibit 7, Form 7.2, on a weekly basis. As a prerequisite for payment, not limiting any other prerequisites for payment, the Subcontractor must submit all respective certified payrolls to the Contractor at the time of invoicing.
- 3.14 Subcontractor must submit on a monthly basis, with their invoice, their updated M/WBE Participation Plan, in accordance with Exhibit 6. Failure to submit such Plan on a monthly basis shall be just cause for Phoenix/Authority to withhold payment from the Subcontractor. Submission of an updated M/WBE Plan is a condition precedent for payment to the Subcontractor.

4.0 PRICING FOR CHANGES

Compensation to Subcontractor for changes in the Scope of Work, shall be in accordance with the provisions of Article 8, Change Orders of GC Long Form Subcontract Rev. 0, except to the extent otherwise provided below:

Phoenix may request, and Subcontractor shall provide, proposals for Scope of Work changes (additions and deletions) which are priced, at Phoenix' option, by one or a combination of the following methods:

- a. Negotiated Lump Sums based upon a mutually agreed Scope of Work.
- b. Applicable unit prices set forth in Exhibit B, titled, Contract Unit Rates, if the Work is possible to be fairly classified under the Unit Price items.



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- c. Negotiated Unit Prices not established in the Contract.
- d. On a "cost-reimbursement plus a fixed fee" basis, or at the labor and equipment rates as set forth in Rate Schedule "A" and "B".
- e. Any price based upon cost plus a percentage of cost is expressly prohibited.
- f. Any additional alternative that the Contractor deems appropriate.

4.1 Lower tier Subcontracts

- 4.1.1 All subcontracts and services provided by others for performance of changes or extra work requested by Phoenix/Authority, which have not been objected to by Phoenix/Authority shall be at actual cost to Subcontractor of such subcontracts or services provided by others (not to exceed such subcontract price) plus a mark-up for all overhead and fee of Subcontractor thereon which shall not exceed 10%. Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to "Cost Reimbursement," shall be in accordance with Article 8, entitled "Change Orders."
- 4.1.2 Subcontractor's invoices for work performed by any of Subcontractor's "lower tier subcontractors" may include an allowance for the "lower tier subcontractor's" overhead and fee which shall not exceed 10%.
- 4.1.3 In no instance shall the mark-ups or rates for changes provided by lower tier subcontractor to Subcontractor exceed the mark-ups or rates for changes as stipulated in this Article 3.0. Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to "Cost Reimbursement," shall be in accordance with Article 8, entitled "Change Orders."

4.2 Materials

- 4.2.1 Compensation to Subcontractor for materials supplied by Subcontractor for incorporation into the permanent facility (excluding consumable, expendable, and small tools) shall be at actual invoiced cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by Phoenix/Authority, plus a mark-up, for all fee and overhead expense not to exceed 10%. Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to



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"Cost Reimbursement," shall be in accordance with Article 8, entitled "Change Orders."

4.2.2 Temporary Materials will be reimbursed at the direct cost of such materials, as substantiated by invoices certified paid or by such documentation as may be required by Phoenix/Authority, less their salvage value, if any.

4.2.3 Phoenix/Authority reserves the right to provide, at no cost to Subcontractor, materials, equipment, services, supplies or incidentals required to perform the Work. All refunds, trade discounts, rebates on materials, supplies and services, and all monies obtained from the disposal of surplus materials or supplies shall accrue to Owner.

4.3 Labor

Compensation to Subcontractor for construction labor, related costs and profit shall be in accordance with the rates set forth in Rate Schedule "A" entitled ALL INCLUSIVE LABOR RATES (Form 2A.2).

4.4 Equipment Rental

4.4.1 Equipment rental rates, as set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose Corporation 95110) shall apply for equipment used for extra work requested by Contractor.

Hourly rental for those items of equipment listed in the "Rental Rate 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 of 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.



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When utilizing the rental rates appearing in the Blue Book, the Contractor (or Authority 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 if tool, equipment construction aid used on a particular Work package shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of tool, equipment or construction aid, or substitute item of equipment is at the construction site for use by the Contractor or subcontractors whether under this Contract if any other contract with the Authority. Included within this period will be (i) work days of idleness results from acts or omission of the Contractor, Authority or third persons, breakdowns in the tool, equipment or construction aid or any other cause (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of tool, delivery to the construction site of the same substitute tool, equipment or construction aide. The number of workdays in the period for each rate shall be as indicated below:

| | |
|---|--------------|
| Three work days or less | daily rate |
| More than three work days but not more than fifteen work days | weekly rate |
| More than fifteen work days | monthly rate |

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 daily rental | 1/8 of daily rental from Blue Book |
| Hourly rate based on weekly rental | 1/40 of from weekly rental Blue Book |
| Hourly rate based on monthly rental | 1/176 of from monthly rental Blue Book |



**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST
COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.**

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

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 Contractor (or Authority Engineer) should determine that the nature, number of pieces or size of the tool, equipment or construction aid used by the Subcontractor 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 Contractor (or Authority Engineer) to be suitable for the Work, the reasonable rental will not be based upon the tool, equipment or construction aid used by the Subcontractor but will be based on the smallest quantity or smallest or least elaborate tool equipment or construction aid determined by the Contractor (or Authority 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, (b) with respect to Work performed in New Jersey, the taxes on the rental actually paid by the Subcontractor or lower tier subcontractor and (c) notwithstanding the number of hours during which such of tool, equipment or construction aid is utilized, the minimum rental therefore will be for a period of eight hours.

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

- 4.4.2 For equipment which is specifically mobilized to the jobsite for extra work, Subcontractor shall separately identify such transportation costs (including: loading, off-loading, assembly and disassembly) when submitting proposals to Phoenix/Authority for performing extra work. Transportation costs shall not be applicable to equipment already mobilized on the site.
- 4.4.3 When Subcontractor's equipment does not resemble the equipment having rental rates listed in Rate Schedule "B" for extra work, the rental rate shall be negotiated and agreed upon in writing by Contractor.
- 4.4.4 Compensation to Subcontractor for equipment used for extra work which is rented from third parties and does not resemble the equipment having



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

rental rates listed in the "Rental Rate Blue Book" must be approved by Contractor in writing prior to rental and shall be at actual cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by Contractor plus a mark-up, for all profit and overhead expense of Subcontractor *thereon, of not to exceed 10%*. *Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to "Cost Reimbursement," shall be in accordance with Article 8, entitled "Change Orders."*

4.4.5 All Subcontractors involved with the rental of equipment must comply with the requirements involving rental of equipment in Exhibit 2B.

4.5 Time Sheets

4.5.1 For all work performed on a cost-reimbursable basis, Subcontractor shall submit daily time sheets for approval by Contractor. An approved copy of the time sheets, which shall detail all hours worked, materials installed and equipment used, must be submitted in support of Subcontractor's monthly billing.

5.0 Rate Schedules -- To be determined if: requested by contractor, or if a price/cost change is required.

5.1 Rate Schedule "A" -- All Inclusive Labor Rates

5.2 Rate Schedule "B" -- Equipment Rental Rates

5.3 Rate Schedule "C" -- List of SubSubcontractors



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COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2; 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.**

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS.

1.0 PAYMENT SCHEDULE

Full compensation to Subcontractor for full and complete performance by Subcontractor of all the Work, compliance with all terms and conditions of this Subcontract, and for Subcontractor's payment of all obligations incurred in, or applicable to, performance of the Work, shall be the sum of the lump sums and the value of the unit prices set forth below in paragraph 1.1 below. Phoenix Constructors JV will reimburse the Subcontractor solely for actual contractual Work performed on a monthly basis. Phoenix Constructors JV will utilize an Earned Value System (accepted work in place) for reimbursement in accordance with paragraph 3.0 entitled "Invoicing Instructions."

Prior to proposal and thereafter updated prior to contract execution, the subcontractor shall submit for approval by Phoenix Constructors JV:

- a Detailed Schedule of Values (Form 2A.5), in a format that is required by, and acceptable to Phoenix Constructors JV (when submitting this document prior to proposal, please submit within 2 days of such request being made by Phoenix),
- a Detailed Estimate Breakdown (Form 2A.7), (when submitting this document prior to proposal, please submit within 2 days of such request being made by Phoenix),
- an Earned Value System (Form 2A.8) which supports the method in which the work will be broken down and contracted, and which will be utilized to support future invoicing. The Earned Value System must utilize the Detailed Estimate which ultimately must roll up to Support the Schedule of Values (An Example of an Earned Value System has been provided in EXCEL Format in the enclosed CD),
- a Detailed Schedule (Form 2A.6) which contains enough detail to support the execution of the work and identify all interface points between contractor and all other Subcontractors (This form MUST be submitted prior to proposal with the detailed schedule attached. Thereafter, the subcontractor MUST submit a detailed cost loaded schedule within 5 days of Phoenix requesting the subcontractor to do so. This detailed cost loaded schedule will supersede the submission of the initial detailed schedule and will be updated prior to contract execution and on a monthly basis thereafter as indicated in clause 3.4 of this exhibit);



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COATING, METAL DECK & PRECAST CONCRETE WORK
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PATH STATION + WORK AREA 2, 1 LINE-SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

The above referenced submittals are to be provided in addition to all other required submittals mandated by the Terms and Conditions of this Subcontract, and/or required to substantiate the Subcontractor's work actually performed.

Subcontractors and their respective employees, subcontractors, and suppliers must comply with all security requirements set forth in this Subcontract including Exhibit 19C "WTC PATH Identification Guidelines For Subcontractors;" and all additional security requirements imposed by The Port Authority of New York and New Jersey, Phoenix Constructors, or any additional party that Phoenix Constructors in their sole determination believes shall have the ability to request such requirements. The Subcontractor shall be solely responsible for all costs and/or expenses associated with the security, enrollment and identification procedures and requirements set forth within this Subcontract including but not limited to the actual Secure Worker Access Consortium (SWAC) enrollment cost of \$250.00 per individual and all associated costs associated with such enrollment. All security related costs must be included in the Subcontractors proposal.

Applicable Credits – The applicable portion on ANY income, rebate, allowance, or other credit relating to any allowable cost or any Subcontractor work, which is received by, or accruing to the Subcontractor, shall be credited to Phoenix or the Government either as a cost reduction or by cash refund. This includes, but is not limited to the resale or reuse of any materials. Such a credit must be reflected in the associated price proposal for the value of the subcontracted work.

1.1 Firm Fixed Price

The undersigned, having examined this RFP/Contract Documents for this Work Package and having visited the job site and examined the conditions affecting the work, hereby proposes and agrees to furnish all labor, materials, equipment, and each and every item of cost to perform operations necessary to complete the work as required by subject RFP/Contract Documents, "Station Construction and Transit Hall Structure to Grade – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck and Precast Concrete Work.

The base price proposed as provided for in Paragraph A (Option C) shall assume that all materials will delivered to the WTC Site and any interim storage will be at the Phoenix provided Marshalling Yard in accordance with Exhibit 4-Paragraph 3.57 entitled Marshalling Yard provided by the Subcontractor.



RFP/CONTRACT NO.: WOTC-GC1-2-KN0186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

A. ALTERNATE OPTION BASE BID PROPOSAL: Work Areas 1+2+3

Work Package # 20, Furnish, Fabricate and Erect, Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work.

OPTION: C

SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL

This base price proposed assumes that all materials will delivered to the WTC Site and any interim storage will be ~~at the Phoenix provided Marshalling Yard in accordance with Exhibit 1 Paragraph 3.57 entitled "Marshalling Yard"~~ provided by the Subcontractor.

The total price for complete performance of all the tasks described in Exhibit 1 Statement of Work is \$ 328,800,000 (in words) THREE HUNDRED AND TWENTY EIGHT MILLION EIGHT HUNDRED THOUSAND dollars as indicated below. The Price is firm and fixed for the duration of the Subcontract and is not subject to escalation for any cause. The breakdown of this Total Price against individual pay items is detailed below.

B. Alternate Option - Furnish, Fabricate and Install Precast Concrete Floor and Walls instead of Cast In Place Concrete as Identified and depicted on the Contract drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1, S1413-1 & S1414-1

The total price for complete performance of all the tasks described in Exhibit 1 Statement of Work is \$ 10,000,000 (in words) TEN MILLION dollars as indicated below. The Price is firm and fixed for the duration of the Subcontract and is not subject to escalation for any cause. The breakdown of this Total Price against individual pay items is detailed below.

The Prices are firm and fixed for the duration of the Subcontract and is not subject to escalation for any cause. The above prices shall be furnished in US dollars and are not subject to change based upon currency fluctuations. Payment for actual quantities at the Unit Price shall constitute full payment for the performance of the Subcontract and covers all cost of whatever nature incurred by the Subcontractor in accomplishing the Work in accordance with the provisions of this Subcontract.

Phoenix Constructors JV and Port Authority of New York and New Jersey has the exclusive right at their discretion to select and choose any single or combination of different proposals from the same or more than one bidder for the award. The bidders



RFP/CONTRACT NO.: W0TC-GC1-2-KN0185-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
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COATING, METAL DECK & PRECAST CONCRETE WORK
ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1,
PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

A. ALTERNATE OPTION BASE BID PROPOSAL: Work Areas 1+2+3

Work Package # 20, Furnish, Fabricate and Erect, Structural Steel,
Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work.

OPTION: C

**SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION +
AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL**

This base price proposed assumes that all materials will delivered to the
WTC Site and any interim storage will be at the Phoenix provided
~~Marshalling Yard in accordance with Exhibit 1 Paragraph 3.57 entitled~~
~~"Marshalling Yard"~~ provided by the Subcontractor.

The total price for complete performance of all the tasks described in Exhibit 1
Statement of Work is \$ _____ (in words) _____
dollars as indicated

below. The Price is firm and fixed for the duration of the Subcontract and is not
subject to escalation for any cause. The breakdown of this Total Price against
individual pay items is detailed below.

**B. Alternate Option - Furnish, Fabricate and Install Precast Concrete Floor and
Walls Instead of Cast In Place Concrete as Identified and depicted on the
Contract drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1,
S1413-1 & S1414-1**

The total price for complete performance of all the tasks described in Exhibit 1
Statement of Work is \$ _____ (in words) _____
dollars as indicated

below. The Price is firm and fixed for the duration of the Subcontract and is not
subject to escalation for any cause. The breakdown of this Total Price against
individual pay items is detailed below.

The Prices are firm and fixed for the duration of the Subcontract and is not subject to
escalation for any cause. The above prices shall be furnished in US dollars and are not
subject to change based upon currency fluctuations. Payment for actual quantities at
the Unit Price shall constitute full payment for the performance of the Subcontract and
covers all cost of whatever nature incurred by the Subcontractor in accomplishing the
Work in accordance with the provisions of this Subcontract.

Phoenix Constructors JV and Port Authority of New York and New Jersey has the
exclusive right at their discretion to select and choose any single or combination of
different proposals from the same or more than one bidder for the award. The bidders



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

must consider and have appropriate allowance in their proposals for coordination and review of connection details at the common boundary lines for adjacent work packages, of the Work Package #20, WP#21 & WP# 9 & 9X, In addition to coordination with other WTC site stakeholders, i.e., memorial, towers 1,2,3 & 4, VOEC...

NOTE ** This pricing format MUST be used**

All prices shall be furnished in US Dollars and are not subject to change based upon world currency fluctuations.

| | Bid Breakdown Summary | | A | B | C | D |
|---|---|----------|---------------------|--------------------|--------------------|---------------------|
| | | | Path Station | 1- Line Subway Box | Transit Hall | A+B+C |
| | DESCRIPTION | UM | | | | TOTAL |
| 1 | Total Weight of Permanent Steel | US Ton | 11,000 ^T | 4,500 ^T | 9,200 ^T | 24,700 ^T |
| 2 | Steel Material | Lump Sum | \$ 19,000,000 | \$ 13,000,000 | \$ 17,000,000 | \$ 49,000,000 |
| 3 | Steel Fabrication | Lump Sum | \$ 44,000,000 | \$ 9,000,000 | \$ 18,000,000 | \$ 71,000,000 |
| 4 | Intumescent Fire Resistant Coating | Lump Sum | \$ 18,000,000 | \$ 1,000,000 | \$ 3,000,000 | \$ 22,000,000 |
| 5 | Shipping and Handling FOB Job Site (deliver material to WTC site using Phoenix provided Marshalling Yard) | Lump Sum | \$ 6,000,000 | \$ 2,000,000 | \$ 5,000,000 | \$ 13,000,000 |
| 6 | Steel Erection Labor | Lump Sum | \$ 54,000,000 | \$ 31,000,000 | \$ 39,000,000 | \$ 124,000,000 |



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| | | | | | | |
|-----|---|-------------|-------------------|------------------|------------------|-------------------|
| 7 | Metal Deck and Studs Labor and Material | Lump Sum | \$ 2,000,000 | \$ 1,000,000 | \$ 2,000,000 | \$ 5,000,000 |
| 8 | Precast Concrete Labor and Material | Lump Sum | \$ 15,000,000 | \$ 0 | \$ 2,000,000 | \$ 17,000,000 |
| 9 | Erection Equipment | Lump Sum | \$ 5,000,000 | \$ 2,000,000 | \$ 3,000,000 | \$ 10,000,000 |
| 10 | Temporary Construction | Lump Sum | \$ 3,000,000 | \$ 1,000,000 | \$ 2,000,000 | \$ 6,000,000 |
| 11 | Engineering | Lump Sum | \$ 3,000,000 | \$ 2,000,000 | \$ 1,000,000 | \$ 6,000,000 |
| 12 | Quality Control | Lump Sum | \$ 1,500,000 | \$ 1,500,000 | \$ 1,000,000 | \$ 4,000,000 |
| 13 | Cost to remove Path Hall Roof Crane Runway. | Lump Sum | \$ 1,500,000 | \$ N/A | \$ N/A | \$ 1,500,000 |
| 13a | Cost to remove Church Street Perch / Road Access. | Lump Sum | \$ N/A | \$ N/A | \$ 300,000 | \$ 300,000 |
| 14 | Total Bid Price | Lump Sum | \$ 172,000,000 | \$ 63,500,000 | \$ 93,300,000 | \$ 328,800,000 |

Instructions:

- i. Insert in line 1 the US tonnage of the permanent steel to be fabricated
- ii. Insert in line 2 thru 14 the US dollar value of the work described
- iii. Insert in line D the sum of columns A+ B+C for each row 1 thru 13a
- iv. Insert in row 14 the sum of total of rows 2 thru 13a each column A, B, and C
- v. Insert in cell 14D the sum of total of cells 2D thru 13a D. This shall be equal to the sum of total cells 14A thru 14C
- vi. The value in cell 14D must be equal to the Bid amount.



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS.

| | | | |
|---|--|----------|---|
| A | ALTERNATE OPTION <u>Labor and Material</u> Precast Concrete Floor & Walls Instead of Cast in Place Concrete as indentified and depicted on the contract documents. Reference Drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1, S1413- 1, S1414-1 | Lump Sum | \$ <i>TEN MILLION</i> <i>10,000,000</i> |
| B | Total Precast Alternate Option | Lump Sum | \$ <i>10,000,000</i> |

1.1.1 To assist in the analysis of this proposal, the following information is
 REQUIRED TO BE COMPLETED by the Bidders. Failure to comply with
 this shall be considered Non Responsive RFP.

| FOR ANALYSIS ONLY | | | |
|-------------------|--|-------------------|-----------------|
| No. | Description | Quantity | Unit of Measure |
| 1A | Permanent Steel - Special Shape Exposed Steel | <i>22,400,000</i> | LBS. |
| 1B | Permanent Steel - Standard Profile Steel and Built up Section. | <i>24,900,000</i> | LBS |
| 1C | Permanent Steel - 1-Line Steel | <i>700,000</i> | LBS |
| 2 | Temporary Supports System for Steel Erection | <i>300,000</i> | LBS |
| 3 | Metal Deck | <i>255,000</i> | SQ. Ft |
| 4 | Precast Concrete Floor Slab | <i>157,000</i> | SQ. Ft |
| 5a | Precast Concrete Slab Ducts, Type A1 to A5 | <i>103</i> | No. |
| 5b | Precast Concrete Slab Ducts, Type B1 to B5 | <i>102</i> | No. |
| 5c | Precast Concrete Slab Ducts, Type C1 to C5 | <i>20</i> | No. |
| 5d | Precast Concrete Slab Ducts Type D1 to D5 | <i>104</i> | No. |
| 6 | Precast Concrete Wall Units | <i>4,000</i> | SQ. Ft |
| 7 | Precast Concrete Stair Units | <i>114</i> | No. |



STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST COATING, METAL DECK & PRECAST CONCRETE WORK
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | |
|----|--|---------|--------|
| 8 | Intumescent Coating | 357,000 | SQ. Ft |
| 9 | Paint coating excluding area covered by Intumescent coating. | 590,000 | SQ. Ft |
| 10 | Alternate Option - Precast Concrete Floor & Walls | 42,000 | SQ. Ft |

1. In the case of Item No. 1A, 1B and 1C the quantity shall be the number of pounds of structural steel to be fabricated / erected; Line Item No.2 Temporary support system for steel erection; No. 3 square feet of Metal Deck to be installed; Line Item No.4 Total square feet of Precast Concrete Floor Slab Installed; Item No. 5a, 5b & 5c Total number of typical Precast Concrete Slab ducts (Sections identified as 5a, 5b, 5c & 5d) installed; Item No.6 Precast Concrete wall units in square feet; Item No. 7 Precast Concrete Stair units; Item No.8 total square feet of Intumescent Coating applied; No. 9 Total square feet of painted steel excluding steel covered by Intumescent coating. Item No.10 Alternate Option - Precast Concrete Floor & Walls.

2. Option to Paragraph 1.1A - Option C:

Subcontractor's Own Storage Yard Option (Identify Add(+) or Deduct(-) with respect to the Base Price:

| | | | | | |
|---|---|-----------------|----------|----|---|
| 1 | Provide a change in base cost to deliver all material to the WTC site using the Subcontractor's Own Storage Yard/Facilities. Provide the cost of trucking and number to loads. | Number of Loads | Lump Sum | \$ | 0 |
| 2 | Total Option Price | Lump Sum | Lump Sum | \$ | 0 |

| | | | |
|--|---|-----------------|--------|
| | Subcontractor's Own Storage Yard/Facilities. Provide the number of trucks and number of loads anticipated to complete the Project | Number of Loads | Trucks |
| | | 1500 | 1500 |

WORK TRAINS BASE 300 300
 ALT. 152 152



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

3. In order to be eligible for the award of the structural steel work of this work package, the bidder must meet the following requirements:
 - A. The bid proposal must include Method Statement for Steel Fabrication including detailed information on all facilities to be used. Steel Erection methodology to include proposed temporary support structure, type and location of crane / lifting devices / sequence of steel erection, transferring load to permanent structure. The method statement to include basic steel erection sequence including milestone dates for compliance with the project schedule.
 - B. The bid proposal must include resumes of the Key Personnel allocated for this project including Project Manager, Shop & field Superintendents, Shop and Field Quality Control Managers, and person in-charge of Steel fabrication at the fabrication facility and Steel erection in the field.
 - C. Specification Sec. 07816 'Epoxy Intumescent Coating System' Page 4 Article 5. Submit at the time of the bid, the properties of the proposed product, on the manufacture's letterhead for each of the items listed below:
 - a) Tensile Strength: ASTM D638.
 - b). Bond Strength: ASTM D1002.
 - c). Compressive Strength: ASTM D695
 - d). Explosion: No delamination, no cracking when tested four bar over pressure test.
 - e). Hardness: ASTM D2240
 - f). Chemical Resistance: ISO2812-1
 - g). Water Absorption: ISO 2812-2
 - h). Flame Spread: Class A (Class 1) when tested in accordance with ASTM E84
 - i). Smoke Development: Class A (Class 1) when tested with ASTM e84

The undersigned understands and agrees to comply with, and be bound by, the subcontractor's pricing and instructions and other RFP/ contract documents.



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STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST COATING, METAL DECK & PRECAST CONCRETE WORK
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

The Undersigned acknowledges the receipt of any addendum issued by listing all by number below:

1 THRU 21

Proposer:

Company Name:

DCM ERELECTORS INC
110 EAST 42ND ST SUITE 1704
NY NY 10017

By: (Officer)

[Signature] LARRY DANA

Address:

Date of Proposal: 3/16/09 Corporate Seal:

The undersigned understands and agrees to comply with and be bound by the subcontractors pricing and instructions and other RFP/ contract documents.

1.2 Supplemental Unit Rates, All-in Rates and Cost/Price Assumptions

No changes are authorized from the approved scope, unless they are approved in writing by Phoenix Constructors JV (i.e., co-signed amendment), prior to the time of execution.

When changes occur from the anticipated job site, the following unit rates will be used to negotiate changes which shall also be finalized through the PC as firm fixed price.

All pricing assumptions shall be clearly stated to allow a reviewer to assess the potential cost risks associated with the proposed design, and associated construction efforts.

1.2.1 Financial Terms - See Subcontract

2.0 FEDERAL COMPLIANCE

Subcontractor acknowledges the fact that the World Trade Center Transportation Hub Project is a Federally funded project and as such all Subcontractors/Vendors must comply with and must require all of their respective lower tier Subcontractors/Vendors to comply with the Federal Acquisition Regulation ("FAR") and Truth in Negotiations Act



**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

("TINA"), including but not limited to FAR Part 31 entitled "Contract Cost Principles and Procedures," and FAR Part 15 entitled "Contracting By Negotiation."

Such compliance includes but is not limited to the disclosure of all costs, mark-ups and any other financial information used to develop the proposed Contract, Purchase Order, Change Order, and/or Modification price, if requested, and the provision of any and all information requested Phoenix Constructors Joint Venture in order to substantiate compliance with the Federal Acquisition Regulations and Truth in Negotiations Act.

In addition to complying and providing Phoenix with all documents necessary to substantiate compliance with the FAR and TINA, the Subcontractor/Vendor agrees that if requested by Phoenix Constructors JV, the Subcontractor/Vendor must provide "Cost and Pricing Data" as required by Federal Acquisition Regulation Part 15.403 entitled "Obtaining Cost and Pricing Data" and execute a "Certificate of Current Cost or Pricing Data" which certifies that the data provided is "current, accurate, and complete."

Subcontractor must fully complete and submit FORM 2A.1 prior to proposal submission.

3.0 INVOICING INSTRUCTIONS

- 3.1 Phoenix Constructors JV will reimburse the Subcontractor solely for actual, contractual Work performed on a monthly basis. Phoenix Constructors JV will utilize an Earned Value System for reimbursement in accordance with the information contained in this section entitled "Invoicing Instructions."
- 3.2 On a weekly basis the Subcontractor must perform a walk-through with appropriate Phoenix personnel to establish what work was actually performed during that respective week. On the Tuesday of every week, the Subcontractor must provide to their respective Contract Administrator a "Weekly Physical Progress Update" (See Form 2A.9) for the work performed during the previous week. The "Weekly Physical Progress Update" will be audited and verified for accuracy by appropriate Phoenix personnel and will be returned to the Subcontractor with comments. The "Weekly Progress Update" must be a cumulative report delineating all Work performed to date and specifically detailing the work performed for the respective week.
- 3.3 On a monthly basis Subcontractor shall submit to Phoenix Constructors, JV (PCJV) to the attention of the Contract Administrator an invoice for the actual work performed that month. The invoice must be accompanied by all documentation required by Phoenix Constructors JV evidencing actual performance of Work, including but not limited to the documentation required by Section 3.4. The invoice must be submitted, on the following dates for each month, with earned cost through the end of the month:



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

Work performed in Jan. '09 – Invoice must be submitted by Feb. 9, 2009
Work performed in Feb. '09 – Invoice must be submitted by Mar. 9, 2009
Work performed in Mar. '09 – Invoice must be submitted by April 13, 2009
Work performed in April. '09 – Invoice must be submitted by May 11, 2009
Work performed in May. '09 – Invoice must be submitted by June 8, 2009
Work performed in June. '09 – Invoice must be submitted by July 13, 2009
Work performed in July. '09 – Invoice must be submitted by Aug. 10, 2009
Work performed in Aug. '09 – Invoice must be submitted by Sept. 7, 2009
Work performed in Sept. '09 – Invoice must be submitted by Oct. 12, 2009
Work performed in Oct. '09 – Invoice must be submitted by Nov. 9, 2009
Work performed in Nov. '09 – Invoice must be submitted by Dec. 7, 2009

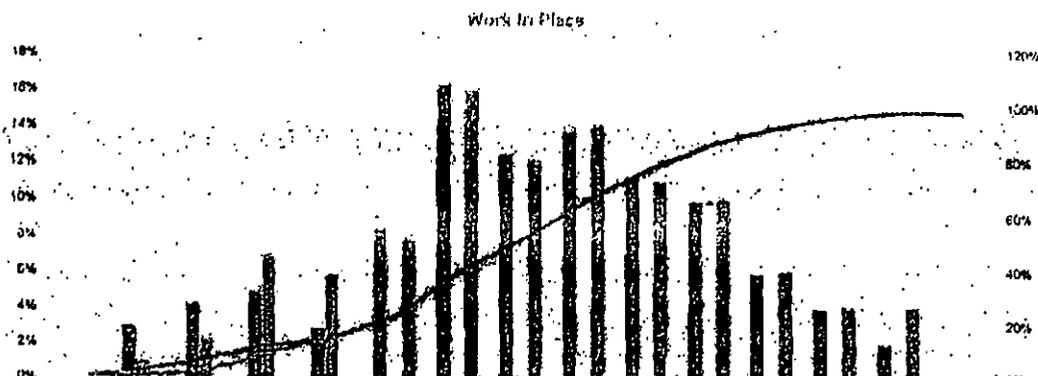
Updated schedules for subsequent years will be provided at a later date.

Phoenix will attempt to reimburse Subcontractor within 45 days from the receipt of an all inclusive, accurate invoice. Subsequent to the initial submittal by the Subcontractor, Phoenix will review the invoice for accuracy. Any discrepancies or inaccuracies as determined solely by Phoenix will be returned to the Subcontractor for revision. Failure to provide an accurate invoice substantiated with all required documents can potentially delay the reimbursement of the Subcontractor's invoice.

3.4 The Subcontractor's Invoice must be accompanied by all documentation required by Phoenix Constructors JV evidencing actual performance of Work, including but not limited to the following documents:

- Earned Value System (Enclosed Excel Format in CD) (Attach to Form 2A.8)
- A Monthly Progress Report (Form 2A.10)
- Graphical Representation Regarding Performance (Examples shown on the following two pages of the three graphical representations required) (Attach to Form 2A.11):

Work in Place (Example shown Below)

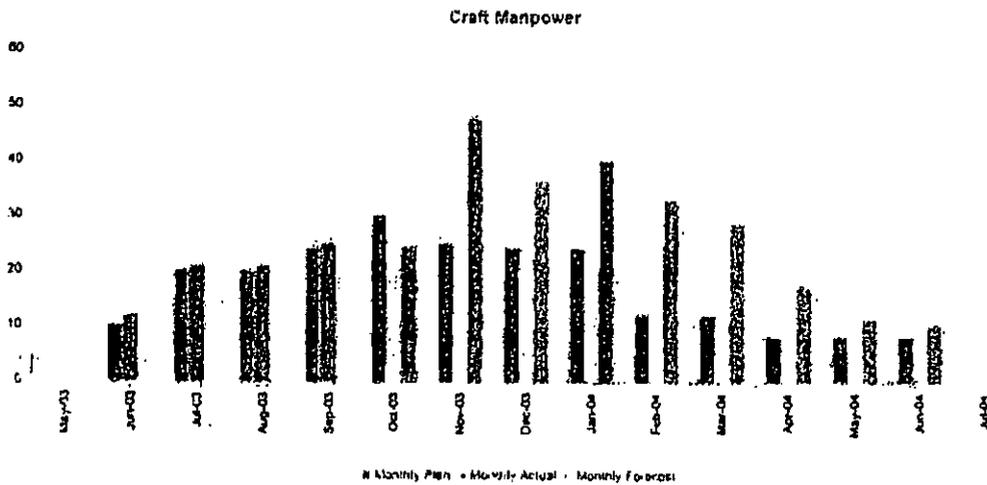




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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS**

- o Billings (Example Shown Below)
- o Craft Manpower (Example Shown Below)



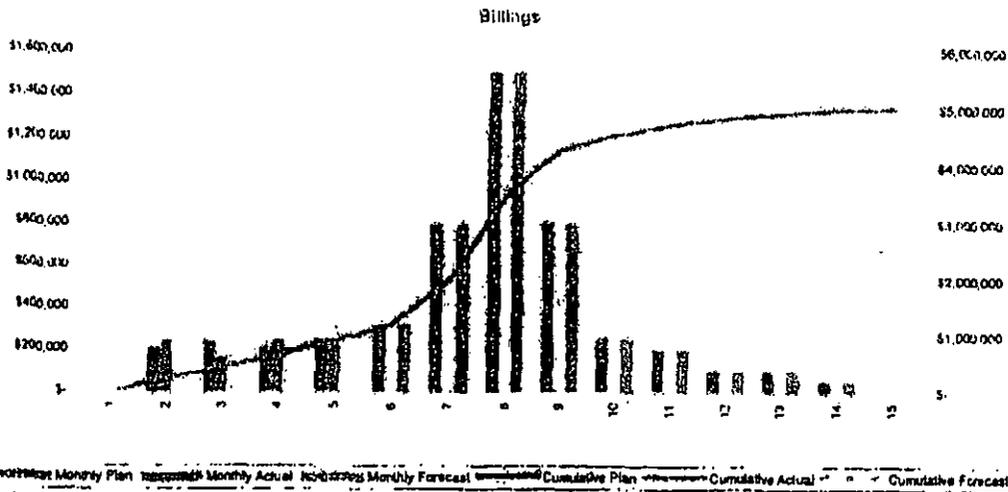
- o Billings (Example Shown Below)



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STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESIST COATING, METAL DECK & PRECAST CONCRETE WORK
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS



- Detailed Estimate Breakdown (Form 2A.7),
- Schedule of Values (Form 2A.5)
- Detailed Updated Cost Loaded Schedule (Form 2A.6)
- Furnisher Information Schedule (Form 2A.13)
- Explanation of Any Variances from Planned Performance vs Actual Performance (Schedule, Manpower, Progress, etc)
- Notarized Certified Payrolls (mandatory form provided in Exhibit 7) (including all second tier subcontractors),
- Partial or Final Releases (Exhibits 3 or 4), and
- W/MBE Monthly Reports (Exhibit 6)

Subcontractor must submit the above requested material via e-mail to an email address to be provided at a later date.

3.5 PCJV shall advise the Subcontractor whether they agree with the amounts claimed, or ask for a meeting with the PCJV PM, PA PM, and the Subcontractor. During this meeting the value of the invoice shall be agreed upon and signed off as approved.

3.6 Contractual retention, which is calculated per the terms of the Contract of amount invoiced, shall be identified on the face of each progress invoice and withheld



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS.

from amounts payable. Retainage of 10% of the contract value will be held on all contracts and on any future modifications unless otherwise stated in the contract. Retainage or Final payment cannot be released until all contract work is completed, punchlist items are completed and signed off by PCJV and the Owner, all warranty and required turn-over information has been received, the Owner has approved the release, all paperwork and forms requested by this Contract have been provided, and the subcontractor has complied with all of the Terms & Conditions of this Contract. Do not invoice retainage until released to do so by the Contract Administrator. Final retainage must be billed separate from base contract invoicing on an Application for Final Payment and Final Payment Release. All outstanding contract modifications must be executed, and all contract deliverables including but not limited to insurance and bond requirements must be provided in accordance with the forms of the Contract. Failure to provide any of the required deliverables will be just cause for retainage retention by PCJV.

- 3.7 Subcontractor's invoices shall be clearly marked with this Subcontract Number and the appropriate milestone description of activities and/or work related to the billing.
- 3.8 Subcontractor's Invoices shall indicate the time period during which the Work was performed and for which the Invoice is submitted.
- 3.9 Phoenix shall not be obligated to pay for invoice items not fully supported by approved progress measurements and any other such documentation as may be required. Phoenix reserves the right to make provisional payment on an invoice in dispute, pending audit and reconciliation of the total charge.
- 3.10 Subcontractor shall sign each invoice certifying that all Work covered by the invoice is complete and that the invoice is correct, authentic and the only one issued for the Work described therein.
- 3.11 Any payments made shall not be construed to be an acceptance of defective Work nor relieve Subcontractor of any of its obligations.
- 3.12 Invoices for Cost-Reimbursable Work shall be prepared and submitted as follows:
 - 3.12.1 Invoices for Labor shall be accompanied by Contractor approved daily reports or time sheets listing workers' names, classification, and straight time and overtime hours. Labor categories and rates must correspond to those set forth in Rate Schedule "A" of this Form 2A.2.



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- 3.12.2 Invoices for Subcontractor-Owned Equipment shall be accompanied by Contractor approved daily reports or time sheets listing the equipment type, number, size and hours. Equipment descriptions and rates must correspond to those set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110)
- 3.12.3 Invoices for Subcontractor Rented Equipment shall be accompanied by Contractor approved daily reports or time sheets listing equipment type, number, size and hours along with a copy of Subcontractor's rental agreement and invoice from supplier. The applicable markup as set forth in this Form 2A.3 shall be set forth separately.
- 3.12.4 Invoices for Materials shall be accompanied by field receiving documentation and a copy of Subcontractor's purchase order and invoice from supplier.
- 3.13 Each subcontractor **MUST** fully complete and sign the certified payroll provided in Exhibit 7, Form 7.2, on a weekly basis. As a prerequisite for payment, not limiting any other prerequisites for payment, the Subcontractor must submit all respective certified payrolls to the Contractor at the time of invoicing.
- 3.14 Subcontractor must submit on a monthly basis, with their invoice, their updated M/WBE Participation Plan, in accordance with Exhibit 6. Failure to submit such Plan on a monthly basis shall be just cause for Phoenix/Authority to withhold payment from the Subcontractor. Submission of an updated M/WBE Plan is a condition precedent for payment to the Subcontractor.

4.0 PRICING FOR CHANGES

Compensation to Subcontractor for changes in the Scope of Work, shall be in accordance with the provisions of Article 8, Change Orders of GC Long Form Subcontract Rev. 0, except to the extent otherwise provided below:

Phoenix may request, and Subcontractor shall provide, proposals for Scope of Work changes (additions and deletions) which are priced, at Phoenix' option, by one or a combination of the following methods:

- a. Negotiated Lump Sums based upon a mutually agreed Scope of Work.
- b. Applicable unit prices set forth in Exhibit B, titled, Contract Unit Rates, if the Work is possible to be fairly classified under the Unit Price items.



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- c. Negotiated Unit Prices not established in the Contract.
- d. On a "cost-reimbursement plus a fixed fee" basis, or at the labor and equipment rates as set forth in Rate Schedule "A" and "B".
- e. Any price based upon cost plus a percentage of cost is expressly prohibited.
- f. Any additional alternative that the Contractor deems appropriate.

4.1 Lower tier Subcontracts

- 4.1.1 All subcontracts and services provided by others for performance of changes or extra work requested by Phoenix/Authority, which have not been objected to by Phoenix/Authority shall be at actual cost to Subcontractor of such subcontracts or services provided by others (not to exceed such subcontract price) plus a mark-up for all overhead and fee of Subcontractor thereon which shall not exceed 10%. Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to "Cost Reimbursement," shall be in accordance with Article 8, entitled "Change Orders."
- 4.1.2 Subcontractor's invoices for work performed by any of Subcontractor's "lower tier subcontractors" may include an allowance for the "lower tier subcontractors" overhead and fee which shall not exceed 10%.
- 4.1.3 In no instance shall the mark-ups or rates for changes provided by lower tier subcontractor to Subcontractor exceed the mark-ups or rates for changes as stipulated in this Article 3.0. Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to "Cost Reimbursement," shall be in accordance with Article 8, entitled "Change Orders."

4.2 Materials

- 4.2.1 Compensation to Subcontractor for materials supplied by Subcontractor for incorporation into the permanent facility (excluding consumable, expendable and small tools) shall be at actual invoiced cost to Subcontractor, delivered to project site, as substantiated, and as certified paid or by such documentation as may be required by Phoenix/Authority, plus a mark-up, for all fee and overhead expense not to exceed 10%. Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to



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"Cost Reimbursement," shall be in accordance with Article 8, entitled
"Change Orders."

4.2.2 Temporary Materials will be reimbursed at the direct cost of such
materials, as substantiated by invoices certified paid or by such
documentation as may be required by Phoenix/Authority, less their
salvage value, if any.

4.2.3 Phoenix/Authority reserves the right to provide, at no cost to
Subcontractor, materials, equipment, services, supplies or incidentals
required to perform the Work. All refunds, trade discounts, rebates on
materials, supplies and services, and all monies obtained from the
disposal of surplus materials or supplies shall accrue to Owner.

4.3 Labor

Compensation to Subcontractor for construction labor, related costs and profit
shall be in accordance with the rates set forth in Rate Schedule "A" entitled ALL
INCLUSIVE LABOR RATES (Form 2A.2).

4.4 Equipment Rental

4.4.1 Equipment rental rates, as set forth in the Rental Rate Blue Book
(published by Machinery Information Division, K III Directory Corporation,
1735 Technology Drive, San Jose Corporation 95110) shall apply for
equipment used for extra work requested by Contractor.

Hourly rental for those items of equipment listed in the "Rental Rate 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 of 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.



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS.

When utilizing the rental rates appearing in the Blue Book, the Contractor (or Authority 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 construction aid used on a particular Work package shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of tool, equipment or construction aid, or substitute item of equipment is at the construction site for use by the Contractor or subcontractors whether under this Contract if any other contract with the Authority. Included within this period will be (i) work days of idleness results from acts or omission of the Contractor, Authority or third persons, breakdowns in the tool, equipment or construction aid or any other cause (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of tool, delivery to the construction site of the same substitute tool, equipment or construction aid. The number of workdays in the period for each rate shall be as indicated below:

| | |
|---|--------------|
| Three work days or less | daily rate |
| More than three work days but not more than fifteen work days | weekly rate |
| More than fifteen work days | monthly rate |

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 daily rental | 1/8 of daily rental from Blue Book |
| Hourly rate based on weekly rental | 1/8 of from weekly rental Blue Book |
| Hourly rate based on monthly rental | 1/176 of from monthly rental 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 Contractor (or Authority Engineer) should determine that the nature, number of pieces or size of the tool, equipment or construction aid used by the Subcontractor 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 Contractor (or Authority Engineer) to be suitable for the Work, the reasonable rental will not be based upon the tool, equipment or construction aid used by the Subcontractor but will be based on the smallest quantity or smallest or least elaborate tool equipment or construction aid determined by the Contractor (or Authority 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, (b) with respect to Work performed in New Jersey, the taxes on the rental actually paid by the Subcontractor or lower tier subcontractor and (c) notwithstanding the number of hours during which such of tool, equipment or construction aid is utilized, the minimum rental therefore will be for a period of eight hours.

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

4.4.2 For equipment which is specifically mobilized to the jobsite for extra work, Subcontractor shall separately identify such transportation costs (including: loading, off-loading, assembly and disassembly) when submitting proposals to Phoenix/Authority for performing extra work. Transportation costs shall not be applicable to equipment already mobilized on the site.

4.4.3 When Subcontractor's equipment does not resemble the equipment having rental rates listed in Rate Schedule "B" for extra work, the rental rate shall be negotiated and agreed upon in writing by Contractor.

4.4.4 Compensation to Subcontractor for equipment used for extra work which is rented from third parties and does not resemble the equipment having



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rental rates listed in the "Rental Rate Blue Book" must be approved by Contractor in writing prior to rental and shall be at actual cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by Contractor plus a mark-up, for all profit and overhead expense of Subcontractor thereon, of not to exceed 10%. Markups relating to work performed in a manner provided in Section 4.0 (b) relating to "Unit Rates," or 4.0 (d) relating to "Cost Reimbursement," shall be in accordance with Article 8, entitled "Change Orders."

4.4.5 All Subcontractors involved with the rental of equipment must comply with the requirements involving rental of equipment in Exhibit 2B.

4.5 Time Sheets

4.5.1 For all work performed on a cost-reimbursable basis, Subcontractor shall submit daily time sheets for approval by Contractor. An approved copy of the time sheets, which shall detail all hours worked, materials installed and equipment used, must be submitted in support of Subcontractor's monthly billing.

5.0 Rate Schedules – To be determined if: requested by contractor, or if a price/cost change is required.

- 5.1 Rate Schedule "A" – All Inclusive Labor Rates
- 5.2 Rate Schedule "B" – Equipment Rental Rates
- 5.3 Rate Schedule "C" – List of SubSubcontractors



FAR TINA COMPLIANCE & COST CERTIFICATE

FORM: 2A.1

FEDERAL ACQUISITION REGULATION & TRUTH AND NEGOTIATIONS ACT COMPLIANCE

Subcontractor acknowledges the fact that the World Trade Center Transportation Hub Project is a Federally funded project and as such all Subcontractors/Vendors must comply with and must require all of their respective Subcontractors/Vendors to comply with the Federal Acquisition Regulation ("FAR") and Truth in Negotiations Act ("TINA"), including but not limited to FAR Part 31 entitled "Contract Cost Principles and Procedures," and FAR Part 15 entitled "Contracting By Negotiation."

Such compliance includes but is not limited to the disclosure of all costs, mark-ups and any other financial information used to develop the proposed Contract, Purchase Order, Change Order, and/or Modification price, if requested, and the provision of any and all information requested Phoenix Constructors Joint Venture in order to substantiate compliance with the Federal Acquisition Regulations and Truth in Negotiations Act.

In addition to complying and providing Phoenix with all documents necessary to substantiate compliance with the FAR and TINA, the Subcontractor/Vendor agrees that if requested by Phoenix Constructors JV, the Subcontractor/Vendor must provide "Cost and Pricing Data" as required by Federal Acquisition Regulation Part 15.403 entitled "Obtaining Cost and Pricing Data" and execute a "Certificate of Current Cost or Pricing Data" which certifies that the data provided is "current, accurate, and complete."

"Cost and Pricing Data" as defined by FAR Part 2 means "all facts that, as of the date of price agreement or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price, prudent buyers and sellers would reasonably expect to affect price negotiations significantly. Cost or pricing data are data requiring certification in accordance with 15.406-2. Cost or pricing data are factual, not judgmental; and are verifiable. While they do not indicate the accuracy of the prospective contractor's judgment about estimated future costs or projections they do include the data forming the basis for that judgment. Cost or pricing data are more than historical accounting data; they are all the facts that can be reasonably expected to contribute to the soundness of estimates of future costs and to the validity of determinations of costs already incurred. They also include such factors as -

- (1) Vendor quotations;
- (2) Nonrecurring costs;
- (3) Information on changes in production methods and in production or purchasing volume;
- (4) Data supporting projections of business prospects and objectives and related operations costs;
- (5) Unit-cost trends such as those associated with labor efficiency;
- (6) Make-or-buy decisions;
- (7) Estimated resource to attain business goals; and
- (8) Information on management decisions that could have a significant bearing on costs.

By executing this Exhibit or by execution of this Subcontract, the Subcontracted party acknowledges, understands, and agrees to abide by the obligations set forth in this Exhibit.

Subcontractor/Vendor Name: DCM EXEUTORS INC

Name of Individual legally permitted to bind Subcontractor/Vendor: LARRY DAVIS

Signature: [Signature] Date: MAY 12/09

CONDITION PRECEDENT TO PROPOSAL



CERTIFICATE OF CURRENT COST OR PRICING DATA

This is to certify that, to the best of my knowledge and belief, the cost or pricing data (as defined in section 2.101 of the Federal Acquisition Regulation (FAR) and required under FAR subsection 15.403-4) submitted, either actually or by specific identification in writing, to the Contracting Officer or to the Contracting Officer's representative in support of WT 234,544 formally known (Identify the proposal, request for price adjustment, or other submission involved, giving the appropriate identifying number (Ex, RFP No.) are accurate, complete, and current as of MAY 12 / 09. (Insert the day, month, and year when price negotiations were concluded and price agreement was reached or, if applicable, an earlier date agreed upon between the parties that is as close as practicable to the date of agreement on price). This certification includes the cost or pricing data supporting any advance agreements and forward pricing rate agreements between the offeror and the Government that are part of the proposal.

AS WOTC-~~661-2-KW0186-020~~

Firm: DCM ERECTORS INC.
Signature: [Handwritten Signature]
Name: LARRY DAVIS
Title: PRESIDENT

Date of Execution: MAY 12 / 09 (Insert the day, month, and year of signing, which should be as close as practicable to the date when the price negotiations were concluded and the contract price was agreed to.)

CONDITION PRECEDENT TO PROPOSAL

RATE SCHEDULE "A"

ALL INCLUSIVE LABOR RATES

1. VACATION: Includes vacations, statutory holidays, sick and other leave with pay.
2. ALLOWANCES: Includes workers compensation, unemployment insurance, and other taxes and insurance's measured by payroll, established employee benefits such as pension, health and life insurance's, bonus programs (excluding profit sharing), union assessments (if any), training funds, and industry and administration funds.
3. OVERHEAD AND PROFIT: Calculated on the base rate, overhead includes all home office and jobsite supervision above the level of general foreman and other non-manual personnel costs and all temporary, construction facilities shall not exceed 10%.
4. ALL INCLUSIVE RATE: Based on ____ (To be completed in by Offerer) hours per week ____ (To be completed in by Offerer) hours per day, ____ (To be completed in by Offerer) days per week.
5. TRAVEL ALLOWANCE: N/A
6. OVERTIME: The overtime rate per hour shall be limited to the actual cost to Subcontractor of the premium portion only of all applicable wages, craft fringe benefits and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Subcontractor shall submit supporting documents satisfactory in form and content to Contractor for its verification and approval. If only one overtime rate is shown, it shall be applicable for all overtime hours.
7. LABOR RATES entered in the above schedule shall be based on labor agreements, if any, and rates in effect on the Proposal closing date, unless otherwise noted. The quoted labor rates may be adjusted as approved by Contractor to reflect subsequent changes in labor agreements or rates if applicable.
8. No Charges will be accepted by Contractor for labor not listed in Rate Schedule "A".
9. Labor rates for stand-by time when specifically ordered by Contractor shall be at ____% (To be completed in by Offerer) inclusive rates in this Rate Schedule "A" less the profit portion thereof.
10. Subcontractor shall not invoice for field support/supervisory personnel assigned to a change in the Scope of Work if the change does not extend the time such personnel are required on site by the original Scope of Work.
11. Please ATTACH to this form ALL UNION AGREEMENTS.
12. The following form with all union agreements must be delivered to Phoenix Constructors by the time of Contract execution, and updated on a monthly basis.

CONDITION PRECEDENT TO

PROPOSAL & CONTRACT EXECUTION

EQUIPMENT RENTAL RATES**RATE SCHEDULE "B"****EQUIPMENT RENTAL RATE****NOTES**

1. Rate Schedule "B" identifies all Subcontractor owned and rented equipment (excluding non powered hand tools) that may be used by Subcontractor in performance of the Work.
2. Rate Schedule "B" shall be calculated in accordance to Exhibit 2A clause 3.4.1.
3. Subcontractor shall, prior to rental of any equipment for changes in the scope, submit a stated value for the equipment being rented.
4. No payment shall be made for equipment which is not operating because it is broken down or undergoing repair, maintenance or overhaul.
5. All Rental Equipment must comply with Exhibit 2B Tax Exemption Status, Subsections Entitled "*Subcontractor Must Act as a Subagent For Phoenix Constructors Regarding Rental of Construction Equipment,*" "*Exemption From New York State and New York City Sales Tax For The Rental of Construction Equipment Based on Agency Agreement,*" "*Notice Regarding Invoices For Rental of Construction Equipment.*", as well as with any and all other requirements of the Contract.
6. These charges must be included in the requisition; and the invoices for rental equipment must accompany the requisition.
7. The following form must be delivered to Phoenix Constructors by the time of Contract execution, and updated on a monthly basis.

**CONDITION PRECEDENT TO
PROPOSAL & CONTRACT EXECUTION**

LIST OF SUBCONTRACTORS**RATE SCHEDULE "C"****LIST OF LOWER TIER SUBCONTRACTORS**

The following is a detailed list of the Subcontractors proposed for the Work.

Once Contractor has given its non-objection the Subcontractors listed below shall not be changed except with Contractor's written approval.

| <u>Lower Tier Subcontractor</u> | <u>Description of Work</u> | <u>Union or Trade Affiliation, if any</u> |
|-------------------------------------|----------------------------|---|
|-------------------------------------|----------------------------|---|

- 1.0 Percentage of Work performed by Subcontractor's own forces: ____ (To be completed by Offerer)
- 2.0 Percentage of Work performed by Subcontractors: ____ (To be completed by Offerer)
- 3.0 Contractor reserves the right to request financial information and work experience histories of the proposed Subcontractors.
- 4.0 The following form must be delivered to Phoenix Constructors by the time of Contract execution, and updated on a monthly basis.

**CONDITION PRECEDENT TO
PROPOSAL & CONTRACT EXECUTION**

**DETAILED SCHEDULE AND
DETAILED COST LOADED SCHEDULE**

Please attach to this form the Detailed Proposed Schedule Prior to Proposal and thereafter attach the Detailed Cost Loaded Schedule as indicated below.

Appropriate Notes:

- All Schedules are to be created using the Primavera P6 Program.
- All Schedules shall follow the standards for the work breakdown structure, activity ID numbering, activity codes, calendars and resources by use of a template file, as well as standard scheduling settings and hours per day. There shall be no P6 Global Data items used other than those designated.
- The Maximum duration of any given activity shall not exceed 20 days.
- Incorporate ALL Milestone dates within the Scope of Work and material, supply, and labor dates.
- Upon request, the subcontractor will provide an itemized breakdown of the costs included for each activity.
- This Detailed Proposed Schedule **MUST** be submitted prior to proposal. Thereafter, during the proposal phase of the Project, the subcontractor **MUST** submit a Detailed Cost Loaded Schedule within 5 days of Phoenix' request to do so which will supersede the detailed proposed schedule. Thereafter, this detailed Cost Loaded Schedule must be updated at contract execution, and updated thereafter on a monthly basis in accordance with Section 3.3 of Exhibit 2A.

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**



DETAILED ESTIMATE BREAKDOWN

FORM: 2A.7

***NOTE:** Prior to Contract execution, the Subcontractor **MUST** submit this form to Phoenix Constructors with a Detailed Estimate Breakdown attached. This Estimate is to be updated, based on the work performed, on a monthly basis and submitted in accordance with section 3.3 of Exhibit 2A.

**CONDITION PRECEDENT TO
PROPOSAL, CONTRACT EXECUTION & PAYMENT**

**EARNED VALUE SYSTEM**

Please attach to this form an Earned Value System which will be submitted within 5 days of Phoenix' request for submission prior to proposal, updated prior to Contract Execution, and thereafter submitted monthly in accordance with Section 3.3 of Exhibit 2A. The Earned Value System supports the method in which the work will be broken down and contracted, and which will be utilized to support future invoicing. The Earned Value System must utilize the Detailed Estimate (Form 2A.7) which ultimately must roll up to support the Schedule of Values (Form 2A.5). (See sample in enclosed Exhibit 2A CD entitled "Earned Value System")



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Sample Earned Value System**is included in Enclosed CD****CONDITION PRECEDENT TO****CONTRACT EXECUTION & PAYMENT**

2A.8



WEEKLY PHYSICAL PROGRESS UPDATE

FORM: 2A.9

| |
|--------------------|
| Subcontractor: |
| Subcontract |
| Number: |
| |
| Period Start Date: |
| Period End Date: |
| |
| Through |
| Amendment: |

Accomplishments this Week:

Goals for Next Week:

Open Issues:

Issues Resolved this Week:

Explanation of Any Variances between Planned versus Actual Performance



MONTHLY PROGRESS REPORT

FORM: 2A.10

| |
|---------------------|
| Subcontractor: |
| Subcontract Number: |
| |
| Period Start Date: |
| Period End Date: |
| |
| Through Amendment: |

Accomplishments this Month:

Goals for Next Month:

Open Issues:

Issues Resolved this Month:

Explanation of Any Variances between Planned versus Actual Performance

CONDITION PRECEDENT TO
PAYMENT



PROGRESS GRAPHS

FORM: 2A.11

**PLEASE ATTACH ALL 3 PROGRESS GRAPHS REQUIRED BASED ON EXHIBIT 2A
SECTIONS 3.3 AND 3.4. (SAMPLE GRAPHS SHOWN IN SECTION 3.4).**

**CONDITION PRECEDENT TO
PAYMENT**

2A.11



EXHIBIT 2B: TAX EXEMPTION STATUS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

CONTRACTOR'S TAX EXEMPT
CERTIFICATE
COVER SHEET

Tax Exemption Status



**EXHIBIT 2B: TAX EXEMPTION STATUS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK**

Pursuant to the terms of Modification 1 to the Prime Contract WTC 284.458 (GC), exemption from state and local New York Sales Tax includes the following items:

(A) Applies only to tangible personal property sold to Contractor, Subcontractor, Repairman for use in erecting a structure or building, or adding to, altering, or improving real property or land. Exemption applies both to personal property that is to become an integral component part of the structure, building or real property, and to personal property that not to be incorporated in the permanent construction but rather used or consumed in the performance of the Contract. The purchase of materials not incorporated in the Permanent Construction, but rather used or consumed in the performance of the Contract, includes but is not limited to, tangible personal property for use in (i) maintaining, installing, repairing or servicing tangible personal property or (ii) the Permanent Construction, excluding tools and equipment, and construction supplies or other taxable services used or consumed by the Contractor or Subcontractors at the construction site, excluding tools and equipment.

(B) Applies to rental and delivery of construction equipment subject to restrictions contained in this paragraph.

Attached is a letter from The Port Authority of NY & NJ addressing the matter of exemption from sales tax.



**EXHIBIT 2B: TAX EXEMPTION STATUS
 CONTRACT NO.: W0TC-GCI-2-KN0186-020
 STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
 STRUCTURAL STEEL AND METAL DECK**

THE PORT AUTHORITY OF NY & NJ

DEPARTMENT OF

FOR THE STATE OF NEW YORK AND NEW JERSEY

[Signature]
 STATE OF NEW YORK AND NEW JERSEY

[Signature]
 STATE OF NEW YORK AND NEW JERSEY



EXHIBIT 2B: TAX EXEMPTION STATUS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

**TAX EXEMPTION INFORMATION
THE PORT AUTHORITY OF NY & NJ**

The Port Authority of NY & NJ, a governmental instrumentality of the States of New York and New Jersey, is exempt from taxes imposed by the State of New York, the State of New Jersey, or municipalities of either State. Purchases made Using an Official Use Port Authority VISA card are exempt from state and local Sales and use taxes.

Tax Exemption References:

| | |
|----|---|
| NY | Tax Law 1116 (a) (1) 20NYCRR 529.2 (b) (2) |
| NJ | NJSA 54:32B-9 (a) (1) |

Exemption certificates are not required or furnished

SUBCONTRACTOR MUST ACT AS A SUBAGENT FOR PHOENIX CONSTRUCTORS REGARDING RENTAL of CONSTRUCTION EQUIPMENT and for the PURCHASE OF MATERIALS NOT INCORPORATED INTO PERMANENT CONSTRUCTION:



EXHIBIT 2B: TAX EXEMPTION STATUS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

Pursuant to the terms of Modification 1 to the Prime Contract WTC 284.458 (GC) clause five (5) *Agency For Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction*, Phoenix Constructors mandates and authorizes subcontractor to act as a subagent for rental of equipment and for the purchase of material not incorporated in the permanent construction, which is used by the subcontractor for performance of work under the Contract. Such subagency is subject to all such terms and agreements respective clause in its entirety (not provided).

"The General Contractor agrees to act as the agent of the Authority, subject to the provisions of this numbered clause relating to such agency (i) for the rental of all construction equipment necessary or desirable for or incidental to the performance of the Contract (other than construction equipment owned and also used by the Contractor or owned and also used by any subcontractor) and (ii) for the purchase of materials not to be incorporated in the Permanent Construction but rather to be used or consumed in the performance of the Contract as provided in the clause in the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes" and, in the exercise of such agency, to assume all the obligations and duties imposed upon him by this Contract."

The Contractor may authorize any subcontractor to act as his subagent for rental of such equipment or purchase for use by such subcontractor, subject to all the provisions of this Contract. "Construction equipment" as used in this numbered clause shall include plant.

"The Authority will pay the (i) rental charges for said equipment directly to the lessors thereof, and (ii) purchase prices for said materials directly to the vendors thereof but the charges so paid shall be deducted from the compensation payable to the Contractor under the Contract; provided, however, that the Authority will pay such charges, and the Contractor is authorized by the Authority to act as such agent, to the extent only that the charges or prices payable for such rental or purchase, as the case may be, do not exceed the compensation payable to the Contractor under the Contract; and provided further that the Contractor performs all the obligations relating to said agency imposed upon him by this Contract."

The subcontractor must:

1. Delivery: Arrange for delivery of said equipment or materials directly to the construction site.
2. Invoices: Provide invoices complying with the Section set forth below "Notice Regarding Invoices for Rental of Construction Equipment and Invoices for Purchase of Materials Not Incorporated into Permanent Construction."

The subcontractor must furnish to the lessors of equipment and vendors of material, a statement, provided by the Port Authority, which will identify this contract as the one under which the Contractor is authorized to rent said equipment or purchase said materials and which will identify the site to which delivery must be made.

"EXEMPTION FROM NEW YORK STATE AND NEW YORK CITY SALES TAX BASED ON AGENCY AGREEMENT, FOR THE RENTAL OF CONSTRUCTION EQUIPMENT and for the PURCHASE OF MATERIALS NOT INCORPORATED INTO THE PERMANENT CONSTRUCTION"



**EXHIBIT 2B: TAX EXEMPTION STATUS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK**

Pursuant to the terms of Modification 1 to the Prime Contract WTC 284.458(GC) clause six (6)(B) and (C), *Exemption from New York State and New York City Sales Taxes*, the subcontractor, based upon the agency/subagency agreement, shall be exempt from the payment of all New York State and New York City sales taxes for the rental of construction equipment (rental) and purchase of materials not incorporated in permanent construction (purchase) provided that:

1. any subcontractor's use of construction equipment rented from others or materials purchased from others, and any agreement for such rental or purchase, is based upon the agency arrangement provided for in the clause entitled "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" from Modification 1 to the Prime Contract WTC 284.458(GC)
2. *delivery of said equipment/material is directly to the construction site.*
3. subcontractor has furnished to the lessors of equipment or sellers of material a statement, provided by the Port Authority, which will identify this contract as the one under which the Contractor is authorized to rent or purchase said equipment or material, respectively, and which will identify the site to which delivery must be made
4. invoices for said equipment/material are made out to the Authority and prescribes place of delivery and the amount payable for rental/purchase (respectively) do not exceed the amount of compensation payable with the Work.

Subcontractor must enter into a subagency agreement with Phoenix Constructors, and mandate delivery from the lessor/seller directly to the construction site of such equipment, to ensure compliance with clauses one (1) and two (2) above. In addition the subcontractor must furnish to the lessor/seller the appropriate statement from the Port Authority, and make invoices for said equipment or materials to the Authority to ensure compliance with clauses three (3) and four (4) above.

Subcontractor shall not include in his price any amounts for New York State and New York City sales and compensating use tax on such rentals of equipment or purchase of materials."

"NOTICE REGARDING INVOICES FOR RENTAL OF CONSTRUCTION EQUIPMENT AND INVOICES FOR PURCHASE OF MATERIALS NOT INCORPORATED INTO PERMANENT CONSTRUCTION."

With regard to AGENCY for RENTAL of CONSTRUCTION EQUIPMENT and PURCHASE OF MATERIALS NOT INCORPORATED INTO PERMANENT CONSTRUCTION, in correlation with EXEMPTION FROM NEW YORK STATE AND NEW YORK CITY SALES TAX FOR THE RENTAL



**EXHIBIT 2B: TAX EXEMPTION STATUS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK
OF CONSTRUCTION EQUIPMENT AND MATERIALS NOT INCORPORATED INTO PERMANENT
CONSTRUCTION BASED ON AGENCY AGREEMENT:**

Invoices must be made out to the Authority in which is contained the place of delivery and on which the Contractor has certified by endorsement that such equipment or material is being or has been used in the performance of the contract. Submit such invoices through the Contractor to the Authority at the time said equipment is put into use at the construction site or material is delivered to the construction site.

Invoices for equipment should be addressed to the Port Authority of New York and New Jersey and sent to the care of:

Mr. Sam Goldenberg
General Service Progress Billing Specialist
115 Broadway 18th Floor
New York, New York 10006
646.467.7193

Subcontractor shall not include in his price any amounts for New York State and New York City sales and compensating use tax on such rentals of equipment or purchase of materials."



CONTRACTOR'S SIGNATURE AUTHORIZATION

CHECKLIST 2C

Please submit the following form upon **PROPOSAL**:

- Form 2C.1: Contractor's Signature Authorization Form**

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**



CONTRACTOR'S SIGNATURE AUTHORIZATION

FORM: 2C.1

Contract Number: _____

Contractor's Name: _____

Contractor's Home Address: _____

Telephone Number: () _____

Fax Number: () _____

Contractor's Field Office Address: _____

Telephone Number: () _____

Fax Number: () _____

The below named individuals are authorized to sign documents relating to the above Subcontract on behalf of Subcontractor which are within the indicated limit of authority.

| <u>NAME</u> | <u>TITLE</u> | <u>SIGNATURE</u> | <u>LIMIT OF AUTHORITY</u> |
|-------------|--------------|------------------|---------------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

The following signature shall be made by an officer of Contractor's company having documented authority to make commitments on behalf of Subcontractor.

Signed By: _____

Name: _____

Title: _____

Date: _____



CONTRACTOR'S SIGNATURE AUTHORIZATION

FORM: 2C.1

Contract Number: _____

Contractor's Name: _____

Contractor's Home Address: _____

Telephone Number: () _____

Fax Number: () _____

Contractor's Field Office Address: _____

Telephone Number: () _____

Fax Number: () _____

The below named individuals are authorized to sign documents relating to the above Subcontract on behalf of Subcontractor which are within the indicated limit of authority.

| <u>NAME</u> | <u>TITLE</u> | <u>SIGNATURE</u> | <u>LIMIT OF AUTHORITY</u> |
|-------------|--------------|------------------|---------------------------|
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ |

The following signature shall be made by an officer of Contractor's company having documented authority to make commitments on behalf of Subcontractor.

Signed By: _____

Name: _____

Title: _____

Date: _____

Please submit all of the following forms prior to **MONTHLY PAYMENT**:

- 3.1: Partial Release and Waiver
 - o Email Description: Partial Release and Waiver 3.1 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**



PARTIAL RELEASE AND WAIVER

WHEREAS, a Subcontract identified as No. _____ (the "Subcontract"), was entered into on the _____ day of _____, 200__, between Phoenix Constructors, a JV (hereinafter "Phoenix") having an office at 115 Broadway, 18th Floor, New York, New York 10006, and

_____ (hereinafter "Subcontractor"); and

WHEREAS, Phoenix, had, prior thereto, entered into a contract in writing with the Port Authority of New York and New Jersey (hereinafter the "Owner") known and designated as Contract WTC-284.458 (CM or GC) (the "Prime Contract"); and

WHEREAS, by such Subcontract, Subcontractor and Phoenix have agreed that Subcontractor would, for and in the stead of Phoenix, fulfill and perform such part of said Prime Contract as is set forth in said Subcontract in consideration for the payment of the unit and lump sum prices set forth therein.

NOW, THEREFORE, Subcontractor, for and in consideration of a payment made herewith in the sum of _____

_____ DOLLARS (\$ _____), does for itself, its successors, heirs and assignees, warrant, certify, affirm and agree, with respect to all work performed to date except as identified in Paragraph 5, below, that:

1. All labor employed thereon or in connection therewith and all payroll taxes and charges (such as withholding taxes, social security taxes and worker's compensation, disability and unemployment taxes and/or insurance premiums) have been paid in full; and
2. All materials, tools, appliances, equipment, supplies and services furnished and used upon or in connection with said work have been paid for in full; and all sales, use, excise and similar taxes on or in connection with the same have been fully paid; and
3. All amounts received by Subcontractor constitute trust funds which shall first be applied to pay for all labor, materials and supplies used or incorporated in connection with the work, before being used for any non-trust purpose; and

**CONDITION PRECEDENT TO
MONTHLY PAYMENT**



PARTIAL RELEASE AND WAIVER

FORM: 3.1

- 4. Upon actual receipt by Subcontractor of payment from Phoenix in the sum of \$ _____, it will have been paid the full amount due Subcontractor, as of _____ (hereinafter the "Release Date"), less and except for retention, if any, being withheld by Phoenix, pursuant to the Subcontract; and that no further monies are due or claimed to be due to Subcontractor for work performed through the Release Date, except as specifically noted in the space provide on paragraph 5 below; and
- 5. Upon Subcontractor's actual receipt of a check from Phoenix in the above amount, and when the check has been paid, this document shall become effective to release and forever discharge Phoenix, its Surety and the Owner and their respective officers, directors, agents, servants and employees, from all manner of claims, demands, liens and claims of lien whatsoever arising out of the Subcontract, as of the Release Date, which Subcontractor now has or hereafter might or could have except for the following:

(If none, write "None" in the space below)

- 6. Subcontractor warrants that it has completed all work performed as of the Release Date as required under the Subcontract and all changes and amendments thereto, if any; and that it has otherwise complied with all the terms and conditions of said Subcontract; and
- 7. Subcontractor, at its sole cost and expense, will forever indemnify, defend and hold harmless Phoenix and the Owner from any and all claims and demands and will defend against and obtain the discharge of any and all liens and claims of lien of others arising out of or in connection with said work, including, without limitation, those claimed or asserted by any employee, supplier or subcontractor of the Subcontractor (or by any employee or supplier of any subcontractor of the undersigned) or by any governmental agency or an insurance carrier; and
- 8. In the event that any of the work performed by the Subcontractor on said project (including the materials used or incorporated therein and the workmanship thereof), is the subject of any guarantee or warranty by the

CONDITION PRECEDENT TO MONTHLY PAYMENT



PARTIAL RELEASE AND WAIVER

FORM: 3.1

undersigned, the giving of this Release and Waiver by the Subcontractor shall not operate in any way to reduce or modify such guarantee or warranty or to release the Subcontractor therefrom. Subcontractor further agrees that if it hereafter performs any labor or furnishes any materials, tools, equipment, supplies or services pursuant to such guarantee or warranty, it will fully pay for the same, will pay any and all taxes and charges in connection therewith and will release, discharge, defend and hold harmless Phoenix and the Owner, and the said lands, improvements, chattels and other real and personal property from any and all claims, demands, liens and claims of lien arising in connection therewith all in like manner and to the same extent as is herein provided with respect to labor, materials, etc., heretofore furnished. This Release and Waiver shall inure to the benefit of Phoenix and the Owner and their respective successors and assigns and shall be binding upon the undersigned Subcontractor and its or their successors, heirs and assigns.

- 9. The undersigned is an authorized officer or representative of Subcontractor, with full power to execute this Release and Waiver, and the undersigned understands that Phoenix shall rely upon the truth of the statements and representations contained herein.
10. This Waiver and Release is not intended to cover any retention retained before the Release Date; extra work furnished before the Release Date for which a validly submitted request for a change order or extra work order is pending; and extras or items furnished after the Release Date.

Dated this ___ day of ___, 200__.

(Name of Subcontractor)

By:

(Name and Title)

STATE OF NEW YORK)
)ss
COUNTY OF NEW YORK)

On this ___ day of ___, 200__, before me personally appeared _____, to me known and known to me to be the same person described in and who executed the within Instrument, consisting of two pages, of his own free will and after being sworn by me duly acknowledged that he executed the same with full authority to do so.

Notary Public

CONDITION PRECEDENT TO MONTHLY PAYMENT

Please submit all of the following forms **PRIOR TO FINAL PAYMENT**:

- 4.1: Closeout Checklist**
 - o Email Description: Closeout Checklist 4.1 (Month 20??)
- 4.2: Certification Statement**
 - o Email Description: Certification Statement 4.2 (Month 20??)
- 4.3: AON Work Completion**
 - o Email Description: AON Work Completion 4.3 (Month 20??)
- 4.4: Full and Final Release for Subcontractor and ALL lower tier subcontractors and vendors**
 - o Email Description: Full and Final Release 4.4 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
FINAL PAYMENT**



Phoenix Constructors
115 Broadway
18th Floor
New York, NY 10006

In accordance with contract requirements for the WTC Transportation Hub Project, please find the enclosed Closeout Documents pursuant to the above referenced Contract. Kindly complete all documents as noted below.

Closeout Notice and Checklist – Exhibit 4.1

PC SOP EXHIBIT 15-2

Kindly complete the checklist in accordance with specific Contract specifications and documents. Please identify all "non-applicable" closeout items by noting the "NA" Column.
Please include all documents, drawings, etc as required.

Certification Statement – Exhibit 4.2

PC SOP EXHIBIT 15-6.4

Please prepare a Certification Statement which certifies and guarantees that all contract work and services were provided and or performed in accordance with contract documents and requirements. A sample "Certification Statement" is provided. The Certification Statement Page(1) certifies and guarantees contract work and Page (2) provides an official directory of all lower tier subcontractors and or vendors to include contact name, address, phone, scope of work information.

AON Form 5 – Notice of Work Completion – Exhibit 4.3

PC SOP EXHIBIT 15-6.5

Complete Form 5 and forward a copy to AON as noted on the lower portion of the form in addition to returning same with the completed Closeout Package.

Final Release, Final Waiver of Claims and Liens and Release of Rights – Exhibit 4.4

PC SOP EXHIBIT 15-6.3

Please complete, execute, and notarize the attached Release. It is important to note that completed Releases must be provided for all lower tier subcontractors and all vendors. Kindly be certain that you provide a "Release" for each of the subcontractors/vendors listed in the directory.

Please forward original documents and direct all inquiries to the undersigned 646-467-7126.

Sincerely,


Sharon Quinn
Closeout Manager
Phoenix Constructors, JV
WTC-Transportation Hub

CC: W. DeCamp, M. Campana, S. Jordan, D. Joyner, K.Harring, J. Kane, V.Kirchner, N. Klemens, J.Kubilus,
C. McAnally, M McLoughlin, J.Qureshi, S.Quinn,, W. Quinn,, W.Reichert, B.Reilly, W. .Saukin,
M.Settanni,,L.Stenman, , T.Taylor, C.Thompson, T.Tyler, A.Vogel, D. Waters. C White, G.Winsper,

FLUOR.

Slattery
SKANSKA

GRANITE
CONSTRUCTION
NORTHEAST, INC.


Bovis
Lend Lease



CLOSEOUT CHECKLIST

FORM: 4.1

CLOSEOUT CHECKLIST - EXHIBIT 15-2 4.1 - PC SOP EXH 15-2



WP Number: _____
 WP Subcontractor/ Contract Number: _____
 WP PC Manager/ Contract Number: _____
 WP PC Project Manager/ Contact Number: _____
 WP Subcontractor Project Manager/ Contact Number: _____
 WP Closeout Specifications: _____

NOTE: SUBCONTRACTORS MUST SUBMIT ALL EXHIBITS NOTED IN RED AND FILL IN BOX ANNOTATED "SUBCONTRACTOR TO COMPLETE"

| Item | Description | Subcontractor (s) to Complete | | PC Project Manager to Complete | | | | Status | Remarks |
|---|--|-------------------------------|----------------------|--------------------------------|----------------------|-------------------------------|------------------|--------|---------|
| | | N/A | Date Submitted to PC | N/A | Date Processed to PA | Submittal/ Transmittal Number | PA Response Date | | |
| 1. Prerequisites to Substantial Completion - Temporary Permit of Occupancy (TPO) | | | | | | | | | |
| | A. PM Confirmation of Work Package Completion and development of a Turnover Plan | | | | | | | | |
| | B. Complete all Testing | | | | | | | | |
| | C. Complete all Notices to Correct | | | | | | | | |
| | D. Complete all Commissioning | | | | | | | | |
| | E. Discontinue and/or Remove all Project Temporary Facilities | | | | | | | | |
| | F. Reconcile all WP Requirements - Establish Internal Incomplete Work Items List | | | | | | | | |
| | G. Perform Closeout Reconciliation with QC, Change Management, Finance, Contract Administration, Risk, EEO, and Safety | | | | | | | | |
| | H. Provide to the PA Notice of Substantial Completion - PC SOP Exhibit 15 - 3 Notice that All Construction Work Required under the Contract including Change Order Work is completed | | | | | | | | |
| | I. Request inspection for Certification of Substantial Completion - PC SOP Exhibit 15 - 3 | | | | | | | | |

CONDITION PRECEDENT TO FINAL PAYMENT



CLOSEOUT CHECKLIST

FORM: 4.1

| III. Final Completion and Acceptance of Work Package - Final Permit of Occupancy (FPO) | | | | | | | | | |
|---|--|--|--|--|--|--|--|--|--|
| A. Request Final Inspection for Certification of Final Acceptances & Final Payment and Final Permit of Occupancy - Completion of Contract Report (PA 915) PC SOP Exhibit 15 - 5 | | | | | | | | | |
| B. Financial Closeout | | | | | | | | | |
| 1. All PPN's Closed out, all PAC's Received, Responded to, Negotiated, and Converted to Change Orders or Cancelled | | | | | | | | | |
| 2. All P.O. Closeout | | | | | | | | | |
| 3. All Change Orders Received from PANYNJ | | | | | | | | | |
| 4. All Desk Audit Material Verified | | | | | | | | | |
| 5. All Change Orders Issued to Subcontractor / Supplier / Self Perform (Including Credits) | | | | | | | | | |
| 6. Fee and / or G&A Adjustments Made | | | | | | | | | |
| 7. Verification of Payments to date for Subcontractor / Supplier / Self Performed | | | | | | | | | |
| 8. All other Financial Requirements | | | | | | | | | |
| 9. Submit Final Payment Request with Final Releases & Supporting Documentation including Cover letter that includes Financial Reconciliation Re: Total Dollars | | | | | | | | | |
| C. WP Closeout Package Transmitted to PA for Approval thru Submittal Process - PC SOP Exhibit 15 - 6.1 through 15 - 6.6 | | | | | | | | | |
| D. Request for Final Certificate of Completion - PC SOP Exhibit 15 - 7 | | | | | | | | | |
| E. Port Authority Final Certificate of Completion - FPO - Completion of Contract Report (PA915) - PC SOP Exhibit 15 - 8 | | | | | | | | | |

| IV. Records Disposition and Retention | | | | | | | | | |
|---|--|--|--|--|--|--|--|--|--|
| A. WP Closeout Package Hard Copy and Electronic Copy Forwarded to JV Archives | | | | | | | | | |
| B. WP Closeout Package Electronic Copy Forwarded to Records Management | | | | | | | | | |
| C. WP Closeout Package Electronic Copy Forwarded to JV Partners | | | | | | | | | |

**CONDITION PRECEDENT TO
FINAL PAYMENT**



CLOSEOUT CHECKLIST

FORM: 4.1

V. Final Closeout Concurrences and Approvals

Concurrences:

WP Manager

Contract Administrator

Claim Officer

EEO Officer

EastWest Operations Manager

Closeout Manager

Project Director

Approved:

PANY&NJ

Key

PC = Phoenix Constructors JV.
PA = Port Authority of NY & NJ

Procurement Buyer

CONDITION PRECEDENT TO
FINAL PAYMENT

 PLEASE PREPARE
ON LETTERHEAD**CONTRACT EXHIBIT 4.2**
PC-CLOSEOUT SOP-EXHIBIT 15-6.4

CERTIFICATION STATEMENT:

ALL SERVICES AND WORK HAVE BEEN PROVIDED AND PERFORMED IN ACCORDANCE WITH APPROVED CONTRACT DOCUMENTS AND REQUIREMENTS INCLUDING, BUT NOT LIMITED TO, CONTRACT DRAWINGS, SPECIFICATIONS, AND SHOP DRAWINGS FREE FROM DEFECTIVE OR INFERIOR MATERIALS, EQUIPMENT, AND WORKMANSHIP. ALL SERVICES AND WORK ARE GUARANTEED IN ACCORDANCE WITH THE CONTRACT REQUIREMENTS AND ALL APPLICABLE CODES.

AUTHORIZED SIGNATURE (PRINCIPAL/OFFICER)

CONDITION PRECEDENT TO
FINAL PAYMENT



AON WORK COMPLETION

FORM: 4.3

| | | |
|--|---|---|
| AON Form-5 PC-SOP-EXHIBIT 15-6.5 | Exhibit 4.3 NOTICE OF WORK COMPLETION Numbers reference attached instructions | The Port Authority of NY & NJ The World Trade Center Transportation Hub Project |
|--|---|---|

A. General Information

Contractor: 1

Under Contract with: 2

Contract #: 3

Description of Work Performed: 4

Date Work Completed: 5

Date this Contract Completed: 6

B. Work Completion

The following Subcontractors have completed their Work at the Project Site:
(Add attachment if more space is needed)

| a Subcontractor's Name | b Contract Number | c Description of Work | d Date Completed |
|---------------------------|----------------------|--------------------------|---------------------|
| 1 | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Location of your payroll records (Receipt of this form will initiate the payroll audit process):

Address: 7

City, State, Zip Code: _____

Contact/Phone #: _____

C. Signature Block

The undersigned acknowledges request for termination of Coverage under the OCIP as of the date indicated above for the specified Contract. Should we return to the Work Site, we will notify Aon to reopen our contract and to reinstate our OCIP coverage.

Signed by: 1
Name & Title _____ Date _____

Approved by: 2
Construction Manager (Name & Title) _____ Date _____

**CONDITION PRECEDENT TO
FINAL PAYMENT**



AON WORK COMPLETION

FORM: 4.3

Fax or Mail to: Victoria M. Lomp
Aon Risk Services, Inc.
300 Jericho Quadrangle Ste.300, 342 P.O. Box
Jericho, New York 11753

Phone: (516) 342-2700
Fax: (516) 342-2727

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
FINAL PAYMENT**



FULL AND FINAL RELEASE

Final Release
Final Waiver of Claims and Liens
and Release of Rights

EXHIBIT 4.4 PC-SOP EXH 15-6.3

Work Package Number: _____

Contract / Purchase Order Date: _____

Contract Number: _____

Contract/Purchase Order(s) Value: _____

Purchase Order Number: _____

Executed Change Order(s) Value: _____

Description: _____

Adjusted Contract / P.O. Value: _____

Payment to Date: _____

Balance Due - Final Payments: _____

The undersigned hereby acknowledges that the above Balance Due when paid represents payment in full for all labor, materials, equipment and services, etc., furnished by the below named Contractor or Supplier and Lower Tier Subcontractors and Vendors in connection with its work performed on the above Project.

In consideration of the amounts and sums previously received, and the payment of \$ _____ being the full and Final Payment amount due, the below named Contractor or Supplier and Lower Tier Subcontractors and Vendors does hereby waive Phoenix Constructors JV, Bovis Lend Lease LMB, Inc, Skanska USA Civil Northeast Inc, Fluor Enterprises, Inc., Granite Construction Northeast Inc, The Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, FTA, and MTA, affiliates and subsidiaries of each of the above listed entities from all claims, liens, and rights of liens upon the premises described above, and upon improvements now or hereafter thereon, and upon the monies or other considerations due or to become due from Phoenix Constructors JV, Bovis Lend Lease LMB, Inc, Skanska USA Civil Northeast Inc, Fluor Enterprises, Inc., The Port Authority of New York and New Jersey, Granite Construction Northeast Inc., Port Authority Trans Hudson Corporation, FTA, and MTA, or from any other person, firm or corporation, said claims, liens and rights of liens being on account of labor, services, materials, fixtures or apparatus heretofore furnished by the below named Contractor or Supplier and Lower Tier Subcontractors and Vendors to the Project. The premises as to which said claims and liens are hereby released are identified as follows:

WTC Transportation Hub Project

The undersigned further represents and warrants that he/she is duly authorized and empowered to sign and execute this waiver and release on his/her own behalf and on behalf of the company or business for which he/she is signing; that it has properly performed all work and furnished all materials of the specified quality per contract documents, plans and specifications and in a good and workmanlike manner, fully and completely; that it has paid for all the labor, materials, equipment and services that it has used or supplied; that it has no other outstanding and unpaid applications, invoices, retentions, holdbacks or expenses employed in the prosecution of work, chargebacks, or un billed work or materials against Phoenix Constructors JV, Bovis Lend Lease LMB, Inc, Skanska USA Civil Northeast Inc, Fluor Enterprises, Inc., Granite Construction Northeast Inc, The Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, FTA, and MTA, as of the date of the aforementioned last and final payment application; and that any materials which have been supplied or incorporated into the above premises were either taken from its fully paid or open stock or were fully paid for and supplied pursuant to the last and final payment application or invoice.

The undersigned further agrees to defend, indemnify and hold harmless the Phoenix Constructors JV, Bovis Lend Lease LMB, Inc, Skanska USA Northeast Inc, Fluor Enterprises, Inc., Granite Construction Northeast Inc, The Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, FTA, and MTA, affiliates and subsidiaries of each of the above listed entities for any losses or expenses (including without limitation reasonable attorney's fees) should any such claim, delay claim, payment bond claim, lien or right of lien, or all and any claims be asserted by the below named Contractor or Supplier and Lower Tier Subcontractors and Vendors or by any of its or their laborers, materialmen or subcontractors of any tier.

In addition, for and in consideration of the amounts and sums received, the below named Contractor or Supplier hereby waives, releases and relinquishes the Phoenix Constructors JV, Bovis Lend Lease LMB, Inc, Skanska USA Civil Northeast Inc, Fluor Enterprises, Inc. Granite Construction Northeast Inc, The Port Authority of New York and New Jersey, Port Authority Trans Hudson Corporation, FTA, and MTA, from any and all claims, delay claims, rights, payment bond claims, liens or causes of action in equity or law whatsoever arising out of, through or under the above mentioned Contract or Purchase Order and the performance of work on the above Project.

The below named Contractor or Supplier and Lower Tier Subcontractors and Vendors further guarantees that all portions of the work furnished and installed are in accordance with the Contract or Purchase Order, and that the terms of the Contract or Purchase Order with respect to this guarantee will remain in effect for the period specified in said Contract or Purchase

Order, and that all warranties and or guarantees owed by the below named Contractor or Supplier and Lower Tier Subcontractors and Vendors under its Contract or Purchase Order or relating to its Work shall remain in effect for the period specified in said Contract or Purchase Order.

Sworn to before me this:
_____ day of _____ / _____
Day Month Year

Company Name: _____
By: _____
_____ / _____
Type Name and Title Date

Notary Public: _____ My Commission
Exp: _____

CONDITION PRECEDENT TO
FINAL PAYMENT



RESOURCE QUESTIONNAIRE AND REPS & CERTS

CHECKLIST 5

Please submit all of the following forms for **PRIOR TO PROPOSAL**:

- 5.1:** Survey and Resource Questionnaire Parts I – VI for Subcontractor and ALL known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants.
- 5.2:** Representations & Certifications for Subcontractor and ALL known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants.
- 5.3:** Background Qualification Questionnaire for Subcontractor and ALL known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants.

Please submit all of the following forms **PRIOR TO CONTRACT EXECUTION**:

- 5.1:** Survey and Resource Questionnaire Parts I – VI for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
- 5.2:** Representations & Certifications for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
- 5.3:** Background Qualification Questionnaire for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants

Please submit all of the following forms **COMMENCEMENT OF WORK**:

- 5.1:** Survey and Resource Questionnaire Parts I – VI for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
 - o Email Description: Survey and Resource 5.1 (Month 20??)
- 5.2:** Representations & Certifications for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
 - o Email Description: Reps & Certs 5.2 (Month 20??)
- 5.3:** Background Qualification Questionnaire for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
 - o Email Description: Background Qual 5.3 (Month 20??)

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT**:

- 5.1:** Survey and Resource Questionnaire Parts I – VI ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
 - o Email Description: Survey and Resource 5.1 (Month 20??)
- 5.2:** Representations & Certifications for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
 - o Email Description: Reps & Certs 5.2 (Month 20??)
- 5.3:** Background Qualification Questionnaire for ALL new known lower tiers, including but not limited to subcontractors, vendors, suppliers, and sub-consultants
 - o Email Description: Background Qual 5.3 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

CONDITION PRECEDENT TO
PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK AND PAYMENT



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

SUBCONTRACTOR SURVEY AND RESOURCE QUESTIONNAIRE FOR WORLD TRADE CENTER TRANSPORTATION HUB PROJECT

Phoenix Constructors JV has been awarded the World Trade Center Transportation Hub Project. Phoenix Constructors JV will contract with third parties for the construction of this Project. The purpose of this Questionnaire is to determine your interest in participating in this Project, and to evaluate your capabilities.

This Questionnaire is used to establish general information on your company's overall capabilities and background.

If you are interested in participating in this work, please answer all questions in the attached Questionnaire and return as per the directive of Exhibit 1D Clauses 2.9.3 and 2.9.4. Please also submit copies of any brochures or other bound material that supports your responses.

Your information will be reviewed by Phoenix Constructors JV and will undergo a screening process by the Port Authority of New York and New Jersey (PANYNJ). Final approval of your company rests solely with the PANYNJ. After approval, your company information will be stored in the Phoenix Constructors JV Subcontractor-Vendor database. Please be informed that continued background screening will be an ongoing process of all firms throughout the term of the WTC project and that your company will be required to certify to the currency of information immediately prior to any award of work.

Issuance of this Questionnaire and your submittal of a response do not constitute a commitment on the part of Phoenix Constructors JV to request you to bid/proposal on this Project.

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**

DOMI ELECTRICS, INC.
110 East 42nd Street
 Suite 1704
New York, NY 10017



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

PART I: SUBCONTRACTOR SURVEY QUESTIONNAIRE

PLEASE COMPLETE AND RETURN THE FOLLOWING QUESTIONNAIRE. THIS INFORMATION WILL ASSIST US IN ACCURATELY IDENTIFYING THE TYPE OF WORK YOU PERFORM. ALL INFORMATION SUBMITTED WILL BE CONSIDERED CONFIDENTIAL AND HANDLED ACCORDINGLY.

| GENERAL | | | |
|---|-------------------------|---|--------------------------|
| NAME OF BUSINESS | | STREET ADDRESS | |
| PREVIOUS BUSINESS NAMES | | TELEPHONE 212-599-1603 | FAX 212 599-1615 |
| SEND INQUIRIES TO: (Name and Address) | | CONTACT IN HOME OFFICE (Including Title) Jeff Gannett, VP | |
| OTHER OFFICES: ATTACH LIST OF SALES OFFICES, REPRESENTATIVES, AGENTS OR CONTACTS THAT MAY ACT FOR YOUR COMPANY, INCLUDING NAMES, ADDRESSES AND TELEPHONE NUMBERS | | EMPLOYER IDENTIFICATION NUMBER (EIN) or TAX ID NUMBER: | |
| LICENSE | | | |
| NUMBER | STATE | TYPE OF WORK LICENSED FOR | |
| | | | |
| ORGANIZATION | | | |
| SOLE PROPRIETORSHIP | PARTNERSHIP | CORPORATION <input checked="" type="checkbox"/> | DATE FOUNDED 3/1999 |
| NAME OF CLIENT(S) | | UNDER PRESENT MGMT. SINCE: 3/1999 | NET WORTH |
| NAMES AND TITLES OF OFFICERS Larry Davis, President Jeff Gannett, VP & Secretary | | 8B/8DB/WOB <input type="checkbox"/> YES <input type="checkbox"/> NO | SIC CODE |
| ANNUAL DOLLAR VOLUME WITH PHOENIX CONSTRUCTORS JV FOR THE LAST 3 YEARS (Provide value per year in the boxes provided below - Box 1 should be most recent) TOTAL: Most Recent Year Worked with Phoenix: | | | |
| 1. | 2. | 3. | |
| PREFERRED JOB COST RANGE | | | |
| MINIMUM | | MAXIMUM | |
| BANKING REFERENCES Chase Manhattan | | | |
| BONDING REFERENCES BDC BONDING LIMIT | | | |
| ATTACH ANNUAL REPORT AND/OR FINANCIAL STATEMENT | | | |
| PROPOSAL PURPOSES | | | |
| TYPE OF WORK Structural Steel, Mezel Deck, Precast, Curtain wall | | | |
| STATES AND/OR COUNTRIES 5 Boroughs + Canada | | | |
| TYPES OF WORK USUALLY SUBCONTRACTED TO OTHERS Touch up painting | | | |
| LABOR RELATIONS (SHOP & FIELD) | | | |
| <input type="checkbox"/> UNION CONTRACTOR | | <input type="checkbox"/> NON-UNION CONTRACTOR | |
| TRADES WITH WHOM YOU HAVE AGREEMENTS | EXPIRATION DATE | TRADES WITH WHOM YOU HAVE AGREEMENTS | EXPIRATION DATE |
| 1. Iron workers | | 2. | |
| 2. Operator, Engineers | | 3. | |
| PRODUCTS | | | |
| LIST MANUFACTURERS FOR WHOM YOU ARE A LICENSED DISTRIBUTOR | | | |
| 1. | 2. | 3. | 4. |
| 5. | 6. | 7. | 8. |
| LOCATION OF FABRICATION SHOPS South Plainfield, NJ, Barrie, ON (Canada) | | | |
| NAMES AND ADDRESSES OF OUTSIDE DETAILERS USED | | | |
| INDICATE APPROVAL FOR CODE WORK (API, ASME, NEMA, ANSI, ETC.) | | | |
| WORK HISTORY | | | |
| USING FORM W/ID. 430.FD145B, PLEASE PROVIDE A BRIEF RESUME OF IMPORTANT JOBS COMPLETED BY YOUR FIRM WITHIN THE LAST THREE YEARS. ALSO ATTACH BROCHURES IF AVAILABLE. PRIOR JOBS WITH OUR FIRM MUST BE LISTED. | | | |
| COMMENTS: | | | RETURN QUESTIONNAIRE TO: |
| QUESTIONNAIRE COMPLETED BY Jeff Gannett | TITLE Vice President | DATE 2/11/09 | |

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
 COMMENCEMENT OF WORK AND PAYMENT**



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

PART II: RESUME OF WORK PERFORMED

| Owner and/or Client (Include Name of Representative and Telephone Number) | Value of Contract | Prime or Subcontract (List General Contractor, Contract and Telephone Number) | Type of Work Performed | Location of Job | Year Completed |
|---|-------------------|--|------------------------|-----------------|----------------|
| | | DCM Erectors, Inc. 110 East 42nd Street Suite 1704 New York, NY 10017 | | | |

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

PART III: PRINCIPAL INFORMATION

Please provide the following information for the ten most senior principals of your company.

| Name | Title | Date of Birth | Social Security # |
|--------------|--|---------------|-------------------|
| Larry Davis | President | | |
| Jeff Gannett | Vice President | | |
| Phil Lalonde | | | |
| Barry King | | | |
| | | | |
| | | | |
| | DCM Erectors, Inc. 110 East 42nd Street Suite 1704 New York, NY 10017 | | |
| | | | |
| | | | |
| | | | |

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**

DCM Erectors, Inc
 New York City High Rise Experience
 February 11, 2009

| <u>Project Name & Location</u> | <u>Description</u> | <u>Tonnage</u> | <u>Square Footage</u> | <u>Contract Value</u> |
|--|---|----------------|-----------------------|-----------------------|
| 383 Madison Avenue aka Bear Stearns New York, NY Erection only | 50 Floor Steel Building | 18,000 | 1,100,000 | 20,000,000 |
| Random House 56 th Street & 8 th Ave New York, NY Erection only | 26 Floor Composite Steel Building with 26 floor concrete residential on top | 12,000 | 800,000 | 18,300,000 |
| Columbus Center aka Time Warner New York, NY Erection only | 19 & 24 floor Composite Steel building with 28 floors concrete residential on top | 23,000 | 2,100,000 | 43,000,000 |
| 731 Lexington Avenue aka Bloomberg Financial New York, NY Erection only | 29 floor Composite Steel Building with 20 floors concrete residential on top and antenna | 23,000 | 1,100,000 | 33,750,000 |
| 330 Jay Street Brooklyn, NY Erection only | 32 Floor Steel Building | 15,400 | 1,300,000 | 22,900,000 |

DCM Erectors, Inc
New York City High Rise Experience
February 11, 2009

| Project Name & Location | Description | Tonnage | Square Footage | Contract Value |
|---|--|---------|----------------|----------------|
| New York Times 40 th Street & 8 th Avenue New York, NY Erection only | 52 Floor Steel Building and Antenna | 26,000 | 1,000,000 | 38,000,000 |
| Goldman Sachs Warren & Vesey Streets New York, NY Furnish and Install | 45 Floor Steel Building | 46,000 | 1,965,500 | 160,000,000 |

DCM Erectors, Inc
Work in Process List
February 11, 2009

| <u>Project Name & Location</u> | <u>Description</u> | <u>Tonnage</u> | <u>Percent Complete</u> | <u>Completion</u> |
|--|---|----------------|-------------------------|-------------------|
| Freedom Tower aka WTC 1 New York, NY Furnish and Install | 105 Floor Steel Building and antenna | 46,000 | 25% | 12/11 |
| 150 Greenwich Street aka WTC 4 New York, NY Furnish and Install | 67 Floor Steel Building with 26 floor concrete residential on top | 24,000 | 1% | 02/11 |
| Columbia University Northwest Science Center New York, NY Erection only - Banker Steel Company, LLC | 17 floor Steel Laboratory building | 4,000 | 65% | 12/08 |
| East River Plaza 116 th Street New York, NY Erection only - Banker Steel Company, LLC | 7 Floor Retail Steel Building | 8,500 | 95% | 12/08 |
| Skyview Parc Queens, NY Furnish and Install | 6 Floor Steel Retail Building with 17 Floor Steel Tower | 17,000 | 95% | 01/09 |

DCM Erectors, Inc
Work in Process List
February 11, 2009

| <u>Project Name & Location</u> | <u>Description</u> | <u>Tonnage</u> | <u>Percent Complete</u> | <u>Completion</u> |
|--|------------------------------------|----------------|-------------------------|-------------------|
| Fox News Studios 1211 Avenue of Americas New York, NY Furnish and Install | 6 Floor Steel Building Addition | 500 | 99% | 12/08 |

DCM Erectors, Inc
 Transportation - Infrastructure Experience
 February 11, 2009

| Project Name & Location | Description | Tonnage | Square Footage | Contract Value |
|---|--|---------|----------------|--|
| 383 Madison Avenue aka Bear Stearns New York, NY Erection only | 50 Floor Steel Building over Metro North Tracks Grand Central Train Shed | 18,000 | 1,100,000 | 20,000,000 |
| Whitehall Ferry Terminal New York, NY Erection Only | Four Floor Ferry Terminal 3 Phases over 1 & 9, 4 & 5 Subway Lines, Brooklyn- Battery Tunnel, FDR/West Street Tunnel | 4,500 | | |
| Grand Central Terminal New York, NY | Priority Structural Repairs Company Principals were General Contractor for 77 Separate Work Areas Coordinated track outages With work areas | 38 | | Performed when company principals worked for Canron/Innovax, JV |
| Grand Central Terminal New York, NY | Control Room Relocation | N/A | | |

DCM Erectors, Inc
Transportation - Infrastructure Experience
February 11, 2009

| <u>Project Name & Location</u> | <u>Description</u> | <u>Tonnage</u> | <u>Square Footage</u> | <u>Contract Value</u> |
|--|--|----------------|-----------------------|--|
| Grand Central Terminal New York, NY | Train Shed Rehabilitation Replaced corroded sections Of Park Avenue Framing And Tunnel Stabilization | N/A | | Performed when company principals worked for Camron/Innovax, JV |
| Grand Central Terminal New York, NY | Roof Girder Reinforcement Relieved over stressed Existing members | N/A | | |
| Blue Water Bridge Sarnia, ON Canada Port Huron, Michigan | Fabricated and Erected Large Arch bridge | | | Performed when company principals worked for Camron See MRP, LLC Brochure |
| Grand Central Terminal New York, NY | ADA Improvements Rehabilitated Existing Handrails and Elevator Enclosure | N/A | | See MRP, LLC Brochure |
| Madison Square Garden New York, NY | Skybox & Paramount Theater Renovations Worked with Amtrak MTA Placed crane on elevated platform above existing operating subway | 3500 | | Performed when company principals worked for Camron |



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

PART IV: BUSINESS AND FINANCIAL QUALIFICATIONS

A. FINANCIAL STATUS

1. Please attach to this questionnaire copies of your Company's financial reports or Balance Sheets and Profit and Loss Statements for the last two years.

B. EMPLOYEES

- Total Company: _____

C. CATEGORY OF WORK (Activities Company wishes to be considered)

Major Activities (specify)

1. Structural Steel Fabrication/Erection
2. Architectural/Structural Precast
3. Mezz Deck

D. QUALIFICATIONS AND LICENSES FOR ACTIVITIES

| <u>MAJOR ACTIVITY</u> | <u>QUALIFICATIONS</u> | <u>LICENSES</u> |
|-----------------------|-----------------------|-----------------|
| _____ | <u>AISC</u> | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

Indicate Activity as per IV C. Indicate by which Association company is recognized Indicate License and name of issuing institute.

E. JOINT VENTURE

If Company is operating in Joint Venture

Specify: - Name of Joint Venture: _____

- Permanent / Ad Hoc (circle appropriate)

F. MANPOWER RESOURCES

Please indicate your proposed approach in respect to manpower resources

- a) By own Manpower Yes No
- b) Subcontract part of Work to others. Yes No

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

Which portion of Work do you intend to subcontract to others?

Indicate names of potential subcontractors: — Phoenix Specialty Shape
Exposed Steel Firms

- 1) ADF Group
- 2) Banker Steel
- 3) Cives Steel
- 4) High Steel
- 5) Owen Steel

Please indicate if you intend to perform the Work in Joint Venture with another Company. Indicate name of potential companies.

Yes No

- 1) _____
- 2) _____

Please indicate if you intend to perform the Work as a subcontractor for a main contractor. Indicate name of potential main contractor(s).

Yes No

- 1) _____
- 2) _____

G. PERFORMANCE GUARANTEE

In the event that the successful contractor is a subsidiary of another company, we will require a full performance guarantee from that parent or holding company for work performed by the successful bidder. Please submit, if applicable, name and address of the parent or holding company willing to provide such performance guarantee.

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**

PART V: QUALITY ASSURANCE MEASURES

A. QUALITY ASSURANCE

- 1) Indicate Quality Standard as applied by You
 ASTM ISO 9001: 2000 Other _____
- 2) Is your Quality System fully documented and available in writing? Yes No
- 3) Is Your Quality System subject to independent 3rd party assessment? Yes No
i) If approved, please indicate name of 3rd Party and include a copy of the Approval certificate and Scope of Approval). AISC
ii) If not independently approved, please include a copy of the Quality Manual
- 4) Is a Quality Control Manual Implemented? Yes No

DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**



ALLIED NORTH AMERICA

America's Construction Specialist™

390 North Broadway
Jericho, New York 11753-2110
Tel: (516) 733-9200
Fax: (516) 681-7390
www.alliedna.com

December 8, 2008
Mr. Jeff Gannet
DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

Re: DCM and Solera/DCM JV Experience Mods

Jeff,

The Solera/DCM JV Experience Modification Factor that has been promulgated for the following years as:

| <u>Effective Date:</u> | <u>EMR:</u> |
|------------------------|-------------|
| 04/15/06 | .740 |
| 04/15/07 | .860 |
| 05/01/08 | .910 |

The DCM Erectors, Inc. Experience Modification Factor that has been promulgated for the following years as:

| <u>Effective Date:</u> | <u>EMR:</u> |
|------------------------|-------------|
| 05/22/06 | 1.32 |
| 05/22/07 | 1.05 |
| 05/22/08 | .870 |

Please let me know if you need further assistance.

Best Regards,

Michael Morra
Senior Account Manager
Allied North America Insurance Brokerage of New York, LLC



PART VI: U.S. CONTRACTOR AND SUBCONTRACTOR HEALTH, SAFETY AND ENVIRONMENTAL (HSE) PRE-QUALIFICATION QUESTIONNAIRE

Please provide all requested information. In general, your firm's HSE performance for the last three years will be considered in this pre-qualification evaluation with emphasis given to the most recent year's performance. Phoenix will use the following primary evaluation metrics to assess a contractor's safety record:

- Experience Modification ("EMR");
 - Provide a copy of a letter from your Insurance broker or company showing your EMR (See Section 1, I)
- OSHA Inspection History;
 - Provide a copy of your OSHA Logs for the last 3 yrs. (See Section 2, I)
 - Provide printout of the your OSHA public database inspection record for the last 3 yrs (See Section 2, I)
- Total Recordable Incident Rate ("TRIR");
- Lost Workday Case Incident Rate ("LWCIR"); and
- Work related fatalities

Failure to provide accurate information or additional requested information supporting/evidencing the data provided below may result in the categorization of the Subcontractor as non-responsive. Please provide all requested information.

Company Name: _____

Primary Services Performed: Structural Steel **DCM Erectors, Inc.**
110 East 42nd Street
Suite 1704
New York, NY 10017

1. EMR: EXPERIENCE MODIFICATION RATE

I] MANDATORY SUBMITTAL:

See Letter Provide a COPY OF THE LETTER FROM YOUR INSURANCE BROKER OR INSURANCE COMPANY or WCB evidencing the rate for the last 3 years.
12-08-2008

II] List your firm's Interstate or Intrastate (if applicable) Experience Modification Rate (EMR) for the three most recent years, as evidenced in Workman's Compensation Insurance premiums:

| | | |
|-------------|-------------|-------------|
| Year: _____ | Year: _____ | Year: _____ |
| Rate: _____ | Rate: _____ | Rate: _____ |

Are these rates: InTER-state/national average or InTRA-state/provincial

Please check this box if your company has less than the minimum number of employees required by law to carry workers' compensation insurance or if your company does not have an EMR. (If checked, please provide a letter from your Insurance Company or WCB stating this)

Is your company self-insured for Workers Compensation claims? Yes No

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK AND PAYMENT

OSHA's Form 300A (REV. 01/2004)

Summary of Work-Related Injuries and Illnesses

ALL PROJECTS

Year 2007

U.S. Department of Labor
Occupational Safety and Health Administration

All establishments covered by the 1970 and 1974 amendments to the Summary Report, 29 CFR 1904.10, must complete this Summary Report, even if no injuries or illnesses occurred during the year. Instructions to establish the Log to verify that the number and description of injuries and illnesses are accurate are provided on the reverse side of this form.

Using the Log, cover the calendar year from 12/31 of the previous year to 12/31 of the current year. There must be a date listed for each injury or illness. Establishments that are not covered by the 1970 and 1974 amendments to the Summary Report, 29 CFR 1904.10, must complete this Summary Report, even if no injuries or illnesses occurred during the year. Instructions to establish the Log to verify that the number and description of injuries and illnesses are accurate are provided on the reverse side of this form.

Establishments that are not covered by the 1970 and 1974 amendments to the Summary Report, 29 CFR 1904.10, must complete this Summary Report, even if no injuries or illnesses occurred during the year. Instructions to establish the Log to verify that the number and description of injuries and illnesses are accurate are provided on the reverse side of this form.

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|
| Total number of injuries and illnesses | 6 | (a) | 0 | (b) | 0 | (c) | 0 | (d) | 0 | (e) | 0 | (f) | 0 | (g) | 0 | (h) | 0 | (i) | 0 | (j) | 0 | (k) | 0 | (l) | 0 | (m) | 0 | (n) | 0 | (o) | 0 | (p) | 0 | (q) | 0 | (r) | 0 | (s) | 0 | (t) | 0 | (u) | 0 | (v) | 0 | (w) | 0 | (x) | 0 | (y) | 0 | (z) | 0 |
|--|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|-------------------------------------|----|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|
| Total number of days away from work | 28 | (a) | 0 | (b) | 0 | (c) | 0 | (d) | 0 | (e) | 0 | (f) | 0 | (g) | 0 | (h) | 0 | (i) | 0 | (j) | 0 | (k) | 0 | (l) | 0 | (m) | 0 | (n) | 0 | (o) | 0 | (p) | 0 | (q) | 0 | (r) | 0 | (s) | 0 | (t) | 0 | (u) | 0 | (v) | 0 | (w) | 0 | (x) | 0 | (y) | 0 | (z) | 0 |
|-------------------------------------|----|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|
| Total number of days lost due to job transfer or restriction | 0 | (a) | 0 | (b) | 0 | (c) | 0 | (d) | 0 | (e) | 0 | (f) | 0 | (g) | 0 | (h) | 0 | (i) | 0 | (j) | 0 | (k) | 0 | (l) | 0 | (m) | 0 | (n) | 0 | (o) | 0 | (p) | 0 | (q) | 0 | (r) | 0 | (s) | 0 | (t) | 0 | (u) | 0 | (v) | 0 | (w) | 0 | (x) | 0 | (y) | 0 | (z) | 0 |
|--|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|

| | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
|--|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|
| Total number of days lost due to job transfer or restriction | 0 | (a) | 0 | (b) | 0 | (c) | 0 | (d) | 0 | (e) | 0 | (f) | 0 | (g) | 0 | (h) | 0 | (i) | 0 | (j) | 0 | (k) | 0 | (l) | 0 | (m) | 0 | (n) | 0 | (o) | 0 | (p) | 0 | (q) | 0 | (r) | 0 | (s) | 0 | (t) | 0 | (u) | 0 | (v) | 0 | (w) | 0 | (x) | 0 | (y) | 0 | (z) | 0 |
|--|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|-----|---|

Post this Summary page from February 1 to April 30 of the year following the year covered by the form.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, reviewing and collecting the data, and reviewing and editing the information. Send comments regarding this burden estimate or any aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Service, Paperwork Project (0292-0102), Washington, DC 20503. Do not send this information to the OSHA office.

Establishment Information

Your establishment name: OSHA Employees, Inc.
 Street: 218 East 12th Street, Suite 1204
 City: New York State: NY Zip: 10002
 Industry description (e.g., Manufacturer of metal parts, wholesaler of electrical equipment):
Employment Street Director
 Standard Industrial Classification (SIC) (4 digits): 8000
 North American Industry Classification (NAICS) (4 digits): 8000
 Employment information:
 Annual average number of employees: 170
 Total hours worked by all employees last year: 322,470

Sign here

Knowledge that this document may result in a fine.
 I certify that I have reviewed this document and that to the best of my knowledge the entries are true, accurate, and complete.

Officer: John D. D'Amico
 Title: Officer
 Date: 1/21/2008

233-599-1000
 Phone

OSHA's Form 300A Summary of Work-Related Injuries and Illnesses

Total All Projects

Year 2006



U.S. Department of Labor
Occupational Safety and Health Administration

Form approved OSH no. 171-0175

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that this entries are complete and

Using the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0".

Employees former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

| | | | |
|------------------------|--|--|--|
| Total number of deaths | Total number of cases with days away from work | Total number of cases with job transfer or restriction | Total number of cases other recordable cases |
| 0 (G) | 5 (H) | 0 (I) | 0 (J) |

Number of Days

| | |
|---|-------------------------------------|
| Total number of days of job transfer or restriction | Total number of days away from work |
| 0 (K) | 51 (L) |

Injury and Illness Types

| | | | | | |
|--------------------|------------|-------------------|---------------------------|---------------|-------------------------|
| Total number of... | (1) Injury | (2) Skin Disorder | (3) Respiratory Condition | (4) Poisoning | (5) All other illnesses |
| (M) | 21 | 0 | 0 | 0 | 0 |

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room N-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.

2006_OSHA_300_DCM_Total_DCM

| | |
|---|----------------------------------|
| Establishment information | |
| Your establishment name | DCM ERECTORS INC. |
| Street | 110 EAST 42ND STREET, SUITE 1710 |
| City | NEW YORK |
| State | NY |
| Zip | 10017 |
| Industry description (e.g., Manufacture of motor truck trailers) | STEEL ERECTOR |
| Standard Industrial Classification (SIC), if known (e.g., SIC 3715) | 1 7 9 1 |
| Employment information | |
| Annual average number of employees | 122 |
| Total hours worked by all employees last year | 254,530 |
| Sign here | |
| Knowingly falsifying this document may result in a fine. | |
| I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete. | |
| Richard Gilbert Company executive | Safety Manager Title |
| (212) 539-1603 Phone | Date |

OSHA's Form 300A

Total All Projects Summary of Work-Related Injuries and Illnesses

Year 2005
U.S. Department of Labor
Occupational Safety and Health Administration
Form approved OMB no. 1218-0178

All establishments covered by Part 1904 must complete this Summary page, even if no injuries or illnesses occurred during the year. Remember to review the Log to verify that the entries are complete and

Listing the Log, count the individual entries you made for each category. Then write the totals below, making sure you've added the entries from every page of the log. If you had no cases write "0."

Employees, former employees, and their representatives have the right to review the OSHA Form 300 in its entirety. They also have limited access to the OSHA Form 301 or its equivalent. See 29 CFR 1904.35, in OSHA's Recordkeeping rule, for further details on the access provisions for these forms.

Number of Cases

| | | | | | | | | | | | |
|------------------------|-----|---|---|-----|---|--|-----|---|--|-----|----|
| Total number of deaths | (G) | 0 | Total number of cases with days away from work or restriction | (H) | 3 | Total number of cases with job transfer or restriction | (I) | 0 | Total number of other recordable cases | (J) | 15 |
|------------------------|-----|---|---|-----|---|--|-----|---|--|-----|----|

Number of Days

| | | | | | |
|---|-----|---|-------------------------------------|-----|-----|
| Total number of days of job transfer or restriction | (K) | 0 | Total number of days away from work | (L) | 198 |
|---|-----|---|-------------------------------------|-----|-----|

Injury and Illness Types

| | | | | |
|---------------------------|-----|-------------------------|---------------|---|
| Total number of: | (M) | | (4) Poisoning | 0 |
| (1) Injury | 18 | (5) All other illnesses | 0 | |
| (2) Skin Disorder | 0 | | | |
| (3) Respiratory Condition | 0 | | | |

Post this Summary page from February 1 to April 30 of the year following the year covered by the form

Public reporting burden for this collection of information is estimated to average 50 minutes per response, including time to review the instruction, search and gather the data needed, and complete and review the collection of information. Persons are not required to respond to the collection of information unless it displays a currently valid OMB control number. If you have any comments about these estimates or any aspects of this data collection, contact: US Department of Labor, OSHA Office of Statistics, Room H-3644, 200 Constitution Ave, NW, Washington, DC 20210. Do not send the completed forms to this office.

| | |
|---|----------------------------------|
| Establishment information | |
| Your establishment name | DCM ERECTORS INC. |
| Street | 119 EAST 42ND STREET, SUITE 1710 |
| City | NEW YORK |
| State | NY |
| Zip | 10017 |
| Industry description (e.g., Manufacture of motor truck trailers) STEEL ERECTOR | |
| Standard Industrial Classification (SIC), if known (e.g., SIC 3715) 1 7 9 1 | |
| Employment information | |
| Annual average number of employees | 117 |
| Total hours worked by all employees last year | 244,325 |
| Sign here | |
| Knowingly falsifying this document may result in a fine. | |
| I certify that I have examined this document and that to the best of my knowledge the entries are true, accurate, and complete. | |
| Richard Gilbert Company executive | Safety Manager Title |
| (312) 599 - 1603 Phone | Date |



U.S. Department of Labor
Occupational Safety & Health Administration

www.osha.gov

Search



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Search Results

Establishment Search Results Page

[Find It! in DOL]

| Establishment | Date Range | Office | State |
|--------------------|--------------------------|--------|-------|
| DCM Erectors, Inc. | 12/04/2003 to 12/04/2008 | All | NY |

Please note that inspections which are known to be incomplete will have the Identifying Activity Nr shown in *italic*. Information for these open cases is especially dynamic, e.g., violations may be added or deleted.

Sort By: | **Date** | Name | Office | State |

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Results 1 - 2 of 2
By Date

| | Activity | Opened | RID | St | Type | Sc | SIC | NAICS | Vlo | Establishment Name |
|--------------------------|--------------------|------------|---------|----|----------|---------|------|--------|-----|--------------------|
| <input type="checkbox"/> | 1 <i>312480551</i> | 07/21/2008 | 0215000 | NY | Planned | Partial | 1791 | 238120 | 1 | Dcm Erectors Inc. |
| <input type="checkbox"/> | 2 <i>311442974</i> | 12/14/2007 | 0215000 | NY | Referral | Partial | 1791 | 238120 | 4 | Dcm Erectors Inc. |

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Occupational Safety & Health Administration
200 Constitution Avenue, NW
Washington, DC 20210



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Establishment Search Results Page

[Find It! In DOL]

| Establishment | Date Range | Office | State |
|--------------------|--------------------------|--------|-------|
| DCM Erectors, Inc. | 12/04/2003 to 12/04/2008 | All | NY |

Please note that inspections which are known to be incomplete will have the Identifying Activity Nr shown in *italic*. Information for these open cases is especially dynamic, e.g., violations may be added or deleted.

Sort By: | [Date](#) | [Name](#) | [Office](#) | [State](#) |

[Return to Search](#)

[Get Detail](#) [Select All](#) [Reset](#)

Results 1 - 3 of 3
By Date

| | Activity | Opened | RID | St | Type | Sc | SIC | NAICS | Vio | Establishment Name |
|--------------------------|-------------|------------|---------|----|--------------|----------|------|--------|-----|--|
| <input type="checkbox"/> | 1 312424526 | 06/27/2008 | 0215000 | NY | Prog Related | Partial | 1791 | 238120 | 1 | Dcm Erectors Inc. |
| <input type="checkbox"/> | 2 310692108 | 01/19/2007 | 0215000 | NY | Unprog Rel | Complete | 1791 | 238120 | 1 | The Davls Group Db a Dcm Erectors Inc. |
| <input type="checkbox"/> | 3 309914018 | 03/23/2006 | 0215000 | NY | Prog Related | Complete | 1791 | 238120 | 8 | Dcm Erectors Inc. |

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Occupational Safety & Health Administration
200 Constitution Avenue, NW
Washington, DC 20210

iii) For the Subcontractor to be considered qualified, their EMR rate established by the National Council on Compensation Insurance (NCCI) or state rating bureau (if applicable) should be no greater than 1.2; or a WCB surcharge no more 20% above the industry average. A rating greater than 1.2 will place the Subcontractor in a probationary status, and allowance will be subject solely to Phoenix's review. Higher rates may require a corrective action plan for your firm to be a qualified bidder. If the rating provided exceeds 1.2 please provide a written explanation below (such explanation is mandatory):

DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

OSHA: OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION / FATALITIES

i) **MANDATORY SUBMITTALS:** Attach to this questionnaire: *see Forms*

- (1) a PRINTOUT OF YOUR OSHA LOGS FOR THE LAST 3 YRS, and
- (2) a PRINTOUT OF YOUR OSHA PUBLIC DATABASE INSPECTION RECORD FOR THE LAST 3 YRS

ii) Fill in the following information for the last three available years. (In the U.S. use your last three annual OSHA 200 or 300 Logs. Non-U.S. firms, please see OSHA definitions at the conclusion of this questionnaire.)

A. Number of Total (OSHA/BLS) Recordable Cases:

| | | |
|-------------|-------------|-------------|
| Year: _____ | Year: _____ | Year: _____ |
| No: _____ | No: _____ | No: _____ |

B. Number of Restricted Work Activity Cases:

| | | |
|-------------|-------------|-------------|
| Year: _____ | Year: _____ | Year: _____ |
| No: _____ | No: _____ | No: _____ |

C. Number of Lost Workday Cases:

| | | |
|-------------|-------------|-------------|
| Year: _____ | Year: _____ | Year: _____ |
| No: _____ | No: _____ | No: _____ |

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
 COMMENCEMENT OF WORK AND PAYMENT**



SURVEY AND RESPONSE QUESTIONNAIRE

FORM: 5.1

~~110 East 44th Street~~
Suite 1704
New York, NY 10017

D. Number of Fatalities:

| | | |
|-------------|-------------|-------------|
| Year: _____ | Year: _____ | Year: _____ |
| No: _____ | No: _____ | No: _____ |

See
Forms

E. Employee hours worked (do not include any non-work time, even though paid):

| | | |
|--------------|--------------|--------------|
| Year: _____ | Year: _____ | Year: _____ |
| Hours: _____ | Hours: _____ | Hours: _____ |

III) If the Contractor has had an OSHA citation within the last 3 years that was classified with a severity **greater than serious or experienced any fatalities** please provide a written explanation, explaining the relevant circumstances and any corrective actions that have been taken (such explanation is necessary). Allowance will be subject solely to Phoenix's review and approval. Phoenix may require a satisfactory corrective action plan for your firm to be a qualified bidder.

3. TRIR: TOTAL RECORDABLE INCIDENT RATE:

List your firm's (OSHA/BLS) Total Recordable Incident Rate (TRIR) for the three most recent years. To be qualified without corrective action, that resultant number should be no greater than 7.5. Provide a legible copy of your OSHA Logs for the last 3 years (or equivalent) with your submittal. A rating greater than 7.5 will place the Subcontractor in a probationary status, and require a satisfactory explanation from the Subcontractor. Allowance will be subject solely to Phoenix's review and approval. Higher rates may require a corrective action plan for your firm to be a qualified bidder.

| | | |
|-------------|-------------|-------------|
| Year: _____ | Year: _____ | Year: _____ |
| Rate: _____ | Rate: _____ | Rate: _____ |

Note: Calculate your TRIR by counting without duplication all recordable injuries and illnesses. Use the information entered on your OSHA 200 or 300 Form (Line 2A, above), multiply this number by 200,000, and divide the result by your firm's total work hours for that calendar year. (i.e. for 2001, take the value entered in Item 2-A (2001), multiply by 200,000, divide this total by the 2001 employee work hours entered in Item 3 above).

If the rating provided exceeds 7.5 please provide a written explanation below (such explanation is mandatory):

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

4. LWCIR: LOST WORKDAY CASE INCIDENT RATE:

List your firm's Lost Workday Case Incident Rate (LWCIR) for the three most recent years, as evidenced by your OSHA Log or equivalent document if non-U.S.) To be qualified without corrective action, that resultant number should be no greater than 4.0. Provide a legible copy of your most recent OSHA Log with your submittal. A rating greater than 4.0 will place the Subcontractor in a probationary status, and require a satisfactory explanation from the Subcontractor. Allowance will be subject solely to Phoenix's review and approval. Higher rates may require a corrective action plan for your firm to be a qualified bidder.

Year: _____ Year: _____ Year: _____
Rate: _____ Rate: _____ Rate: _____

Note: Calculate your LWCIR in the same manner as the TRIR, except use the values reported in 2C, above, rather than 2A.

If the rating provided exceeds 4.0 please provide a written explanation below (such explanation is mandatory):

[Blank lines for written explanation]

5. Please list any OSHA health, safety or environmental citations or notices of violation, reportable spill events, sanitation code violations, or other governmental indications of an HSE incident¹ received by your company during the previous three years. Please attach a copy of each or a summary describing the incident and how it was resolved.

¹ HSE incident means an accident or some other unplanned event that causes or had potential to cause an injury, illness, environmental or property damage, or loss of production.

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK AND PAYMENT



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

6. Is the information collected from the OSHA logs/OH&S notices, HSE incident reports, and near miss reports communicated to the following? If yes, how often?

Table with 5 columns: Yes, No, Monthly, Quarterly, Annually. Rows include Field Superintendent or Dept Mgr, Vice President, President or CEO, and Other.

7. How are individual HSE incidents and associated costs recorded? How often are they reported?

Table with 5 columns: Yes, No, Monthly, Quarterly, Annually. Rows include Incidents totaled for entire company, Incidents totaled by project, Incidents subtotaled by superintendent or dept manager, Incidents subtotaled by foreman/supervisor, Costs totaled for entire company, Costs totaled by project, Costs subtotaled by superintendent, and Costs subtotaled by foreman/supervisor.

8. Do you have a written HSE program?

[X] Yes [] No

Previously submitted on 8A

If yes, please attach a copy or a summary of your program, including any HSE, safety, or package environmental policy or mission statements you may have.

9. Does your firm have a Sustainability Program, Policy, or Report? If yes, please attach a brief summary.

[] Yes [] No

10. Do you have an orientation program for new hires?

[] Yes [] No

11. Do you have a program for newly hired or promoted foreman and supervisors?

[] Yes [] No

12. Please indicate below the elements included in your overall HSE program, new hire training/orientation, and new supervisor/foreman training

Table with 3 columns: HSE Program, New Hire Training, Supervisor Training. Rows include A. Corporate HSE Policy and B. HSE Workplace Committee.

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK AND PAYMENT



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

- C. HSE Inspections and Audits
- D. Personal Protective Equipment
- E. Hazard Assessment and Communication
- F. Task Assignment Training
- G. Respiratory Protection
- H. Fall Protection
- I. Scaffolding & Ladders
- J. Perimeter Guarding
- K. Housekeeping
- L. Fire Protection/Prevention
- M. First Aid Procedures/Facilities
- N. Emergency Procedures
- O. Toxic Substances/Hazard Communication
- P. Trenching & Excavation
- Q. Signs, Barricades, & Flagging
- R. Electrical Safety
- S. Rigging & Crane Safety
- T. Safe Work Practices
- U. Safety Supervision
- V. Toolbox/Workplace HSE Meetings
- W. Incident Investigation/Reporting
- X. Confined Spaces
- Y. Abrasive Blasting Safety
- Z. Substance Abuse
- AA. Vehicle Safety
- BB. Use of Compressed Gas Cylinders
- CC. Welding/Cutting
- DD. Medical Evaluation
- EE. Blood-borne Pathogens
- FF. Employee Discipline
- GG. High-pressure Water Cleaning
- HH. Hot Taps
- II. Noise/Hearing Conservation
- JJ. Heat/Cold Stress
- KK. Incentives/Awards for HSE Achievements
- LL. Spill Prevention/Response
- MM. Dust Suppression
- NN. Wastewater/Storm Water Management

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**

DCM Erectors, Inc.

~~110 East 42nd Street~~

Suite 1704

New York, NY 10017



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

- OO. Hazardous Waste & Solid Waste Management
- PP. Equipment Emissions
- QQ. Wetlands/Sensitive Habitats
- RR. Other _____

13. Do you hold workplace HSE meetings for supervisors? Yes No

If yes, how often?

- Daily
- Weekly
- BI-Weekly
- Monthly
- As Needed

14. Do you hold employee "toolbox" HSE meetings? Yes No

If yes, how often?

- Daily
- Weekly
- BI-Weekly
- Monthly
- As Needed

15. Do you conduct pre-task HSE planning meetings with employees? Yes No

If yes, briefly describe the program format and/or attach a copy.

16. Do you conduct workplace HSE inspections? Yes No

If yes, who conducts this inspection? _____ and how often?

- Daily
- Weekly
- BI-Weekly
- Monthly
- As Needed

17. Please identify the most senior executive/manager directly responsible for HSE program management and implementation at your company:

Name: _____

Title: _____

Reports to: _____

Comments:

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**



SURVEY AND RESOURCE QUESTIONNAIRE

FORM: 5.1

Jeffrey S. Gannett
Prepared by (Printed Name)

Jeffrey S. Gannett
Prepared by (Signature)

Vice President
Title

02/11/2009
Date

U.S. Bureau of Labor Statistics/OSHA Recordkeeping Summary

Note- this is a summary, prepared to assist the Contractor/Subcontractor in making Recordkeeping determinations to complete this form. For a more detailed explanation of the regulations the Contractor/Subcontractor is advised to review U.S. OSHA Regulation 29CFR1904, available on www.osha.gov.

Basic recordkeeping concepts and guidelines are included with instructions on the back of U.S. OSHA Form No. 200. The following summarizes the major recordkeeping concepts and provides additional information to aid in keeping records accurately.

General concepts of recordability

1. An injury or illness is considered work related if it results from an event of exposure in the work environment. The work environment is primarily composed of: (1) The employer's premises, and (2) other locations where employees are engaged in work-related activities or are present as a condition of their employment. When an employee is off the employer's premises, work relationship must be established, when on the premises, this relationship is presumed. The employer's premises encompass the total establishment. This includes not only the primary facility, but also such areas as company storage facilities, cafeterias, and rest rooms. In addition to physical locations, equipment or materials used in the course of an employee's work are also considered part of the employee's work environment.

2. Work relationship is not presumed when injury results as:

- a. Member of general public
- b. Eating, drinking one's own food
- c. Personal tasks outside working hours
- d. Personal grooming or self-medication
- e. Motor vehicle accident in parking lot
- f. Cold or flu
- g. Non-work related mental illness

3. All work-related fatalities are recordable.

4. All recognized or diagnosed work-related illnesses are recordable.

5. All work-related injuries requiring medical treatment or involving loss of consciousness, restriction of work or motion, or transfer to another job are recordable.

Analysis of injuries

Recordable and nonrecordable injuries. Each case is distinguished by the treatment provided by a physician or licensed healthcare professional; i.e., if the injury was such that medical treatment was provided or should have been provided, it is

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recordable; if only first aid was required, it is not recordable. However, medical treatment is only one of several criteria for determining recordability. Regardless of treatment, if the injury involved loss of consciousness, restriction of work or motion, or transfer to another job, the injury is recordable.

Injuries & Illnesses. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illnesses are recordable only if they are new, work-related cases that meet one or more of the OSHA Part 1904 Recording criteria.)

(RECORDABLE) Medical treatment. The following procedures are generally considered medical treatment, injuries for which this type of treatment was provided or should have been provided are almost always recordable if the injury is work related:

- Treatment of **INFECTION**
- Hearing loss of 25 dBA from baseline
- Treatment of **SECOND OR THIRD DEGREE BURN(S)**
- Application of **SUTURES** (stitches)
- Removal of **FOREIGN BODIES EMBEDDED IN EYE**
- Removal of **FOREIGN BODIES FROM WOUND**; if procedure is **COMPLICATED** because of depth of embedment, size, or location
- Use of **PRESCRIPTION MEDICATIONS**
- Significant diagnosed injury – fracture; punctured eardrum; cancer; chronic irreversible disease
- **CUTTING AWAY DEAD SKIN** (surgical debridement)
- **POSITIVE X-RAY DIAGNOSIS** (fractures, broken bones, etc.)
- **ADMISSION TO A HOSPITAL** or equivalent medical facility **FOR TREATMENT.**

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Medical Treatment **DOES NOT** include (a) visits to a physician or other licensed healthcare professional solely for observation or counseling; (b) diagnostic procedures such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or (c) any treatment contained on the list of first-aid treatments.

(RECORDABLE) General Guidelines for recording Lost Workday Cases:

1. Count days lost from work as prescribed by the physician or licensed healthcare professional
2. Count calendar days
3. DO NOT count day of injury

(RECORDABLE) General Guidelines for recording Restricted Cases:

1. Cannot work a full shift
2. Cannot perform all of his/her routine job functions (Routine = any duty regularly performed at least once per week)

First aid treatment. The following procedures are generally considered first aid treatment (e.g., one-time treatment and subsequent observation of minor injuries) and should not be recorded if the work-related injury does not involve loss of consciousness, restriction of work or motion, or transfer to another job. First Aid means only the following treatments (any treatment not included in this list is not considered First Aid for recordkeeping purposes):

- Using a non-prescription medication at non-prescription strength
- Administering tetanus immunizations
- Cleaning, flushing or soaking wounds on the surface of the skin
- Using wound coverages such as bandages, Band-Aids, gauze pads, etc.; or using butterfly bandages or Steri-Strips
- Using hot or cold therapy
- Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.
- Using temporary immobilization devices while transporting an accident victim
- Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister
- Using eye patches
- Removing foreign bodies from the eye using only irrigation or a cotton swab
- Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means
- Using finger guards
- Using massages
- Drinking fluids for relief of heat stress

The following procedure, by itself, is not considered medical treatment:

- Administration of TETANUS SHOT(S) or BOOSTER(S). However, these shots are often given in conjunction with more serious injuries; consequently, injuries requiring these shots may be recordable for other reasons.

Reminder: Work-related injuries requiring only first aid treatment and that do not involve any of the conditions in item 4 above, are not recordable.

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**INSTRUCTIONS FOR COMPLETION OF DISCLOSURE OF LOBBYING
ACTIVITIES**

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code. Of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award of loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If know, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

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8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal Agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB NO. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington D.C., 20503

DCM Erectors, Inc
110 East 42nd Street
Suite 1704
New York, NY 100

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DCM Erectors, Inc.

110 East 42nd Street

Suite 1704

New York, NY 10017

REPRESENTATIONS & CERTIFICATIONS



FORM: 5.2



EXHIBIT 5.2 - REPRESENTATIONS AND CERTIFICATIONS

Complete for Yourself and All Lower Tiers including Subcontractors and Vendors

The Proposer identified below certifies to the following facts. The full text of the representations and certifications made below (and referenced to the right of each statement) is available in the Federal Acquisition Regulations (FAR) or can be supplied by Phoenix Constructors JV.

Check each block that applies:

REFERENCE

1. The Proposer certifies, to the best of its knowledge and belief, that the Proposer and/or any of its principals: 49 CFR 29

[] ARE [X] ARE NOT presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any federal agency; and

Exhibit C

For contracts expected to equal or exceed \$25,000, the Proposer further certifies, to the best of its knowledge and belief, that the Proposer and/or any of its principals [] ARE [X] ARE NOT presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any federal agency as represented in the signed Exhibit C

2. The Proposer certifies it [] HAS [X] HAS NOT been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property, and [] ARE [X] ARE NOT presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses. The Proposer further represents it is in complete compliance with the terms of Exhibit A. Exhibit A

3. The Proposer [] IS [X] IS NOT a women-owned business certified by the Authority. 13 CFR 124

The Proposer [] IS [X] IS NOT a minority-owned business certified by the Authority.

4. [] Proposer has an accounting system approved by an agency of the Federal Government. Date accounting period ends:

5. [] Proposer has approved forward pricing rates.

6. [] Proposer has an approved Disclosure Statement. Date: _____

Proposer's Administrative Contracting Officer (ACO): Name: _____

Address: _____ Phone Number: _____

7. [X] Proposer maintains a corporate quality assurance program and executes all projects/orders in accordance with this program. AISC

8. [] ISO 9001 Certified.

9. [X] Signer is authorized to represent the business making this offer (Proposer) in all matters related to pricing, terms and conditions, conduct of business, and buyer-seller relationships between Proposer and the Buyer.

10. [X] Prices offered have been arrived at independently, without consultation, communication, agreement, or condition that relates to the proposal by any other Proposer or competitor. The Proposer has not, and will not, disclose offered prices to any other Proposer or competitor prior to award of a resulting Contract or Purchase Order, or cancellation of this solicitation. The Proposer has not attempted to induce any other person or firm to submit, or not submit, an offer in response to this solicitation. Proposer warrants that the prices offered do not exceed those currently offered to any other customer for the same or similar quantities of the same or similar goods or services. The Proposer further represents it is in complete compliance with the terms of Exhibit B. Exhibit B

11. [X] For all Contracts expected to equal or exceed \$100,000 in value, the Proposer is required to complete and sign Exhibit D, Certificate Regarding Lobbying Pursuant to 31 U.S.C. 1352, and if applicable, Exhibit D, Standard Form (SF) LLL - Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352. Exhibit D

12. [X] No person or company, other than Proposer's employee(s) or affiliate firms, has/have been paid to solicit or obtain this Contract or Purchase Order nor has any agreement been made to pay a person or company a commission, fee, or any form of compensation contingent upon award of this solicitation.

13. Proposer provides [X] Goods [X] Services Employer/Tax I.D. No.: _____

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14. Complete one of the following responses:
 Proposer is not subject to backup withholding per Sec. 3406(a)(1)(c) Internal Revenue Code.
 Proposer is subject to backup withholding; social security number(s) is: _____ - _____ - _____

15. Proposer is:
- | | | |
|---|--|---|
| <input type="checkbox"/> An Individual | <input type="checkbox"/> A Joint Venture | <input type="checkbox"/> A Nonprofit Corporation |
| <input type="checkbox"/> A Partnership | <input type="checkbox"/> A Foreign Citizen | <input type="checkbox"/> A State or Local Government Agency |
| <input type="checkbox"/> U.S. Government Agency | <input checked="" type="checkbox"/> A Corporation Incorporated in the State of <u>New York</u> | |

DCM Erectors, Inc.
110 East 42nd Street
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CERTIFICATE REGARDING DEBARMENT

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Proposer is required to verify that none of the entities comprising the Proposer, their principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Proposer is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

Company LEGAL Name:

Dun & Bradstreet Number:

Ordering Address:

P.O. Box:

State:

Phone:

Company Principal:

DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

City:

Zip:

Fax:

Title:

212 599 1603

212 599 1615

Larry Davis

President

Parent Company Name:

Dun & Bradstreet Number:

Ordering Address:

P.O. Box:

State:

Phone:

Company Principal:

City:

Zip:

Fax:

Title:

I certify that the information provided on this form and the attachments/exhibits there to is accurate and true to the best of my knowledge, and any changed conditions shall be reported promptly to Phoenix Constructors JV.

These certification statements concern matters within the jurisdiction of an agency of the United States. Making a false, fictitious, or fraudulent certification may render Proposer subject to prosecution Section 1001, Title 18, United States Code(U.S.C.). The Buyer may withhold an award based on any negative responses to the certifications above and/or Proposers' failure to adequately describe the conditions of the response.

Proposer agrees that the certifications and conditions provided herein are a material and binding part of, and are hereby incorporated by reference into, any resulting contract unless specifically excluded in the Contract or Purchase Order.

Jeffrey S. Cannett

Printed Name

DCM Erectors, Inc

Company

[Handwritten Signature]

Signature

02/11/2009

Date

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EXHIBIT A

CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, SUSPENSION, DEBARMENT, DISQUALIFICATION, PREQUALIFICATION DENIAL OR TERMINATION, ETC; DISCLOSURE OF OTHER REQUIRED INFORMATION.

By proposing on this Contract, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that the proposer and each parent and/or affiliate of the proposer has not (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal; (f) been denied a contract by any governmental agency for failure to provide the required security, including proposal, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency including an inspector general of a governmental agency of public authority; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local environmental law, rule or regulation; and (k) shared space, staff or equipment with any business entity.

Under certain circumstances the successful Proposer may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent monitor to be selected by the Authority. Said monitor shall be charged with, among other things, auditing the actions of the successful Proposer to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to do business with the Authority.

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The foregoing certification as to "(a)" through "(k)" shall be deemed to have been made by the proposer as follows: if the proposer is a corporation, such certification shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each director and officer, as well as, to the best of the certifier's knowledge and belief, each stockholder with an ownership interest in excess of 10%; if the proposer is a partnership, such certification shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate proposer, shall be deemed to have been authorized by the Board of Directors of the proposer, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the proposer cannot make the foregoing certification, the proposer shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefore. If the proposer is uncertain as to whether or not it can make the foregoing certification, it shall so indicate in a signed statement furnished with its proposal, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the proposer's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the proposal is submitted, the proposer agrees to immediately notify the Authority in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the proposer with full knowledge that it would become a part of the records of the Authority and that the Authority will rely on its truth and accuracy in awarding this Contract. In the event that the Authority determines at any time prior or subsequent to the award of the Contract that the proposer has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Authority may determine that the proposer is not a responsible proposer with respect to its proposal on this Contract or with respect to future proposals and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of Authority". In addition, proposers are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.) Proposers are also advised that the inability to make such certification will not in and of itself disqualify a proposer, and that in each instance the Authority will evaluate the reasons therefore provided by the proposer.

As used in this clause, the following terms shall mean:

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- Affiliate – An entity in which the parent of the proposer owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the proposer also owns more than fifty percent of the voting stock.
- Agency or Governmental Agency – Any federal, state, city or other local agency, including departments, offices, quasi-public agencies, public authorities and corporations, boards or education and higher education, public development corporations, local development corporations and others.
- Employer Identification Number – The tax identification number assigned to firms by the federal government for tax purposes.
- Investigation – Any inquiries made by any federal, state or local criminal prosecuting or investigative agency, including an inspector general or a governmental agency or public authority, and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil governmental agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or federal, state and local inquiries into tax returns.
- Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the proposer by whatever titles known.
- Parent – An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the proposer.
- Space Sharing – Space shall be considered to be shared when any part of the floor space utilized by the submitting business at any of its sites is also utilized on a regular or intermittent basis for any purpose by any other business or not-for-profit organization, and where there is no lease or sublease in effect between the submitting business and any other business or not-for-profit organization that is sharing space with the submitting business.
- Staff Sharing – Staff shall be considered to be shared when any individual provides the services of an employee, whether paid or unpaid, to the proposer and also, on either a regular or irregular basis, provides the services of an employee, paid or unpaid, to one or more other business(es) and/or not-for-profit organization(s), if such services are provided during any part of the same hours the individual is providing services to the proposer or if such services are provided on an alternating or interchangeable basis between the proposer and the other business(es) or not-for-profit organization(s). "The services of an employee" should be understood to include services of any type or level, including managerial or supervisory. This

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type of sharing may include, but is not limited to, individuals who provide the following services: telephone answering, receptionist, delivery, custodial and driving.

- *Equipment Sharing* – Equipment shall be considered to be shared whenever the proposer shares the ownership and/or the use of any equipment with any other business or not-for-profit organization. Such equipment may include, but is not limited to, telephones or telephone systems, photocopiers, computers, motor vehicles, and construction equipment. Equipment shall not be considered to be shared under the following circumstances: when, although the equipment is owned by another business or not-for-profit organization, the proposer has entered into a formal lease for the use of the equipment and exercises exclusive use of the equipment; or when the proposer owns equipment that it has formally leased to another business or not-for-profit organization, and for the duration of such lease the proposer has relinquished all right to the use of such leased equipment.

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DCM Erectors, Inc.

110 East 42nd Street

Suite 1704

New York, NY 10017

REPRESENTATIONS & CERTIFICATIONS

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EXHIBIT B

**NON-COLLUSIVE PROPOSING AND CODE OF ETHICS CERTIFICATION;
CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION,
PERCENTAGE, BROKERAGE, CONTINGENT FEE OR OTHER FEE.**

By proposing on this Contract, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that: (a) the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor; (b) the prices quoted in its proposal have not been and will not be knowingly disclosed, directly or indirectly, by the proposer prior to the official opening of such proposal to any other proposer or to any competitor; (c) no attempt has been made and none will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the Form of Contract entitled "No Gifts, Gratuities, Offers of Employment, etc.") or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Proposers"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or a bona fide established commercial or selling agency maintained by the proposer for the purpose of securing business, has been employed or retained by the proposer to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency; the proposer has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each parent, affiliate, director and officer of the proposer, as well as, to the best of certifier's knowledge and belief, each stockholder of the proposer with an ownership interest in excess of 10%; if the proposer is a partnership, such certification shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each partner.

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Moreover, the foregoing certification, if made by a corporate proposer, shall be deemed to have been authorized by the Board of Directors of the proposer, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the proposer cannot make the foregoing certification, the proposer shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefore. If the proposer is uncertain as to whether or not it can make the foregoing certification, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement, an explanation for its uncertainty.

Notwithstanding that the proposer may be able to make the foregoing certification at the time the proposal is submitted, the proposer shall immediately notify the Authority in writing during the period of irrevocability or proposals on this Contract or any extension of such period, or any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure.

The foregoing certification or signed statement shall be deemed to have been made by the proposer with full knowledge that it would become a part of the records of the Authority and that the Authority will rely on its truth and accuracy in awarding this Contract. In the event that the Authority determines at any time prior or subsequent to the award of the Contract that the proposer has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstance with respect to any item in the foregoing certification required to be disclosed, the Authority may determine that the proposer is not a responsible proposer with respect to its proposal on this Contract or with respect to future bids on Authority contracts and may, in addition exercising any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of Authority". In addition, proposers are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.) Proposers are also advised that the inability to make such certification will not in and of itself disqualify a proposer, and that in each instance the Authority will evaluate the reasons therefore provided by the proposer.

Under certain circumstances the successful Proposer may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent monitor to be selected by the Authority. Said monitor shall be charged with, among other things, auditing the actions of the successful Proposer to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to do business with the Authority.

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
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EXHIBIT C**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER
COVERED TRANSACTIONS PURSUANT TO FTA CIRCULAR 2015.1**

1. The prospective lower tier participant, _____, certifies, by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this 11th day of February, 2008

By: Jeffrey S. Connors
Signature of Authorized Official
Jeffrey S. Connors
Official Name and Title of Authorized Official

OWI Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**



REPRESENTATIONS & CERTIFICATIONS

FORM: 5.2

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY
EXCLUSION – LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction", "debarred", "suspended", "ineligible", "lower tier covered transaction", "participant", "persons", "principal", "proposal", and "voluntarily excluded", as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction", without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List issued by U.S. General Service

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
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Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, the Authority may pursue available remedies including suspension and/or debarment.

DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**



REPRESENTATIONS & CERTIFICATIONS

FORM: 5.2

EXHIBIT D

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. § 1352

The undersigned Jeffrey S. Gannatt, Vice President
(name of authorized officer)

certifies, to the best of my knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.

Note: Pursuant to 31, U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification of disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
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REPRESENTATIONS & CERTIFICATIONS

FORM: 5.2

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31, U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this 11th day of February, 2009

By: Jeffrey S. Gannett
Signature of Authorized Official

Jeffrey S. Gannett, Vice President
Official Name and Title of Authorized Official

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
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STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

NONE

1. Type of Federal Action:

a. contract

b. grant

c. cooperative agreement

d. loan

e. loan guarantee

f. loan assistance

2. Status of Federal Action:

a. bid/offer/application

b. initial award

c. post award

3. Report Type:

a. initial filing

b. material change

For Material Change Only:

year quarter

date of last report

4. Name and Address of Reporting Entity:

Prime

Subawardee

Tier __, if known:

Congressional District, __, if known:

5. If Reporting Entity in No.4 is a Subawardee,

Enter Name and Address of Prime:

Congressional District, __, if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:

CFDA Number, if applicable:

8. Federal Action Number, if known:

9. Award Amount, if known:

\$

10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI)

b. Individuals Performing Services (including address if different from No. 10a)

(last name, first name, MI):

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK & PAYMENT



REPRESENTATIONS & CERTIFICATIONS

FORM: 5.2

11. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

Signature: Jeffrey S. Crane
Print Name: Jeffrey S. Crane
Title: Vice President
Date: 02/11/2009
Telephone No. 212 599-1603

DCM Erectors, Inc.
110 East 42nd Street
Suite 1704
New York, NY 10017

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
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**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
WORLD TRADE CENTER PROJECTS
PROJECT CORRUPTION PREVENTION PROGRAM
BACKGROUND QUALIFICATION QUESTIONNAIRE PACKAGE**

Introduction:

The Port Authority of New York and New Jersey has implemented a Project Corruption Prevention Program ("PCPP") for all World Trade Center Projects. The Office of the Inspector General of the Port Authority of New York and New Jersey and the World Trade Center Construction Department have worked collaboratively in the design and implementation of the PCPP. The PCPP is grounded in the bedrock belief that fair and ethical business practices are an absolute prerequisite to doing business on these Projects. These ethical practices must be followed by all contractors, subcontractors, consultants, vendors and suppliers, of all tiers, on all Port Authority WTC Projects.

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 a record of law abiding conduct. Screening is being performed through the use of a background qualification questionnaire package ("BQQP"). To that end, and to facilitate the consideration of your firm for the award of a contract, we have enclosed a BQQP for your immediate attention.

Instructions:

The Background Qualification Questionnaire Package consists of two forms:

- 1) the Background Qualification Questionnaire, (the "BQQ", also referred to as the Rider K Attachment), and attached Exhibit A Certification; and,
- 2) the Certification of No Change.

All consultants, sub-consultants, contractors, sub-contractors, and vendors, of all tiers, whose contracts or purchase orders will exceed \$100,000 (collectively, "WTC Contractors") must complete an initial BQQ. The Company will then be required to file updates to the BQQ in relation to each new WTC contract or purchase order in excess of \$100,000. So that WTC Contractors do not have to file a new BQQ every time, WTC Contractors may submit the Certification of No Change, whenever it is applicable. In the event that the Company cannot certify to no change, the Company will be required to file an updated BQQ in full. For this reason, the Company should never submit more than one form at a time, rather only one form for one contract or purchase order. Please retain blank copies for future use.

Forms in this Questionnaire Package must be completed by a Key Person (see Question 9 of the BQQ for definition of Key People) who is knowledgeable about the past and present operations of the Company. If a particular question does not apply, the response should state "Not Applicable" ("N/A").

Please answer all questions truthfully, fully and accurately. The Company may expand on the answers given or the information submitted by attaching additional pages. Use 8 1/4 X 11" paper, marking each page with the firm's name, Tax ID # (also known as Employer Identification Number-EIN) and the number/section of the question that is being answered. Individual WTC Contractors that do not have a Tax ID # should enter their Social Security Number. When completing the BQQP, err on side of full and complete disclosure.

(continued...)

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**



BACKGROUND QUALIFICATION QUESTIONNAIRE

FORM: 5.3

Return the completed BQQP to the **Office of the Inspector General**, not to the firm that your Company will be contracting with. In order to ensure timely processing, please complete the appropriate form and send the signed & notarized original, as soon as possible, but in no event later than two weeks after receipt of the BQQP to:

Ronald Calvosa
Program Manager
The Port Authority of New York and New Jersey
Office of Inspector General
5 Marine View Plaza, Suite 502
Hoboken, NJ 07030

In addition, to further expedite processing, the Office of the Inspector General will also accept a fully completed preliminary BQQP via fax (973-565-4307) or email (OIGBQQP@panynj.gov), however, follow-up with the original by mail is still required, as detailed above.

If you have any questions please call the Office of the Inspector General at (973) 565-4340 and request to speak with an Investigator on the WTC Fraud Prevention Unit.

In the event of changes in ownership, address, circumstances, conditions or status of the firm that would require amending the answers to this Questionnaire, the firm shall notify the above in writing of such changes within one month after the change has occurred.

We appreciate your cooperation.

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT**

MINORITY & WOMEN'S BUSINESS
ENTERPRISES PROGRAM SUBCONTRACTOR REQUIREMENTS

All of the following forms must be submitted to Phoenix in order to be in compliance with the Port Authority's Minority and Women's Business Enterprises Program:

Please submit all of the following forms **PRIOR TO PROPOSAL**:

- 6.1: Schedule C: Subcontractor MBE/WBE Participation Plan
- 6.4: If not enumerated on the Port Authority's Directory, all appropriate Certifications for Subcontractor and ALL Known Lower Tiers (If Applicable)
 - o Schedule A: Minority and Women's Certification
 - o Schedule B: Information for Determining Joint Venture Eligibility
- 6.5: If not enumerated on the Port Authority's Directory, MBE/WBE Technical References for Subcontractor and ALL Known Lower Tiers (If Applicable)

Please submit all of the following forms **PRIOR TO CONTRACT EXECUTION**:

- 6.1: Schedule C: Updated Subcontractor MBE/WBE Participation Plan
- 6.4: If not enumerated on the Port Authority's Directory, all appropriate Certifications for ALL New Known Potential Lower Tiers (If Applicable)
 - o Schedule A: Minority and Women's Certification
 - o Schedule B: Information for Determining Joint Venture Eligibility
- 6.5: If not enumerated on the Port Authority's Directory, MBE/WBE Technical References for ALL New Known Potential Lower Tiers (If Applicable)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

MINORITY & WOMEN'S BUSINESS
ENTERPRISES PROGRAM SUBCONTRACTOR REQUIREMENTS

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT**:

- 6.1:** Schedule C: Subcontractor MBE/WBE Participation Plan
 - o Email Description: MWBE 6.1 (Month 20??)
- 6.2:** Schedule D: Statement of Payments
 - o Email Description: MWBE 6.2 (Month 20??)
- 6.3:** Monthly Employment Utilization Report
 - o Email Description: MWBE 6.3 (Month 20??)
- 6.4:** If not enumerated on the Port Authority's Directory, all appropriate Certifications for ALL New Known Potential Lower Tiers (If Applicable)
 - o Schedule A: Minority and Women's Certification
 - o Schedule B: Information for Determining Joint Venture Eligibility
 - o 21G.4 Forms must contain Email Description: MWBE 6.4 (Month 20??)
- 6.5:** If not enumerated on the Port Authority's Directory, MBE/WBE Technical References for ALL New Known Potential Lower Tiers (If Applicable)
 - o Email Description: MWBE 6.5 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**



EXHIBIT 6 MBE/WBE PROGRAM
CONTRACT NO.: W0TC-GCI-2-KN0186-020
**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK**

**Minority & Women's Business Enterprises Program
Subcontractor Requirements**

Phoenix Constructors, JV has adapted the Port Authority of New York and New Jersey Program for The World Trade Center Transportation Hub Project to facilitate a proactive effort to afford maximum contract opportunities to as many MBE and WBE firms as possible.

All Subcontractors of Phoenix Constructors JV working on the WTC Hub whom intend to purchase material or services, are required to establish company policies and procedures to take affirmative steps to encourage Minority and Women's Business Enterprises to seek business opportunities on the Project. The Subcontractor must submit all required documentation discussed below in accordance with Exhibit 1D Page 4 of 14, [Clauses 2.9.3 and 2.9.4].

The following guidelines are provided to assist you with conformance to this Program.

"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:

- a. Black persons having origins in any of the black African racial groups not of Hispanic origin;
- b. Hispanic persons of Puerto Rican, Mexican, 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 North America and maintaining identifiable tribal affiliations through membership and participation or community identification.
- 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.



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The Subcontractor is required to use best efforts to attain a minimum goal of seventeen (17) percent participation by MBE's and WBE's for all procurement, subcontracting, and ancillary service opportunities.

In the event that the Subcontractor subcontracts any portion of the Work, the Subcontractor shall use and document every good faith effort to ensure MBE and WBE participation in the Work. Such good faith efforts shall include at least the following:

- a. Attendance at pre-bid meetings,
- b. Utilization of the Port Authority's Directory of certified MBE/WBE's annexed hereto and/or proposing for certification other MBE/WBE's which appear to meet the Port Authority's criteria for the Work which the proposer plans to subcontract;
- c. Active and affirmative solicitation of bids for subcontracts from MBE/WBE's;
- d. Advertisement in general circulation media, trade association publications and minority-focused media for a reasonable period before bids or proposals 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 in order to increase the likelihood of achieving the MBE/WBE goal;
- f. Providing a sufficient supply of plans and specifications of prospective work to MBE/WBE's and providing appropriate materials to each in sufficient time to review; and
- g. Utilizing the services of available minority and women's community organizations; Subcontractor's groups; local, State and Federal business assistance/development offices and other organizations that provide assistance to MBE/WBE's.

Subsequent to Contract award, the Subcontractor shall use and document every good faith effort to comply with its MBE/WBE Participation Plan and to permit its MBE/WBE Subcontractors to perform. Participation percentages shall be monitored throughout the performance of the Contract. 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 Port 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 Subcontractors such as the Loaned Executive Assistance Program (L.E.A.P.).



EXHIBIT 6 MBE/WBE PROGRAM
CONTRACT NO.: W0TC-GCI-2-KN0186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

REQUIRED REPORTS:

- (1) Upon proposal submission and updated at contract execution, the Subcontractor shall submit on Form 6.1, Schedule C entitled "MBE/WBE Participation Plan" (attached hereto), a trade breakdown schedule showing when the Subcontractor's MBE/WBE Subcontractors are scheduled to perform. Such plan shall be submitted regardless of the quantity of W/MBE's participating. This includes both, in addition to every other situation, when there is a zero (0) participation level of M/WBE Subcontractors, and when the Subcontract is being Self Performed and the Subcontractor is neither a WBE nor a MBE.
- (2) In addition to the original submittal, such Plan shall be updated and submitted on a monthly basis and included with the Subcontractor's requisition for payment.
- (3) The Subcontractor shall also submit on a monthly basis, the Statement of Subcontractor's Payments on Form 6.2, Schedule D entitled "Statement of Payments" (attached hereto).
- (4) Subcontractor shall also submit on a monthly basis, Form 6.3 Subcontractor's "Monthly Employment Utilization Report" (attached hereto).

**Note: Failure to submit (2)-(4) on a monthly basis shall be just cause for PCJV to withhold payment from the Subcontractor. Submittal of these forms are condition precedents for payment.*

If, during the performance of the subcontract, the Subcontractor fails to demonstrate good faith in carrying out its MBE/WBE Participation Plan and in permitting its MBE/WBE Subcontractors to perform and the Subcontractor has not demonstrated that a full or partial waiver of the above referenced MBE/WBE participation goal is appropriate, then, upon receipt of a future proposal or proposals from the Subcontractor, the Subcontractor may be advised that it is not a responsible Proposer and therefore the proposal would be rejected.

Either prior or subsequent to acceptance of the Proposer's proposal, the Proposer may request a full or partial waiver of the above described MBE/WBE participation goal by providing a reasonable demonstration that its good faith efforts will not result in compliance with the goal set forth above because participation by eligible MBE/WBE's were not available or they refused to perform as Subcontractors. The proposer shall provide such documentation to support its request.

Once approved, the MBE/WBE Participation Plan submitted by the Proposer may be modified only with written approval.



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Following approval, one or more Subcontractors who are either MBE's or WBE's and listed in the MBE/WBE Directory or determined to be "eligible" in accordance with the Program requirements, Phoenix and/or the Port Authority may provide to said approved M/WBE's, without charge, whatever appropriate consultant services may be available under the L.E.A.P. Program; provided, however, that such consultant services will only be furnished pursuant to a request in writing. Such services will be discontinued following a written request.

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 advise 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 Phoenix Constructors, J V and the Port Authority and the individuals furnishing consultant advice of all liability and responsibility in connection therewith.

Form 6.4 (Attached hereto) are instructions as to how to retrieve the Port Authority of NY & NJ MBE/WBE Directory, which specifies the firms the Authority has determined to be (1) MBE's/WBE's 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 MBE/WBE's listed in the Directory will count toward the required MBE/WBE participation.

If the Subcontractor wishes to perform a portion of the Work through a firm not listed in the Directory but which the Subcontractor 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 Subcontractor believes it is such a firm, the Subcontractor shall submit a written request for a determination that the proposed firm is eligible. This shall be done by completing and forwarding:

- a. The form labeled "Schedule A" and, if appropriate, "Schedule B" in Form 6.4 (attached hereto).
- b. Technical references of jobs completed of similar scope and complexity on the Form 6.5 entitled "MBE/WBE Technical References" 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.

1. Air Services Development Office
Terminal 1 Bldg. 55
JFK International Airport
Jamaica, New York 11430
(718) 244-6852



**EXHIBIT 6 MBE/WBE PROGRAM
CONTRACT NO.: W0TC-GCI-2-KN0186-020
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2. Association of Minority Enterprises
250 Fulton Avenue, Suite 507
Hempstead, New York 11550
(516) 489-0120
3. Newark Opportunity Center
972 Broad Street, 7th Floor
Newark, NJ 07102
(201)622-4537
4. Council for Airport Opportunity
89-39 161st Street
Jamaica, NY 11432
(718) 526- 3322
5. Greater Jamaica Development Office
90-04 161st Street
Jamaica NY 11432
(718) 291-0282
6. Greater Newark Chambers of Commerce
1 Newark Center 22nd Floor
Newark, NJ 07102
(201) 624-6699
7. Jamaica Chamber of Commerce
89-31 161st Street
Jamaica, NY 1432
(718) 262-4800
8. Hispanic American Chamber of Commerce of Essex County
P.O. Box 9146
Newark, NJ 07104
9. Statewide Hispanic Chamber of Commerce of New Jersey
482 Broadway
Paterson, NJ 07514
10. National Minority Business Council
235 East 42nd Street
New York, NY 10017
(212) 589-2385
11. Urban Business Assistance Corp.
44 West 4th Street Room 5-61
New York, NY 10012
(212) 995-4404



EXHIBIT 6 MBE/WBE PROGRAM
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12. Dormitory Authority of the State of New York
1 Penn Plaza 52nd Floor
New York, NY 10119-0118
(212) 356-0635
13. NY/NJ Minority Purchasing Council
1271 Avenue of the Americas
New York, NY 10020
(212) 522-7632
14. Queens Overall Economic Development Office
90-04 161st Street Room 80
Jamaica, NY 1143
(718) 262-8383
15. Small Business Development Center
York College/City University of NY
Jamaica, NY 11451
(718) 262-2880
16. United Black Subcontractors
1061 Atlantic Avenue
Brooklyn, NY 11238
(718) 638-1300
17. United Black Entrepreneurs
117-02 Guy Brewer Boulevard
Jamaica, NY 11434
(718) 378-5400
18. United Minority Brain Trust of NJ
P.O. Box 1291
Plainfield, NJ 07061
(908) 246-3332
19. N.J. Air Services
Development Office (ASDO)
Newark International Airport
Building 80- 2nd Floor
Airport Street
Newark, N.J. 07114
(201) 961-4278

All such requests shall be in writing. If any such firm is determined to be eligible it shall only be in writing. If any such firm is found not to be eligible, the only substitute for such firm is a firm listed in the MBE/WBE Directory annexed hereto.



**EXHIBIT 6 MBE/WBE PROGRAM
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK**

Please note that the Subcontractor must submit the name of proposed MBEs/WBEs for work on the Contract if their names do not appear in the attached MBE/WBE Directory. 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. However only 60% of the amounts paid by the Subcontractor to such materialmen who are MBE's/WBE's, except in the case of firms who themselves manufacture materials for use under the Contract, shall be allowed in computing the percentages of the Contract Price required to be paid to MBE's/WBE's hereunder. Nothing herein shall be deemed to supersede or to otherwise modify the clause of the Form of the Subcontract entitled "Assignments and Subcontracts".



MBE/WBE PARTICIPATION PLAN

FORM: 6.1



THE PORT AUTHORITY OF NY & NJ

Schedule C
MBE/WBE Participation Plan

Page ____ of ____

Office of Business & Job Opportunity

Instructions: All bidders shall submit this form upon Subcontract proposal and updated upon Contract Execution. Such Plan shall be updated and submitted on a monthly basis and included with the Subcontractor's requisition for payment. Failure to submit such a plan on a monthly basis shall be just cause for PCJV to withhold payment from the Subcontractor. Note: Plans/Reports must be submitted regardless of the quantity of W/MBE participation - including both, in addition to every other situation, when there is a zero (0) participation of M/WBE Subcontractors, and when the Subcontract is being Self Performed and the Subcontractor is neither a WBE nor a MBE. Submittal of this form is a condition precedent for payment.

Contractor Number: _____ Work Description: _____
Contractor Name: _____
Mailing Address: _____ Contract Amount: _____
Contract Goals: MBE _____ WBE _____ DBE _____

| Name, Address & Telephone No. of P.A. Certified MBE/WBE/DBE Subcontractor (including name of contact person) | Indicate MBE, WBE or DBE | Description of Work, Services to be Provided Where applicable, specify "supply" or "install" or both | Approximate \$ Amount of M/W/DBE Subcontract | MBE/WBE/DBE % of Total Contract Amount |
|--|--------------------------|--|--|--|
| | | | | |
| | | | | |
| | | | | |
| TOTAL | | | | |

Signature of Low Bidder _____

Print Name _____

Title _____ Date _____

NOTE: All subsequent revisions to the Plan must be submitted on the form "MODIFIED MBE/WBE/DBE PARTICIPATION PLAN" to the Engineering Dept. for acceptance by OBJO.

The contractor will be required to submit a subcontractor work schedule with estimated start dates at the Pre-Construction meeting.

FOR OBJO USE ONLY

Plan Accepted: Meets or Exceeds Contract Goals Waived Contract Goals Yes No

Reviewed by _____
OBJO Business Development Representative

Print Name _____ Date _____

Distr.: Original-OBJO Part 2-Engineer of Construction Part 3-Contractor Part 4-Line Dept.

**CONDITION PRECEDENT TO
PROPOSAL, CONTRACT EXECUTION & PAYMENT**



MONTHLY EMPLOYMENT UTILIZATION REPORT

FORM: 6.3



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Form 6.3 is included

In Enclosed CD

Please Fill out form electronically and mail via US post mail as well as email electronically as per the guidelines of Exhibit 1D, Page 4 of 14 [Clause 2.9.3 and 2.9.4]

CONDITION PRECEDENT TO PAYMENT

6.3

**MINORITY BUSINESS ENTERPRISES
AND
WOMEN'S BUSINESS ENTERPRISES
DIRECTORY
AND
FORMS**

The Port Authority has a long-standing practice of making its contract 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. The Port Authority's on-line Directory of Qualified MBE/WBEs lists the firms that are registered.

The MBE/WBE Directory 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.

Contractors are provided with an interactive directory and the ability to view and print a current listing of M/WBE contractors. Information may be selected and sorted according to categories, state, dollar range, and type (MBE, WBE, DBE, and SBE).

To view the directory, type in www.panynj.gov/mwbe or go to www.panynj.gov, select Engineering - M/W/S/DBE Information (under Doing Business with the Port Authority), and then select MWBE Qualified Vendor Search. A hard copy is available upon request to the Contract Desk at (973) 792-3935 or contractsdesk@panynj.gov.



PA DIRECTORY & CERTIFICATIONS

FORM: 6.4

6. Type of Ownership:

- A. Sole Proprietorship
- Partnership
- Corporation

B. The above type of ownership since _____ Date

C. Date Business Est.: _____

7. Method of Acquisition (check all applicable):

- Bought Existing Business
- Started New Business
- Secured Franchise
- Secured Concession
- Merger or Consolidation
- Other _____

Date of Acquisition: _____ Month/Year

8.a. For Corporations and Partnerships: Complete for all Shareholders, Partners, Directors or Officers.

| Name & Position (if no position is held, state "none") | Circle | No. of Shares Owned | % of Voting Shares Owned | Common Or Preferred | Date of Ownership or Employment | Home Address & Telephone No. |
|--|--------|---------------------------|-----------------------------------|---------------------------|---------------------------------------|------------------------------------|
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |
| _____ | _____ | _____ | _____ | _____ | _____ | _____ |

8.b. The present configuration of ownership has existed since _____ Date

8.c. Total number of shares issued and outstanding:

| | | |
|-----------|---------------|--------------------|
| | <u>Issued</u> | <u>Outstanding</u> |
| Common | _____ | _____ |
| Preferred | _____ | _____ |
| Other | _____ | _____ |

9. Number of Employees (average over year): Full-time Part-time

CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT

10. Gross Income:
 \$ _____
 Current Year ()
 \$ _____
 Last Year ()
 \$ _____
 Previous Year ()

11. List your three largest clients or customers:

| Company Name & Contact Person | Address & Telephone No. | Annual Sales/Contracts |
|-------------------------------|-------------------------|------------------------|
| | | |
| | | |
| | | |

12. Have you ever been a Prime Contractor? Yes No

13. List the three largest contracts that your company has entered into during the last year:

| Client Name | Contract Dollar Amount | Location of Contract Performance | Contract Duration | Prime Sub. Or Joint Venture |
|-------------|------------------------|----------------------------------|-------------------|-----------------------------|
| | | | | |
| | | | | |
| | | | | |

14. Check one item which best describes your major operation. You may check an additional item if your operations consist of two or more fairly equal areas. When two or more items are grouped together, please circle the one most appropriate for you.

- | | |
|--|--|
| <input type="checkbox"/> Agriculture, Forestry, Fishing | <input type="checkbox"/> Wholesale Trade |
| <input type="checkbox"/> Mining | <input type="checkbox"/> Retail Trade |
| <input type="checkbox"/> Construction | <input type="checkbox"/> Finance, Insurance |
| <input type="checkbox"/> Manufacturing | <input type="checkbox"/> Real Estate |
| <input type="checkbox"/> Transportation | <input type="checkbox"/> General Services |
| <input type="checkbox"/> Electric, Gas, Sanitary Service | <input type="checkbox"/> Professional Services |
| <input type="checkbox"/> Repair Shop | <input type="checkbox"/> Public Administration |
| <input type="checkbox"/> Research & Development | <input type="checkbox"/> Other (explain) |
| <input type="checkbox"/> Communications | _____ |

CONDITION PRECEDENT TO PROPOSAL,
 CONTRACT EXECUTION & PAYMENT

15. Describe principal products sold or services offered (please explain):

16.a. Do any principals and/or officers of this company maintain a business relationship or have an ownership interest in any other company? _____ Yes _____ No

If Yes, provide the following information:

| A. Name of Principal | B. Name, Address & Telephone No. of Affiliated Firm | C. Position with Firm |
|----------------------|---|-----------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

16.b. List any principals and/or officers of this company who are not full-time employees of the company:

16.c. Does this firm share the following with any other firm: (For each "Yes" response, indicate the name and address of the business.)

| | <u>Yes</u> | <u>No</u> | <u>Name/Address</u> |
|--------------------------|------------|-----------|---------------------|
| 1) Office Space | _____ | _____ | _____ |
| 2) Yard Space | _____ | _____ | _____ |
| 3) Equipment (including | _____ | _____ | _____ |
| 4) Office or Field Staff | _____ | _____ | _____ |
| 5) Secretary | _____ | _____ | _____ |
| 6) Estimator | _____ | _____ | _____ |
| 7) Controller | _____ | _____ | _____ |
| 8) Attorney/C.P.A. | _____ | _____ | _____ |

**CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT**

17.a. List all major creditors and types of investments in the applicant company by principals or others: Examples include Cash, Machinery, Equipment, Real Estate, Other (identify).

| Name of Source | Type of Investment or Credit | Dollar Value of Investment or Credit |
|----------------|------------------------------|--------------------------------------|
| | | |
| | | |
| | | |
| | | |

17.b. If your company is owned, in full or in part, by another firm, identify the firm and percent of ownership interest. Include MESBIC's, venture capitalists and other similar investors.

| A. | Firm Name | B. | Address | C. Percent of Ownership |
|----|-----------|----|---------|-------------------------|
| | | | | |
| | | | | |
| | | | | |

18. If this company was established within the last five years as the result of acquiring an existing business, identify the former Board of Directors and/or Company Principals:

| A. Name and Title | B. Circle | C. Home Address & Telephone No. |
|-------------------|-----------|---------------------------------|
| | | |
| | | |
| | | |
| | | |

CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT

19. Identify those individuals responsible for managerial operations:

| | Name and Title | Circle |
|---|----------------|------------------|
| a. Financial Decisions | | Min/Fem/Non-Min. |
| b. Estimating | | Min/Fem/Non-Min. |
| c. Preparing Bids | | Min/Fem/Non-Min. |
| d. Negotiating Contracts | | Min/Fem/Non-Min. |
| e. Negotiating & Signing for Surety and/or Performance Bonding | | Min/Fem/Non-Min. |
| f. Negotiating & Signing for Insurance | | Min/Fem/Non-Min. |
| g. Marketing & Sales | | Min/Fem/Non-Min. |
| h. Hiring & Firing of Personnel | | Min/Fem/Non-Min. |
| i. Supervisor of Field Operations | | Min/Fem/Non-Min. |
| j. Purchase of Major Equipment or Supplies | | Min/Fem/Non-Min. |
| k. Managing & Signing Payroll, Employee Benefits | | Min/Fem/Non-Min. |
| l. Company Checking Account(s) How many signatures are required? They are | | Min/Fem/Non-Min. |

20. Has your firm ever been Bonded? Yes No If Yes, specify:

Type of Bonding: _____

Current Bonding Capacity: _____

Bonding Company: _____
Name
Mailing Address
Telephone No.

**CONDITION PRECEDENT TO PROPOSAL,
 CONTRACT EXECUTION & PAYMENT**

21. Identify Bank(s) and Sources of Letter(s) of Credit:

| | A. Name | B. Mailing Address | C. Telephone No. |
|--------------------------|---------|--------------------|------------------|
| a. Bank(s) | | | |
| Letter(s) of | | | |
| b. Credit (list sources) | | | |

22. If licensing or accreditation is required to conduct your business, identify:

| Type of License/ Accreditation | Issued By | Date Issued | Expiration Date | Holder/Registrant Of License, etc. |
|-----------------------------------|-----------|-------------|--------------------|---------------------------------------|
| | | | | |
| | | | | |
| | | | | |

23. List major equipment and machinery which is owned/leased by the firm:

| Type of Equipment/ Machinery | Owned/Leased | Quantity | Purchase Date | Purchase Price |
|---------------------------------|--------------|----------|---------------|----------------|
| | | | | |
| | | | | |
| | | | | |

24. List rented or leased warehouse, plant and office facilities:

| Type of Facility | Lessor/Rental Agent | Rented/Leased (specify) & Expiration Date | Present Value or Amount of Yearly Lease/Rent Payment | Floor Space (sq. ft.) |
|------------------|---------------------|--|--|--------------------------|
| | | | | |
| | | | | |
| | | | | |

**CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT**

25. Has this firm or any of its principals and/or officers previously applied for Certification as an M/WBE with any agency?

_____ Yes. _____ No If Yes, which agency?

| | <u>Agency</u> | <u>Date</u> | <u>Agency</u> | <u>Date</u> |
|--------------|---------------|-------------|---------------|-------------|
| a. Certified | _____ | _____ | _____ | _____ |
| b. Denied | _____ | _____ | _____ | _____ |
| Decertified | _____ | _____ | _____ | _____ |
| c. by | _____ | _____ | _____ | _____ |
| d. Withdrawn | _____ | _____ | _____ | _____ |
| Application | _____ | _____ | _____ | _____ |

26. Are there any appeals pending on any of the above actions: Yes No

| <u>Name of Agency</u> | <u>Date of Appeal</u> | <u>Description of Pending Appeal</u> |
|-----------------------|-----------------------|--------------------------------------|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| _____ | _____ | _____ |

27. Check of Supporting Documents:

Submit copies of the following Required Documents according to your Type of Business Ownership. Regardless of business type, check and attach copies of all items that apply in Section D.

| | |
|--|--|
| <p>A. FOR A CORPORATION - REQUIRED Attach copies of the following:</p> <ol style="list-style-type: none"> 1. Articles of incorporation, including date approved by State 2. Corporation By-Laws 3. Minutes of first corporate organization meeting and amendments 4. Specimen copy of stock certificate(s) issued 5. Stock transfer ledger 6. Resumes of the principals of this company showing education, training and employment with dates 7. List of current Board of Directors, including ethnicity, gender and effective dates 8. Prior three years' federal and state, income tax returns including all schedules 9. Current financial statements 10. Corporate bank signature cards 11. Proof of sources of capitalization or investments 12. Copies of all issued stock certificates, front and back, as well as next unissued certificate | <p>B. FOR A PARTNERSHIP - REQUIRED Attach copies of the following:</p> <ol style="list-style-type: none"> 1. Partnership agreement 2. Current financial statements 3. Prior three years' federal tax returns, including all schedules, if applicable 4. Resumes of all partners showing education, training and employment with dates 5. Proof of sources of capitalization/investments 6. Copy of bank signature cards |
| | <p>C. FOR A SOLE PROPRIETOR - REQUIRED Attach copies of the following:</p> <ol style="list-style-type: none"> 1. Copy of Business Certification of DBA filed with County Clerk (if doing business under an assumed name) 2. Current financial statements 3. Prior three years' federal tax returns, including all schedules, if applicable 4. Resumes of owners, superintendents, field and/or office supervisors showing education, training and employment with dates 5. Copy of bank signature cards 6. Proof of sources of capitalization |

- D. FOR ALL APPLICANTS - OTHER DOCUMENTS REQUIRED**
1. Copy of all third party agreements (e.g. equipment rental, purchase agreements, management service agreements, etc.)
 2. Proof of Small Business Administration 8(a) Certification (copy of all approval letters)
 3. Copy of vehicle(s) registration(s)
 4. Copy of lease agreements
 5. Furnish copies of agreements relating to
 - a. Stock options
 - b. Ownership agreements
 - c. Stockholder agreements
 - d. Stockholder voting rights
 - e. Restriction on the disposal of stock loan agreements
 - f. Facts pertaining to the value of shares
 6. Copy of buy-out rights agreements
 7. Copy of profit sharing agreements
 8. Copy of any certification, decertification or denial of certification documentation
 9. Copy of proof of permanent resident alien status
 10. You may be required to submit other financial and other data such as cancelled checks and personal income tax returns.

28. Acknowledgements and Verification:

FIRST, this Application form, the supporting documents, and any other information provided in support of the Application are considered part of the Application. The making of any false statements or misrepresentations in the Application may result in the Applicant's disqualification from certification as an MBE or WBE by The Port Authority of New York and New Jersey.

SECOND, the information contained herein is subject to the Port Authority's Freedom of Information Policy as reflected in the resolution adopted by the Committee on Operations of the Port Authority on September 28, 1977.

THIRD, the Port Authority of New York and New Jersey may require proof of minority or woman status in addition to the information disclosed in this Application and a business wishing to be certified as an MBE/WBE by the Agency shall cooperate with the Port Authority in supplying the additional information. By making this Application, the Applicant agrees to submit additional proof if it is requested and acknowledges that the Port Authority may decide not to certify the Applicant as a Minority, or Women-owned Business if the additional proof is not submitted within 60 days after it is requested by the said Agency.

**CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT**

FOURTH, by making this Application, the Applicant consents to examinations of its books and records and interviews of its principals and employees by the Port Authority for the purpose of determining whether the Applicant is, or continues to be, an eligible Minority, or Women-owned Business. The Applicant acknowledges that its certification may be immediately denied or revoked if such examinations or interviews are refused or if the Port Authority determines, as a result of the examinations or interviews, that the Applicant does not qualify as a Minority, or Women-owned Business Enterprise.

FIFTH, by filing this Application, the Applicant consents to inquiries being directed by the Port Authority to the Applicant's bonding companies, banking institutions, credit agencies, contractors and clients for the purpose of ascertaining the Applicant's eligibility for certification. If the Applicant fails to permit such inquiries to be made, such failure shall be grounds for denying or revoking the Applicant's certification.

SIXTH, the Applicant agrees to provide information regarding any change in the ownership or operational and managerial control of Applicant's business after the initial certification application has been filed, within 30 days of such change.

SEVENTH, certification is normally granted for a period of two (2) years. However, the Port Authority may require the submission of a new Application, additional information, examinations of the Applicant's principals and employees at any time before the expiration of the two-year certification period. The Applicant's failure to submit such material or to consent to such examinations and interviews will be grounds for immediate revocation of certification.

EIGHTH, the filing of this Application, its acceptance by the Port Authority, and any subsequent certification of the Applicant by the Port Authority, is not intended to and does not create any procedural or substantive rights enforceable at law by the Applicant against the Port Authority, its Commissioners, Officers, or employees, and any such certification is only intended to facilitate the identification of qualified and bona fide Minority, Women, and Disadvantaged Business Enterprises.

Applicant's Signature

**CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT**

VERIFICATION

(A) STATE OF _____
COUNTY OF _____

SS: _____

(B) _____, being duly sworn, states he or she is the owner of (or a partner in) the enterprise making the foregoing Application and that the statements and representations made in the Application are true to his or her own knowledge.

(C) _____, being duly sworn, states that he or she is the _____ of _____ the enterprise making the foregoing Application, that he or she has read the Application and knows its contents, that the statements and representations made in the Application are true to his or her own knowledge, and that the Application is made at the direction of the Board of Directors of the Corporation.

Corporate Seal
(if applicable)

Signature

Date

SCHEDULE B

Note: This form is for the use of the Port Authority and completion of same has no connection with possible or probable subcontracting awards by any general contractors.

INFORMATION FOR DETERMINING JOINT VENTURE ELIGIBILITY

(This form need not be filled in if all joint venture firms are minority-owned.)

1. Name of Joint Venture:

2. Address of Joint Venture:

3. Phone No. of Joint
Venture:

4. Identify the firms that comprise the Joint Venture: (The MBE partner must complete Schedule A.)

(A Describe the role of the MBE firm in the Joint
) Venture:

5. Nature of the Joint Venture's
business:

6. Provide a copy of the Joint Venture Agreement.

CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT

7. What is the claimed percentage of MBE ownership? _____

8. Ownership of Joint Venture: (This need not be filled in if described in the Joint Venture Agreement provided by No. 6.)
A. Profit and Loss Sharing:
B. Capital Contributions, including Equipment:
C. Other Applicable Ownership Interests:

9. Control of and participation in this Contract. Identify by name, race, sex, and "firm" those individuals (and their titles) who are responsible for day-to-day management and policy decision-making, but not limited to, those with prime responsibility for:

Financial Decisions: _____

Management Decisions, such as Estimating _____

Marketing & Sales: _____

Hiring & Firing of Management Personnel: _____

Purchasing of Major Items or Supplies: _____

Supervision of Field Operations: _____

AFFIDAVIT

"The undersigned swear that the foregoing statements are correct and include all material information necessary to identify and explain the terms and operation of our joint venture and the intended participation by each joint venturer in the undertaking. Further, the undersigned covenant and agree to provide to the grantee current, complete and accurate information regarding actual joint venture work and the payment therefor and any proposed changes in any of the joint venture arrangements and to permit the audit and examination of the books, records and files of the joint venture, or those of each joint venturer relevant to the joint venture, by authorized representatives of the grantee or the Federal funding agency. Any material misrepresentation will be grounds for terminating any contract which may be awarded and for initiating action under Federal or State laws concerning false statements."

Name of Firm_____
Name of Firm_____
Signature_____
Signature_____
Name_____
Name_____
Title_____
Title_____
Date_____
Date

**CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION & PAYMENT**



STATE OF _____
COUNTY _____
OF _____

On this _____ Day of _____, 20____, Before me appeared

(name) _____
to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by (name of firm) to execute the affidavit and did so as his or her free act and deed.

Notary Public
My Commission Expires:

SEAL



MBE APPROVAL REQUEST

PART ONE: (to be completed by Bidder)

Name:

Address:

Telephone No.:

Facility:

Contract No.:

Contract Title:

Request Approval of:

Amount of Sub-Contract:

Address:

Materials

Telephone No.:

Labor

Type of Work:

TOTAL

Has this Company done work under a Port Authority Contract?

Estimated Start Date

Yes No

Actual Start Date

If the answer to above question is "Yes", give P.A. Contract No. If "No", give three references, contract nos., type and approx. estimate work performed by contractor, name and telephone no. of the person in charge for the owner.

Remarks (for P.A. use only)

Date

For the Bidder

PART TWO: (to be completed by Port Authority)

- [] Subject to the provisions of subject contract, the company submitted for approval on this application is hereby disapproved.
[] Subject to the provisions of subject contract, the company submitted for approval on this application is hereby approved. Any materials to be furnished by this subcontractor shall be subject to inspection and approval as required by the Specifications.

Date

Signature

Title

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION & PAYMENT



MBE/WBE TECHNICAL REFERENCES

FORM: 6.5

MBE/WBE TECHNICAL REFERENCES

| Owner and/or Client (Include Name of Representative and Telephone Number) | Value of Contract | Prime or Subcontract (List General Contractor Contract and Telephone Number) | Type of Work Performed | Location of Job | Year Completed | Other Relevant Information |
|---|----------------------|---|---------------------------|--------------------|-------------------|----------------------------------|
| | | | | | | |

**CONDITION PRECEDENT TO
PROPOSAL, CONTRACT EXECUTION & PROPOSAL**

Please submit all of the following forms **PRIOR TO PROPOSAL**:

- 7.1: Equal Employment Certification for the Subcontractor and ALL known lower tier subcontractors
- 7.3: Davis-Bacon Compliance Statement for the Subcontractor and ALL known lower tier subcontractors and vendors

Please submit all of the following forms **PRIOR TO EXECUTION OF CONTRACT**:

- 7.1: Equal Employment Certification for all new known lower tier subcontractors and vendors
- 7.3: Davis-Bacon Compliance Statement for ALL new known lower tier subcontractors and vendors

Please submit all of the following forms **PRIOR TO COMMENCEMENT OF WORK**:

- 7.1: Equal Employment Certification for all new known lower tier subcontractors and vendors (prior to subcontract or purchase order execution, respectively)
 - o Email Description: MWBE 7.1 (Month 20??)
- 7.3: Davis-Bacon Compliance Statement for ALL new known lower tier subcontractors and vendors
 - o Email Description: Davis Bacon 7.2 (Month 20??)

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT**:

- 7.1: Equal Employment Certification for all new known lower tier subcontractors and vendors (prior to subcontract or purchase order execution, respectively)
 - o Email Description: MWBE 7.1 (Month 20??)
- 7.2: Certified Payroll for Subcontractor and ALL known lower tier subcontractors and vendors
 - o Email Description: Certified Payroll 7.2 (Month 20??)
- 7.3: Davis-Bacon Compliance Statement for ALL new known lower tier subcontractors and vendors
 - o Email Description: Davis Bacon 7.2 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

APPENDIX F

SCHEDULES OF MINIMUM WAGE RATES

The following are the minimum wage rates required by the Secretary of Labor. The classification may be supplemented and the rates for each classification may be changed from time to time in accordance with the revised rates and classifications issued by the Secretary of Labor.

GENERAL DECISION: NY20030003 02/11/2005 NY3

Date: February 11, 2005

General Decision Number: NY20030003 02/11/2005

Superseded General Decision Number: NY020003

State: New York Construction Types: Building, Heavy, Highway and Residential
 Counties: Bronx, Kings, New York, Queens and Richmond
 Counties in New York.

BUILDING & RESIDENTIAL CONSTRUCTION PROJECTS (includes single family homes and apartments up to and including 4 stories),
HEAVY AND HIGHWAY CONSTRUCTION PROJECTS

| Modification Number | Publication Date |
|---------------------|------------------|
|---------------------|------------------|

| | |
|----|------------|
| 0 | 06/13/2003 |
| 1 | 05/14/2004 |
| 2 | 05/28/2004 |
| 3 | 07/16/2004 |
| 4 | 07/23/2004 |
| 5 | 07/30/2004 |
| 6 | 09/24/2004 |
| 7 | 10/01/2004 |
| 8 | 10/15/2004 |
| 9 | 12/03/2004 |
| 10 | 12/24/2004 |
| 11 | 02/11/2005 |

* ASBE0012-001 01/03/2005

| | Rates | Fringes |
|---|----------|---------|
| Asbestos Workers/Insulator includes application of all insulating materials, protective coverings, coatings and finishing to all types of mechanical systems..... | \$ 41.56 | 23.86 |
| Hazardous Material Handler..... | \$ 24.00 | 6.20 |

 BOIL0005-001 09/01/2004

| | Rates | Fringes |
|--|-------|---------|
|--|-------|---------|

Boilermaker..... \$ 41.90 25.55+a

FOOTNOTE:

a. PAID HOLIDAYS: New Year's Day, Thanksgiving Day, Memorial Day, Independence Day, Labor Day and Good Friday, Friday after Thanksgiving, Christmas Eve Day and New Year's Eve

BRNY0001-001 07/01/2004

| | Rates | Fringes |
|-----------------|----------|---------|
| Bricklayer..... | \$ 39.32 | 18.46 |
| Stonemason..... | \$ 37.36 | 18.03 |

BRNY0001-002 07/01/2004

| | Rates | Fringes |
|---------------------------------|----------|---------|
| Pointer, cleaner and caulker... | \$ 33.50 | 17.10 |

BRNY0003-001 07/01/2004

| | Rates | Fringes |
|------------------------|----------|---------|
| Terrazzo Finisher..... | \$ 38.17 | 18.55 |
| Terrazzo Worker..... | \$ 39.48 | 18.55 |

BRNY0004-001 07/01/2004

| | Rates | Fringes |
|--------------------|----------|---------|
| Marble Setter..... | \$ 44.20 | 16.40 |

BRNY0020-001 07/01/2004

| | Rates | Fringes |
|----------------------|----------|---------|
| Marble Finisher..... | \$ 37.53 | 17.02 |

BRNY0024-001 07/01/2004

| | Rates | Fringes |
|-----------------------|-----------|---------|
| MARBLE POLISHERS..... | .\$ 34.83 | 13.48 |

BRNY0052-001 07/01/2004

| | Rates | Fringes |
|-----------------|----------|---------|
| Tile Layer..... | \$ 39.85 | 18.43 |

BRNY0088-001 07/01/2004

| | Rates | Fringes |
|--------------------|----------|---------|
| Tile Finisher..... | \$ 33.29 | 15.00 |

CARP0001-009 07/01/2003

| | Rates | Fringes |
|-------------------------------------|----------|---------|
| Carpenters: | | |
| Carpenters & Soft floor layers..... | \$ 38.78 | 26.05 |

CARP0740-001 07/01/2003

| | Rates | Fringes |
|--|-------|---------|
|--|-------|---------|

Millwright..... \$ 37.06 30.46

 CARP1456-004 07/01/2003

| | Rates | Fringes |
|---|----------|---------|
| Dock Builder & Piledrivermen DOCKBUILDERS..... | \$ 37.70 | 26.05 |

 CARP1456-005 07/01/2003

| | Rates | Fringes |
|-------------------|----------|---------|
| Diver Tender..... | \$ 34.25 | 26.05 |
| Diver..... | \$ 46.30 | 26.05 |

 CARP1536-001 07/01/2003

| | Rates | Fringes |
|-------------------------------|----------|---------|
| Carpenters: TIMBERMEN..... | \$ 34.47 | 26.05 |

 ELEC0003-001 05/15/2003

| | Rates | Fringes |
|---|----------|---------|
| Electrician Electricians..... | \$ 41.00 | 29.45 |
| Jobbing, and maintenance and repair work..... | \$ 23.80 | 10.77+a |

PAID HOLIDAYS:

a. New Years Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day

 ELEC1049-001 04/04/2004

QUEENS COUNTY

Line Construction (Substation and Switching structures pipe type cable installation and maintenance jobs or projects; Railroad electrical distribution/transmission systems maintenance (when work is not performed by railroad employees) Overhead and Underground transmission/distribution line work. Fiber optic, telephone cable and equipment)

| | Rates | Fringes |
|--------------------------------|----------|---------|
| Groundman..... | \$ 21.12 | 12.60 |
| Heavy Equipment Operator..... | \$ 28.16 | 12.60 |
| Lineman and Cable Splicer..... | \$ 35.20 | 12.60 |
| Material Man..... | \$ 30.62 | 12.60 |
| Tree Trimmer..... | \$ 22.28 | 7.76 |

 ELEV0001-002 03/17/2004

| | Rates | Fringes |
|--|-------|---------|
|--|-------|---------|

Elevator Mechanic

| | | |
|------------------------------|----------|----------|
| Elevator Constructor..... | \$ 41.10 | 19.697+a |
| Modernization and Repair.... | \$ 32.95 | 18.563+a |

FOOTNOTE:

a. PAID HOLIDAYS: New Year's Day, Lincoln's Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

PAID VACATION: Employer contributes 8% of regular basic hourly rate as vacation pay for employees with more than 5 years of service, and 6% for employees with less than 5 years of service.

ENGI0014-001 07/01/2004

| | Rates | Fringes |
|--|----------|---------|
| Pavement equipment operator | | |
| Asphalt Plants..... | \$ 35.79 | 20.75+a |
| Asphalt roller..... | \$ 42.49 | 20.75+a |
| Asphalt spreader..... | \$ 43.67 | 20.75+a |
| Power Equipment Operator (HEAVY & HIGHWAY) | | |
| GROUP 1..... | \$ 56.75 | 20.75+a |
| GROUP 2..... | \$ 46.63 | 20.75+a |
| GROUP 3..... | \$ 48.12 | 20.75+a |
| GROUP 4..... | \$ 46.98 | 20.75+a |
| GROUP 5..... | \$ 46.03 | 20.75+a |
| GROUP 6..... | \$ 44.14 | 20.75+a |
| GROUP 7..... | \$ 44.99 | 20.75+a |
| GROUP 8..... | \$ 43.67 | 20.75+a |
| GROUP 9..... | \$ 42.70 | 20.75+a |
| GROUP 10..... | \$ 40.82 | 20.75+a |
| GROUP 11..... | \$ 38.05 | 20.75+a |
| GROUP 12..... | \$ 38.89 | 20.75+a |
| GROUP 13..... | \$ 39.22 | 20.75+a |
| GROUP 14..... | \$ 29.33 | 20.75+a |
| GROUP 15..... | \$ 27.16 | 20.75+a |
| Steel erector | | |
| Compressors, Welding Machines | \$ 30.41 | 20.75+a |
| Cranes, Hydraulic Cranes, 2 drum derricks, Forklifts, Boom Trucks | \$ 49.58 | 20.75+a |
| Three drum derricks..... | \$ 51.64 | 20.75+a |
| Utility Laborer | | |
| Horizontal boring rig..... | \$ 41.47 | 20.75+a |
| Off shift compressors..... | \$ 34.29 | 20.75+a |
| Utility Compressors..... | \$ 26.99 | 20.75+a |

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Tower crane

GROUP 2: Backhoes, power shovel, Hydraulic clam shells, moles and machines of a similar type

GROUP 3: Mine hoists and crane, etc. used as mine hoists

GROUP 4: Gradalls, keystones, cranes (with digging buckets), bridge cranes, trenching machines, vermeer cutter and machines of a similar nature

GROUP 5: Piledrivers, derrick boats, tunnel shovels

GROUP 6: Raise bore drill, and machines of a similar nature

GROUP 7: Back filling machines, cranes, mucking machines, dual drum pavers

GROUP 8: Mixers (concrete w/loading attachments), concrete pavers, cableways, land derricks, power house (low pressure units), concrete pumps

GROUP 9: Concrete plants, well drilling machines, stone crushers double drum hoist, power house (other than above)

GROUP 10: Concrete mixers

GROUP 11: Elevators

GROUP 12: Concrete breaking machine, Hoists (single drum), load masters, locomotive and dinkies over 10 tons

GROUP 13: Vibratory console

GROUP 14: Compressors (portable 3 or more in battery), tugger machine (caissons), well point pumps, chum drill

GROUP 15: Boilers, (high pressure, compressors (portable, single, or 2 in battery, not over 100' apart), pumps (river cofferdam and welding machines (except where arc is operated by members of local 15) push button machines, all engines irrespective of power (power pac) used to drive auxilliary equipment, air, hydraulic etc.

PREMIUMS ON CRANES (Crawler or Truck):

100' to 149' boom - add .50

150' to 249' boom - add .75

250' to 349' boom - add 1.00

350' to 450' boom - add 1.50

Premiums for Cranes on Steel Erection:

100' to 149' boom - add 1.75

150' to 249' boom - add 2.00

250' to 349' boom - add 2.25

350' to 450' boom - add 2.75

Tower crane - add 2.00

FOOTNOTE:

a. Paid Holidays: New Year's Day; Lincoln's Birthday; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Veterans Day; Columbus Day; Election Day; Thanksgiving Day; and Christmas Day; provided the employee works one day the payroll week in which the holiday occurs.

ENGI0014-002 07/01/2004

| | Rates | Fringes |
|--|----------|---------|
| Power Equipment Operator BUILDING & RESIDENTIAL | | |
| GROUP 1..... | \$ 46.56 | 20.75+a |
| GROUP 2..... | \$ 49.36 | 20.75+a |
| GROUP 3..... | \$ 45.01 | 20.75+a |
| GROUP 4..... | \$ 41.41 | 20.75+a |
| GROUP 5..... | \$ 31.43 | 20.75+a |

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Double drum

GROUP 2: Stone derrick, cranes, hydraulic cranes, boom trucks

GROUP 3: 4 pole Hoist, Single Drum Hoists

GROUP 4: Fork lift, house cars, plaster (platform machine), plaster bucket, concrete pump and all other equipment used for hoisting material

GROUP 5: Compressors, welding machines (cutting concrete work), paint spraying, sand blasting, pumps (with the exclusion of concrete pumps), house car (settlement basis only), all engines irrespective of power (power pac) used to drive auxiliary equipment, air, hydraulic, etc., boilers

Premiums for Cranes:

100'-149' boom - add 1.75

150'-249' boom - add 2.00

250'-349' boom - add 2.25

350'-450' boom - add 2.75

Tower cranes add 2.00

FOOTNOTE:

a. PAID HOLIDAYS: New Year's Day, Lincoln's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Columbus Day, Election Day, Thanksgiving Day, and Christmas Day, provided the employee works one day in the payroll week in which the holiday occurs

IRON0040-002 07/01/2003
BRONX, NEW YORK, RICHMOND

| | Rates | Fringes |
|-----------------------------|----------|---------|
| Ironworker, Structural..... | \$ 36.20 | 36.93 |

IRON0046-003 07/01/2002

| | Rates | Fringes |
|-------------------------------------|----------|---------|
| Ironworker METALLIC LATHERS..... | \$ 31.05 | 23.03 |

IRON0197-001 07/01/2003

| | Rates | Fringes |
|------------|-------|---------|
| Ironworker | | |

STONE DERRICKMAN..... \$ 35.76 29.07

IRON0361-002 07/01/2003
KINGS, QUEENS

| | Rates | Fringes |
|-----------------------------------|----------|---------|
| Ironworkers: (STRUCTURAL)..... | \$ 36.20 | 36.93 |

IRON0580-001 07/01/2003

| | Rates | Fringes |
|-----------------------------|----------|---------|
| Ironworker, Ornamental..... | \$ 35.65 | 28.50 |

LABO0006-001 07/01/2003

| | Rates | Fringes |
|---|----------|---------|
| Laborers: BUILDING CONSTRUCTION CEMENT AND CONCRETE WORKERS | \$ 31.50 | 15.27 |

LABO0029-001 07/01/2001

| | Rates | Fringes |
|--|----------|---------|
| Laborers: Heavy Blasters (hydraulic trac drill)..... | \$ 32.08 | 16.70 |
| Blasters..... | \$ 31.53 | 16.70 |
| Hydraulic Trac Drill..... | \$ 28.38 | 16.70 |
| Jackhammers, Chippers, Spaders, Concrete Breakers, All Other Pneumatic Tools, Walk Behind Self-Propelled Hydraulic Asphalt and Concrete Breaker..... | \$ 27.14 | 16.70 |
| Powder Carriers..... | \$ 24.50 | 16.70 |
| Wagon; Airtrac; Quarry Bar Drill Runners..... | \$ 27.83 | 16.70 |

LABO0078-001 12/01/2003

| | Rates | Fringes |
|--|----------|---------|
| Asbestos Worker ASBESTOS (Removal, Abatement, Encapsulation or Decontamination of asbestos); LEAD; & HAZARDOUS WASTE LABORERS (Hazardous Waste, Hazardous Materials, Biochemical and Mold Remediation, HVAC, Duct Cleaning, Re-spray Fireproofing, etc..... | \$ 25.50 | 6.81 |

* LABO0079-001 01/01/2005

| | Rates | Fringes |
|--------------------------------|-------|---------|
| Laborers Building Construction | | |

| | | |
|---------------------|----------|-------|
| Mason Tenders..... | \$ 28.00 | 16.39 |
| Demolition Laborers | | |
| Tier A..... | \$ 28.00 | 14.99 |
| Tier B..... | \$ 17.70 | 8.95 |

CLASSIFICATIONS

TIER A: Responsible for the removal of all interior partitions and structural partitions that can consist of sheet rock, block or masonry. Also, all structural slab openings for ducts, mechanical, shafts, elevators, slab openings and exterior walls where the building is not being completely demolished.

TIER B: Responsible for shoveling of debris into containers, pushing containers from the inside to the outside of the building.

LABO0147-001 07/01/2003

| | Rates | Fringes |
|--|----------|---------|
| Laborers: | | |
| LABORERS..... | \$ 28.86 | 30.51 |
| FREE AIR TUNNEL WORKERS Tunnel Workers (including Maintenance Men, Inside Muck Lock Tenders, Pump Men, Electricians, Cement Finishers, Caulkers, Hydraulic Men, Shield Men, Monorail Operators, Motor Men, Conveyor Men, Powder Carriers, Pan Men, Riggers, Chuck Tenders, Track Men Painters, Nippers, Brakemen, Cable Men, Hose Men, Grout Men, Gravel Men, Form Workers, Concrete Workers, Tunnel Laborers, Mole Nipper (one (1) Mole Sipper per Working Shaft per Shift for up to and including Two (2) Moles) | | |

LABO0731-001 07/01/2001

| | Rates | Fringes |
|---|----------|---------|
| Laborers: | | |
| Building, Heavy and Residential | | |
| UNSKILLED..... | \$ 28.74 | 14.64 |
| UTILITY LABORER..... | \$ 28.59 | 14.64 |
| Paid Holidays: Labor Day and Thanksgiving Day | | |

LABO1010-001 07/01/2001

| | Rates | Fringes |
|---|----------|---------|
| Laborers: | | |
| HIGHWAY CONSTRUCTION | | |
| Fence Installer & Repairer. | \$ 28.84 | 15.55+a |
| FORMSETTERS..... | \$ 32.04 | 15.55+a |
| LABORERS..... | \$ 28.94 | 15.55+a |
| Landscape Planting & Maintenance..... | \$ 28.84 | 15.55+a |
| Maintenance Safety Surface. | \$ 28.44 | 15.55+a |
| Slurry/Sealcoater/Play Equipment Installer..... | \$ 28.69 | 15.55+a |
| Small Equipment Operator (Not Operating Engineer) | \$ 28.94 | 15.55+a |
| Small Power Tools Operator. | \$ 28.44 | 15.55+a |

FOOTNOTES:

a. PAID HOLIDAYS: Memorial Day, Fourth of July, Labor Day, Columbus Day, Election Day and Thanksgiving Day, provided the employee has worked one (1) day in the calendar week in which the said holiday occurs.

LABO1018-001 07/01/2001

| | Rates | Fringes |
|--|----------|---------|
| Laborers | | |
| Asphalt Rakers..... | \$ 32.36 | 15.55+a |
| Asphalt Tampers..... | \$ 29.92 | 15.55+a |
| Landscape Planting & Maintenance Fence Installer/Maintenance..... | \$ 29.81 | 15.55+a |
| Line Striping Installers.. | \$ 29.56 | 15.55+a |
| Play Equipment/Safety Surface Installer..... | \$ 29.31 | 15.55+a |
| Screedman/Micropaver..... | \$ 32.73 | 15.55+a |
| Shoveler, General Laborers/ All other incidental work..... | \$ 29.81 | 15.55+a |
| Slurry/Sealcoater..... | \$ 29.31 | 15.55+a |
| Small Equipment Operator... | \$ 29.56 | 15.55+a |

FOOTNOTE:

a. Paid Holidays: Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, and Thanksgiving Day

PAIN0009-001 05/01/2002

| | Rates | Fringes |
|---|----------|---------|
| Glazier..... | \$ 32.20 | 20.17 |
| All repair and maintenance work on particular building, whenever performed, where the total cumulative contract is under \$100,000.00. | | |
| GLAZIERS..... | \$ 19.05 | 11.44 |
| Painters: | | |
| Painters, Drywall Finishers, Lead Abatement Worker (Bridge Work)..... | \$ 30.25 | 15.42 |
| Spray, Scaffold and Sandblasting..... | \$ 33.25 | 15.42 |

PAIN0806-001 10/01/2004

| | Rates | Fringes |
|------------------------------|----------|---------|
| Painters: | | |
| Structural steel and Bridge. | \$ 42.00 | 25.37 |

PAIN1974-001 07/03/2002

| | Rates | Fringes |
|-----------------------------|----------|---------|
| Painters: | | |
| Drywall Tapers/Pointers.... | \$ 33.82 | |

PLAS0260-001 07/01/1999
 BRONX, NEW YORK AND RICHMOND COUNTIES:

| | Rates | Fringes |
|----------------|----------|---------|
| Plasterer..... | \$ 27.91 | 15.55 |

PLAS0260-002 07/01/1999
 KINGS AND QUEENS COUNTIES

| | Rates | Fringes |
|----------------|----------|---------|
| Plasterer..... | \$ 27.91 | 15.16 |

PLAS0530-001 02/04/2004

| | Rates | Fringes |
|--------------------------------------|----------|---------|
| Plasterer DRYWALL PLASTERERS..... | \$ 31.00 | 15.55 |

PLAS0780-001 07/01/2004

| | Rates | Fringes |
|-------------------|----------|---------|
| Cement Mason..... | \$ 40.00 | 21.10 |

PLUM0001-001 07/01/2004

| | Rates | Fringes |
|---|----------|---------|
| Plumber JOBBING AND ALTERATIONS Any repair and/or replacement of the present plumbing system that does not change the existing roughing..... | \$ 20.97 | 7.43 |
| PLUMBERS:..... | \$ 41.91 | 27.30 |

* PLUM0638-001 12/29/2004

| | Rates | Fringes |
|--------------------------------------|----------|---------|
| Plumber SERVICE FITTERS..... | \$ 26.30 | 2.55 |
| SPRINKLER FITTERS, STEAMFITTERS..... | \$ 41.82 | 31.07 |

Service Fitter work shall consist of all repair, service and maintenance work on domestic, commercial and industrial refrigeration, air conditioning and air cooling, stoker and oil burner apparatus and heating apparatus etc., including but not exclusively the charging, evacuation, leak testing and assembling for all machines for domestic, commercial and industrial refrigeration, air conditioning and heating apparatus. Also, work shall include adjusting, including capacity adjustments, checking and repairing or replacement of all controls and start up of all machines and repairing all defects that may develop on any system for domestic, commercial and industrial refrigeration and all air conditioning, air cooling, stoker and oil burner apparatus and heating apparatus regardless of size or type.

* ROOF0008-003 07/01/2004

| | Rates | Fringes |
|---|----------|---------|
| Roofer (including Built Up, Composition and Single Ply).... | \$ 32.08 | 21.28 |

SHEE0028-002 07/29/2004

| | | |
|-------------------------|----------|---------|
| Sheet metal worker..... | Rates | Fringes |
| | \$ 39.99 | 28.28 |

TEAM0282-001 07/01/2004

| | Rates | Fringes |
|--------------------------|---------------|-------------|
| Truck drivers: | | |
| TRUCK DRIVERS: | | |
| Asphalt..... | \$ 30.685 | 23.6025+a+b |
| Euclids & Turnpulls..... | \$ 31.25 | 23.6025+a+b |
| High Rise..... | \$ 32.31 2 | 3.6525+a+b |

FOOTNOTES:

PAID HOLIDAYS: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day (Armistice Day), Thanksgiving Day and Christmas Day. Employees working two (2) days in the calendar week in which a holiday falls are to be paid for such holiday, provided that they shape each remaining workday during such calendar week.

b. **VACATION:** For each 15 days worked within the contract year an employee will receive one day's vacation with pay with a maximum vacation of 3 weeks per year.

TEAM0813-001 12/01/1998

| | Rates | Fringes |
|----------------|----------|---------|
| Truck drivers: | | |
| GROUP 1..... | \$ 19.49 | 3.61+a |
| GROUP 2..... | \$ 19.76 | 3.61+a |
| GROUP 3..... | \$ 19.90 | 3.61+a |
| GROUP 4..... | \$ 20.23 | 3.61+a |
| GROUP 5..... | \$ 20.40 | 3.61+a |
| GROUP 6..... | \$ 21.29 | 3.61+a |
| GROUP 7..... | \$ 22.40 | 3.61+a |
| GROUP 8..... | \$ 19.90 | 3.61+a |

FOOTNOTE:

a. **PAID HOLIDAYS:** New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, Christmas Day, Employee's Birthday, Two (2) Personal Days, and any holiday or day of mourning proclaimed as such by the State or Federal Government.

TRUCK DRIVER CLASSIFICATIONS

- GROUP 1: Closed body trucks with self contained loading unit up to and including 22 yard capacity
- GROUP 2: Open trucks, rack body or trucks with no self contained mechanical loading device, up to 22 yard capacity. One-container tractor hoist
- GROUP 3: 10 wheel, open trucks, container loaders, dino-master, over-cab loaders, rack body trucks, or any trucks 22 yards to and including 25 yards capacity

GROUP 4: Rubbish and garbage trucks, 26 yards to and including 31 yards

GROUP 5: Single axle working non-compactor containers up to 15 yards capacity on rubbish and garbage removal

GROUP 6: Roll-off trucks up to and including 42 yard capacity

GROUP 7: Roll-off truck with more than 42 yard capacity or any tractor trailer trucks

GROUP 8: One-container tractor hoist on construction and alteration debris removal

WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

- * an existing published wage determination
- * a survey underlying a wage determination
- * a Wage and Hour Division letter setting forth a position on a wage determination matter
- * a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue. 3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

END OF GENERAL DECISION

EQUAL EMPLOYMENT CERTIFICATION

- A. In connection with the performance of work under this Subcontract, Subcontractor agrees not to discriminate against any employee or applicant for employment because of race, religion, sex, color, national origin, marital status, personal appearance, sexual orientation, family responsibilities, physical handicap, matriculation, or political affiliation. The aforesaid provision shall include, but not be limited to the following employment: upgrading, demotion, or transfer, recruitment, or recruitment compensation; and selection for training including apprenticeship. Subcontractor agrees to post hereafter in conspicuous places available for employees and applicants for employment, notices prepared by Subcontractor and approved by the applicable government entity when required, setting for the provisions of Form 7.1.
- B. Subcontractor shall include the provisions of this Form 7.1 in every lower-tier subcontract and purchase order. The requirements of this Form 7.1 shall be in addition to any Equal Employment Opportunity provision of the Contract Documents.
- C. Subcontractor shall submit this Form 7.1 for itself upon proposal. Form 7.1 will also be submitted at Contract execution for all lower-tier subcontractors and vendors known at that time, and prior to executing a lower-tier subcontract or purchase order for a lower-tier subcontractor or vendor throughout the performance of this Contract.
- D. In the event of Subcontractor's non-compliance with the Equal Employment Opportunity provisions of this Subcontract, Contractor may immediately terminate this Subcontract.
- E. Subcontractor shall comply fully with the Prime Contract.

DCM ERECTORS INC
Contractor

PHOENIX CONSTRUCTORS, JV

By: 
(Signature)

By: W. Kelly
(Signature)

LARRY DAVIS PRESIDENT
Name and Title

W. Kelly
Name and Title

CONDITION PRECEDENT TO PROPOSAL, EXECUTION,
COMMENCEMENT OF WORK AND PAYMENT

Instructions for Completion of the Attached Payroll

All Subcontractors must fully complete the Payroll incorporated in this Exhibit in accordance with the directions set forth below and in the Davis-Bacon Act. Such payrolls **must** be fully completed on a **weekly basis** and **submitted at the time of invoicing** in order to receive associated payment.

This payroll provides for the Subcontractor showing on the face of the payroll all monies to the employees, whether as basic rates or as cash in lieu of fringes and provides for the Subcontractor's representation in the statement of compliance on the rear of the payroll that he is paying to other fringes required by the contract and not paid as cash in lieu of fringes. Detailed instructions concerning the preparation of the payroll follow:

Subcontractor: Fill in your firm's name and check appropriate box.

Address: Fill in your firm's address.

Column 1 - Name, Address, and Social Security Number of Employee: The employee's full name and Social Security Number must be shown on each weekly payroll submitted. The employee's address must also be shown on the payroll covering the first week in which the employee works on the project. The address need not be shown on subsequent weekly payrolls unless the address changes.

Column 2 - Withholding Exemptions: This column is merely inserted for the employer's convenience and is not a requirement of Regulations, Part 3 and 5.

Column 3 - Work Classifications: List classification descriptive of work actually performed by employees. Consult classification and minimum wage schedule set forth in contract specifications. If additional classifications are deemed necessary, see Contracting Officer or Agency representative. Employee may be shown as having worked in more than one classification provided accurate breakdown or hours so worked is maintained and shown on submitted payroll by use of separate entries.

Column 4 - Hours worked: On all contracts subject to the Contract Work Hours Standard Act enter as overtime hours worked in excess of 8 hours per day and 40 hours a week.

Column 5 - Total: Self-explanatory

Column 6 - Rate of Pay, including Fringe Benefits: In straight time box, list actual hourly rate paid the employee for straight time worked plus in cash in lieu of fringes paid the employee. When recording the straight time hourly rate, any cash paid in lieu of fringes may be shown separately from the basic rate, thus \$3.25/.40. This is of assistance in correctly computing overtime. See "Fringe Benefits" below. In overtime box shown overtime hourly rate paid, plus any cash in lieu of fringes paid the employee. See "Fringe Benefits" below. Payment of not less than time and one-half the basic or regular rate paid is required for overtime under the Contract Work Hours Standard Act of 1962. In addition to paying no less than the predetermined rate for the classification which the employee works, the Subcontractor shall pay to approved plans, funds or programs or shall pay as cash in lieu of fringes amounts predetermined as fringe benefits in the wage decision made part of the contract. See "FRINGE BENEFITS" below.

FRINGE BENEFITS - Subcontractors who pay all required fringe benefits: A Subcontractor who pays fringe benefits to approved plans, funds, or programs in amounts not less than were determined in the applicable wage decision of the Secretary of labor shall continue to show on

**CONDITION PRECEDENT
TO PAYMENT**

CERTIFIED PAYROLL

the face of the payroll the basic cash hourly rate and overtime rate paid to his employees just as he has always done. Such a Subcontractor shall check paragraph 4(a) of the statement on the reverse of the payroll to indicate that he is also paying to approved plans, funds or programs not less than the amount predetermined as fringe benefits for each craft. Any exceptions shall be noted in section 4(c).

Subcontractors who pay no fringe benefits: A Subcontractor who pays no fringe benefits shall pay to the employee, and insert in the straight time hourly rate column of the payroll, an amount not less than the predetermined rate for each classification plus the amount of fringe benefits determined for each classification in the applicable wage decision. Inasmuch as it is not necessary to pay time and a half on cash paid in lieu of fringes, the overtime rate shall be not less than the sum of the basic predetermined rate, plus the half time premium on basic or regular rate, plus the required cash in lieu of fringes at the straight time rate. In addition, the Subcontractor shall check paragraph 4(b) of the statement on the reverse of the payroll to indicate that he is paying fringe benefits in cash directly to his employees. Any exceptions shall be noted in Section 4(c).

Use of Section 4(c), Exceptions

Any Subcontractor who is making payment to approved plans, funds, or programs in amounts less than the wage determination requires is obliged to pay the deficiency directly to the employees as cash in lieu of fringes. Any exceptions to Section 4(a) or 4(b), whichever the Subcontractor may check, shall be entered in section 4(c). Enter in the Exception column the craft, and enter in the Explanation column the hourly amount paid the employee as cash in lieu of fringes and the hourly amount paid to plans, funds, or programs as fringes. The Subcontractor shall pay, and shall show that he is paying to each such employee for all hours (unless otherwise provided by applicable determination) worked on Federal or Federally assisted project an amount not less than the predetermined rate plus cash in lieu of fringes as shown in Section 4(c). The rate paid and amount of cash paid in lieu of fringe benefits per hour should be entered in column 6 on the payroll. See paragraph on "Subcontractors who pay no fringe benefits" for computation of overtime rate.

Column 7 - Gross Amount Earned: Enter gross amount earned on this project. If part of the employees' weekly wage was earned on projects other than the project described on this payroll, enter in column 7 first the amount earned on the Federal or Federally assisted project and then the gross amount earned during the week on all projects, thus \$63.00/\$120.00.

Column 8 - Deductions: Five columns are provided for showing deductions made. If more than five deduction should be involved, use first 4 columns; show the balance deductions under "Other" column; show actual total under "Total Deductions" column; and in the attachment to the payroll describe the deduction contained in the "Other" column. All deductions must be in accordance with the provisions of the Copeland Act Regulations, 29 CFR, Part 3. If the employee worked on other jobs in addition to this project, show actual deductions from his weekly gross wage, but indicate that deductions are based on his gross wages.

Column 9 - Net Wages Paid for Week: Self-explanatory

Totals - Space has been left at the bottom of the columns so that totals may be shown if the Subcontractor so desires.

Statement Required by Regulations, Parts 3 and 5: While this form need not be notarized, the statement on the back of the payroll is subject to the penalties provided by 18 USV 1001, namely, possible imprisonment of 5 years or \$10,000.00 fine or both. Accordingly, the party signing this statement should have knowledge of the facts represented as true.

CONDITION PRECEDENT
TO PAYMENT



CERTIFIED PAYROLL

Space has been provided between item (1) and (2) of the statement for describing any deductions made. If all deductions made are adequately described in the "Deductions" column above, state "See Deductions column in this payroll." See paragraph entitled "FRINGE BENEFITS" above for instructions concerning filling out paragraph 4 of the statement.

**CONDITION PRECEDENT
TO PAYMENT**



CERTIFIED PAYROLL

FORM: 7.2

(f) WHERE FRINGE BENEFITS ARE PAID IN CASH

Each laborer or mechanic listed in the above referenced payroll has been paid, as indicated on the payroll, an amount not less than the sum of the applicable basic hourly wage rate plus the amount of the required fringe benefits as listed in the contract, except as noted in Section 4(c) below.

(g) EXCEPTIONS

EXCEPTION (CRAFT) EXPLANATION

Table with 2 columns: EXCEPTION (CRAFT), EXPLANATION

REMARKS

Large empty box for remarks

NAME AND TITLE

SIGNATURE

THE WILLFUL FALSIFICATION OF ANY OF THE ABOVE STATEMENTS MAY SUBJECT THE CONTRACTOR OR SUBCONTRACTOR TO CIVIL OR CRIMINAL PROSECUTION. SEE SECTION 1001 OF TITLE 18 AND SECTION 231 OF TITLE 31, OF THE UNITED STATES CODE.

U.S. O.P.D.-1187 (4-15)

Date: (Name of Signatory Party) (Title)

(1) That I pay or supervise the payment of the persons employed by (Contractor or Subcontractor) on the (Building or Work) that during the payroll period commencing on the day of and ending the day of

all persons employed on said project have been paid the full weekly wages earned, that no rebates have been or will be made either directly or indirectly to or on behalf of said (Contractor or Subcontractor) from the full

weekly wages earned by any person and that no deductions have been made either directly or indirectly from the full wages earned by any person, other than permissible deductions as defined in Regulations, Part 3 (29 CFR Subpart A), issued by the Secretary of Labor under the Copeland Act, as amended (48 Stat. 948, 65 Stat. 108, 72 Stat. 957, 76 Stat. 457, 40 U.S.C. 276c), and described below.

(2) That any payments otherwise under this contract required to be submitted for the above period are earned and complete; that the wage rates for laborers or mechanics contained therein are not less than the applicable wage rates contained in any wage determination incorporated into the contract, that the classifications set forth therein for each laborer or mechanic conform with the work he performed.

(3) That any apprentices employed in the above period are duly registered in a bona fide apprenticeship program registered with a State apprenticeship agency recognized by the Bureau of Apprenticeship and Training, United States Department of Labor, if no such recognized agency exists in a State, are registered with the Bureau of Apprenticeship and Training, United States Department of Labor.

(4) That (a) WHERE FRINGE BENEFITS ARE PAID TO APPROVED PLANS, FUNDS, OR PROGRAMS

In addition to the basic hourly wage rates paid to each laborer or mechanic listed in the above referenced payroll, payments of fringe benefits as listed in the contract have been or will be made to appropriate programs for the benefit of such employees, except as noted in Section 4(c) below.

CONDITION PRECEDENT TO PAYMENT



DAVIS-BACON COMPLIANCE STATEMENT

FORM: 7.3

PLEASE PREPARE ON LETTERHEAD.

On behalf of the Subcontractor/Vendor, I LARRY DAVIS (Principal/Officer Name and Title) am in a position to certify and acknowledge that the Subcontractor/Vendor

DCM FLETCHERS INC (Name of Subcontractor/Vendor) is in full compliance with the Davis-Bacon Act, Contract Work Hours and Safety Standards Act, Copeland (Anti-kickback) Act, and Fair Labor Standards Act. I further acknowledge that I am aware that these regulations establish Federal Minimum Wage Rates, as well as Overtime Rates, and Labor Reporting Requirements for the Subcontractor/Vendor.

LARRY DAVIS
Principal/Officer Printed Name

[Signature]
Principal/Officer Signature

MAY 12 / 09 Date

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK AND PAYMENT

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT**:

- 8.1: Request for Information Form**
 - o Email Description: RFI 8.1 (Day, Month 20??)
- 8.2: Change Order Request Form**
 - o Email Description: Change Order Request Form 8.2 (Day, Month 20??)
- 8.3: Change Order Request Log**
 - o Email Description: Change Order Request Log 8.3 (Month 20??)
- 8.4: Time and Material Ticket (To be submitted with Port Authority and Phoenix signatures by 10 AM the following morning after daily work has been completed)**
 - o Email Description: T & M Ticket 8.4 (Day, Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
MONTHLY PAYMENT**



REQUEST FOR INFORMATION

FORM: 8.1

[Empty rectangular box]

Detailed, RFIs Grouped by Company and RFI Number

NOTE: Company's response to this RFI does not constitute authorization to perform a change to the Contract. Contractor may proceed in accordance with the response only on the basis that Contractor agrees that it is not a change. If Contractor believes that the response does constitute a change, Contractor shall await to initiate a Change Order Request in accordance with the Subcontract, Article 8.0.

| | | | | | | | |
|-------------------|--|-------------------|--|----------------------|--|----------------------|--|
| To Company | | Attention | | Subcontractor | | Date Created: | |
| [] | | [] | | [] | | [] | |
| Subject | | Discipline | | Category | | | |
| [] | | [] | | [] | | | |

Subcontract No:
[]

Work Package #:
[]

Question: [] **Date Required:** []

[Large empty rectangular box for question and answer]

*Please note and Attach ALL Required Supporting Documentation for this Request

CONDITION PRECEDENT TO
PAYMENT



CHANGE ORDER REQUEST FORM

FORM: 8.2

CHANGE IDENTIFICATION (SUBCONTRACTOR OR CONTRACTOR)

| | | |
|-----------------|-----------------|-------|
| Change Order #: | Contractor: | Date: |
| Contract No.: | Contract Title: | |

Contractor requested proposed change. PC requested/directed proposed change.

| | |
|-----------------|--------|
| Requestor Name: | Phone: |
|-----------------|--------|

Change (General description):

Reason for Change – (Attach additional sheets if necessary).

BASELINE CHANGE (SUBCONTRACTOR)

Impact to Price (Cost) / Schedule:

| | |
|----------------------|-----------------------------|
| Price (Cost) Change: | Schedule Change: _____ days |
|----------------------|-----------------------------|

| | |
|----------------------------|-------------------------------------|
| Contractor Project Manager | Phoenix Constructors Representative |
|----------------------------|-------------------------------------|

APPROVALS (PHOENIX)

| | | | |
|---|-----------------------------------|--|--------------------------------------|
| <input type="checkbox"/> Approved | <input type="checkbox"/> Rejected | <input type="checkbox"/> Need More Information | |
| <input type="checkbox"/> Accepted (Contractor Only) | | | Phoenix Constructors Project Mgr |
| <input type="checkbox"/> Approved | <input type="checkbox"/> Rejected | <input type="checkbox"/> Need More Information | |
| | | | Phoenix Constructors Procurement Mgr |
| Change Order/ Modification #: | Notice to Proceed Date: | Not-to-Exceed Value: | |
| RFI # | PPIN # | PACC # | |

CONDITION PRECEDENT TO PAYMENT



TIME & MATERIAL TICKET

FORM: 8.4

Phoenix Constructors, JV
Time & Material Summary

Page 1 of 1

| | |
|--------------------------------------|----------------------|
| Job #: 485 | EWO #: |
| Job Desc.: WTC Transportation Hub | Date: |
| Location: World Trade Center, NY | Owner's #: |
| Date Sent To Owner: | Owner's #: (EWO): |
| Charge to: Port Authority of NY & NJ | Phoenix: |
| For: | |
| EWO Desc.: Example | |

| Labor | | | | | | |
|-------|-----------|-------|----------------------|------------|-----------|----------|
| Name | Worker ID | Trade | Total Hrs Reg Hrs | Hrs at 1.5 | Hrs at 2x | Other PT |
| | | X | | | | |
| | | X | | | | |

| Equipment | | | | | |
|-----------|-------------|------|------------|--------------|----------|
| Number | Description | Item | Hrs Worked | Hrs Overtime | Hrs Idle |
| X | | | | | |

| Material | | | |
|----------|-------------|--------|--------------------|
| Qty | Description | Vendor | Invoice # or P/N # |
| | | | |

The labor, material, and equipment listed above were checked & approved by

SIGNATURE FOR PORT AUTHORITY OF NY & NJ

SIGNATURE OF PHOENIX REPRESENTATIVE

PRINT NAME

PRINT NAME

----- End of Page -----

CONDITION PRECEDENT TO
PAYMENT

INTENTIONALLY OMITTED

FLUOR.

Slattery

SKANSKA

GRANITE
CONSTRUCTION
NORTHEAST, INC.



Bovis
Lend Lease

PERFORMANCE AND PAYMENT BONDS

Please submit the following forms **PRIOR TO PROPOSAL**:

- 10.3: Surety Letter of Intent Form w/ Attached Surety Letter of Intent**

Please submit the following forms within **10 DAYS OF CONTRACT EXECUTION**:

- 10.1: Payment Bond w/ Acknowledgment and Justification of Surety**
- 10.2: Performance Bond w/ Acknowledgment and Justification of Surety**

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**UNTIMELY SUBMISSION OF FORMS ARE
JUST CAUSE FOR CONTRACT CANCELLATION**



PAYMENT BOND

FORM: 10.1

Multiple Obligor
Labor and Material Payment Bond

Bond No. _____ Premium Amount \$ _____

KNOW ALL MEN BY THESE PRESENTS,

That we, _____
(Full Name and Address of Subcontractor)

(hereinafter called the Principal), as Principal, and _____
(Full Name and Address of Surety)

a corporation duly organized under the laws of the state of _____
(hereinafter called the Surety), as Surety, are held and firmly bound unto:

Phoenix Constructors, JV and its Partners: Bovis Lend Lease LMB, Inc., Fluor Enterprises, Inc., Granite Construction Northeast Inc., and Skanska USA Civil Northeast Inc.
115 Broadway
New York, NY 10006

Table with 2 columns: List Name(s) of Other Obligor(s), Address(es) of Other Obligor(s). Rows include The Port Authority of New York & New Jersey, Federal Transit Administration, and Metropolitan Transportation Authority.

(hereinafter called the Obligees)

in the sum of _____ U.S. Dollars (\$ _____), for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

WHEREAS, the Principal entered into a certain Contract dated _____ (Month, Day) (Year)

with Phoenix Constructors, JV, Contract No. WOTC-GC1-2-KN0186-20 - WTC-Transportation Hub

which is hereby referred to and made a part hereof as if fully set forth herein.



PAYMENT BOND

FORM: 10.1

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly make payment to all claimants as hereafter defined, for all (1) labor and material used or reasonably required for use in the performance of the Contract, (2) pension, welfare, vacation and any other supplemental employee benefit contributions payable under collective bargaining agreements with respect to persons employed upon said work, and (3) federal, state and local taxes and contributions required to be withheld or paid with respect to the employment of persons upon said work that may hereafter be made, then this obligation shall be void; otherwise, it shall remain in full force and effect, subject, however, to the following conditions:

- 1. A claimant is defined as one having a direct contract with the Principal or a subcontractor of the Principal, for labor, material, or both, used or reasonably required for use in the performance of the Contract, labor and material being construed to include that part of water, gas, power, light, heat, oil, gasoline, telephone service or rental of equipment directly applicable to the Contract.
2. The above-named Principal and Surety hereby jointly and severally agree with the Obligees that every claimant as herein defined, who has not been paid in full, may sue on this bond for the use of such claimant, prosecute the suit to final judgment for such sum or sums as may be justly due claimant, and have execution thereon. The Obligees shall not be liable for the payment of any costs expenses, and/o claims of any suit.
3. No suit or action shall be commenced hereunder by any claimant:
a. After the expiration of the minimum period of limitation permitted by any law controlling the construction hereof.
b. Other than in a state court of competent jurisdiction in and for the county or other political subdivision of the state in which the Project, or any part thereof, is situated, and not elsewhere.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract.

Sealed with our seals and dated this _____ day of _____
(Day) (Month) (Year)

(Attested by) By: _____
(Principal) (Title)

SEAL

(Attested by) _____
(Surety) (Attorney-in-Fact)

SEAL

*Attach Power-Of-Arrowney

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION



PERFORMANCE BOND

FORM: 10.2

Multiple Oblgee Performance Bond

Bond No. _____ Premium Amount \$ _____

KNOW ALL MEN BY THESE PRESENTS,

That we, _____ (Full Name and Address of Subcontractor)

(hereinafter called the Principal), as Principal, and _____ (Full Name and Address of Surety)

a corporation duly organized under the laws of the state of _____ (hereinafter called the Surety), as Surety, are held and firmly bound unto:

Phoenix Constructors, JV and its Partners: Bovis Lend Lease LMB, Inc., Fluor Enterprises, Inc., Granite Construction Northeast Inc., and Skanska USA Civil Northeast Inc.

115 Broadway
New York, NY 10006

and

Table with 2 columns: List Name(s) of Other Oblige(e)s, Address(es) of Other Oblige(e)s. Rows include The Port Authority of New York & New Jersey, Federal Transit Administration, and Metropolitan Transportation Authority.

(hereinafter called the Obligees)

in the sum of _____ U.S. Dollars (\$ _____), for the payment of which we, the said Principal and the said Surety, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents. Principal and Surety shall not be liable to all Obligees in the aggregate in excess of the penal sum above stated.

WHEREAS, the Principal entered into a certain Contract dated _____ (Month, Day) (Year)

with Phoenix Constructors, JV, Contract No. WOTC-GC1-2-KN0186-20 - WTC-Transportation Hub

which is hereby referred to and made a part hereof as if fully set forth herein.

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION



PERFORMANCE BOND

NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION IS SUCH, that if the Principal shall promptly and faithfully perform said Contract, within the time provided therein and any extension thereof that may be granted by the Obligees, and during the life of any guaranty required under said Contract, and shall also promptly and faithfully perform any and all authorized modifications of said Contract that may hereafter be made, then this obligation shall be null and void; otherwise, it shall remain in full force and effect.

The Surety agrees that no change, extension of time, alteration, addition, omission or other modification of the Contract Documents, as specified in the Contract, shall in any way affect its obligations under this Bond, and the Surety hereby waives notice of any such changes, extensions of time, alterations, additions, omissions or other modifications.

Whenever Principal shall be, and declared by Obligees, or any of them, to be in default, in breach, and/or to have failed to perform in any manner under the Contract, the Obligees having performed their respective obligations thereunder, the Surety shall promptly remedy the default by one of the following:

1. Fund Principal to complete the Contract in accordance with its terms and conditions.
2. Complete the Contract in accordance with its terms and conditions utilizing a subcontractor of obligee's discretion.
3. Obtain a bid or bids for completing the Contract in accordance with its terms and conditions, and upon determination by the Obligees of the best value bidder, arrange for a contract between such bidder and Obligees, and make available as Work progresses (even though there should be a default or a succession of defaults under the contract or contracts of completion arranged under this paragraph) sufficient funds to pay the cost of completion less the balance of the Contract price; but not exceeding, including other costs and damages for which the Surety may be liable hereunder, and pursuant to the Contract, the amount set forth in the first paragraph hereof. The term "balance of the Contract price," as used in this paragraph, shall mean the total amount payable by Obligees to the Principal under the Contract and any amendments thereto, less the amount properly paid by Obligees to the Principal.
4. Pay to Obligees the full amount of the penal sum above stated.

No right of action shall accrue on this bond to or for the use of any person or corporation other than the Obligees named herein or the heirs, executors, administrators, successors or assigns of the Obligees.

Principal and Surety shall not be liable to the Obligees unless the Obligees, or any of them, have performed their respective obligations to the Principal in accordance with the terms of said Contract.

Sealed with our seats and dated this _____ day of _____
(Day) (Month) (Year)

(Principal)

By: _____
(Title)

(Attested by)

SEAL

(Surety)

(Attested by)

(Attorney-in-Fact)

SEAL

*Attach Power-Of-Arrowney

NOT SUBMITTING FORM WITHIN 10 DAYS OF CONTRACT EXECUTION
RESULTS IN JUST CAUSE FOR CONTRACT CANCELLATION

NOTE: Please Attach a Surety Letter of Intent in the following format to this form and submit to Phoenix Prior to Proposal.

[INSERT SURETY OR BONDING COMPANY LETTERHEAD]

Date

Ms. Sharon Quinn
Risk Manager
Phoenix Constructors, JV
115 Broadway – 18th Floor
New York, NY 10006

Dear Ms. Quinn:

Please be advised that _____ (Name of Surety) has established a bonding line of credit for _____ (Name of Subcontractor). This program has a single limit of \$ _____ and an aggregate limitation of \$ _____. It is the Surety's intent to provide Performance and Payment Bonding in accordance with contractual requirements of the WTC-Transportation Hub Project based on an approximate rate of _____ per cent.

(Name of Surety) is both licensed in the State of New York and is AM Best rated "A" or better, Category VIII or better.

Should you have any questions, please contact _____ at _____.

Sincerely,

Surety Authorized Signature

INSURANCE

Please submit all of the following forms for Subcontractor and ALL known lower-tier subcontractors and vendors **PRIOR TO PROPOSAL**:

- 11.1: Insurance Rider
- 11.2: Certificate of Insurance (Reflecting Proof of Insurance in accordance with Insurance Rider)

Please submit all of the following forms for Subcontractor and ALL known lower-tier subcontractors and vendors **PRIOR TO EXECUTION OF CONTRACT**:

- 11.1: Insurance Rider (for ALL NEW known lower-tier subcontractors and vendors)
- 11.2: Valid Certificate of Insurance

Please submit all of the following forms for ALL new known lower-tier subcontractors and vendors **PRIOR TO COMMENCEMENT OF WORK**:

- 11.1: Insurance Rider
 - o Email Description: Insurance Rider 11.1 (Month 20??)
- 11.2: Valid Certificate of Insurance
 - o Email Description: Certificate of Insurance 11.2 (Month 20??)
- 11.2: Revised and Renewed Certificates of Insurance (For Subcontractor and ALL known lower-tiers when applicable)
 - o Email Description: Certificate of Insurance 11.2 (Month 20??)

Please submit all of the following forms for ALL new known lower-tier subcontractors and vendors **PRIOR TO MONTHLY PAYMENT**:

- 11.1: Insurance Rider
 - o Email Description: Insurance Rider 11.1 (Month 20??)
- 11.2: Valid Certificate of Insurance
 - o Email Description: Certificate of Insurance 11.2 (Month 20??)
- 11.2: Revised and Renewed Certificates of Insurance (For Subcontractor and ALL known lower-tiers when applicable)
 - o Email Description: Certificate of Insurance 11.2 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**



INSURANCE RIDER (REQUIREMENTS AND EXAMPLE)

ALL APPROVED SUBCONTRACTORS and SUBCONTRACTOR'S LOWER TIER SUBCONTRACTORS and VENDORS ARE SUBJECT TO THE PROVISIONS OF THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY "CONTRACTORS INSURANCE PROGRAM". IN ADDITION TO THOSE REQUIREMENTS AND BEFORE PERFORMING ANY WORK ON THIS CONTRACT, SUBCONTRACTORS, LOWER TIER SUBCONTRACTORS, VENDORS, AND LOWER TIER VENDORS MUST COMPLY WITH THE FOLLOWING:

Prior to commencement of any work under this contract and until all obligations under this contract are fulfilled, the Subcontractor and each and every lower tier Subcontractor and Vendor and lower tier vendor shall, at its sole expense, maintain the following insurance on its own behalf, and furnish to Phoenix Constructors, JV, hereinafter referred to as "Contractor", certificates of insurance evidencing same and reflecting the effective date of such coverage as follows:

The term "Subcontractor" as used in this insurance rider, shall mean and include Subcontractors and Vendors of every tier.

Subcontractor shall, at its own expense, maintain in effect until final completion and acceptance including stipulated warranty period with insurers holding a Best's rating of A+ or better and admitted/licensed in every state where work is performed and through policy forms satisfactory to Contractor, minimum insurances as described below. The ratings for each company must be indicated on the "Certificate of Insurance". Before permitting any lower tier Subcontractor to perform any work under this subcontract, Subcontractor shall require that Contractor be furnished satisfactory evidence that the lower tier Subcontractor maintains insurance the same as that required below. All policies must be written by companies approved by Contractor and evidence of such must be delivered to Contractor, in the form of Certificates of Insurance. All Subcontractors shall provide to the Contractor Sample Certificates of Insurance for all known Subcontractors and Vendors of every tier to include all associated insurance coverages, limits, and endorsements described above and herein at the time of proposal. Approved and valid Certificates of Insurance in accordance with contract requirements shall be provided at the time of contract execution and thereafter prior to the authorization of any additional lower tier Subcontractors. Further, approved and valid Certificates of Insurance in accordance with contract requirements shall be provided prior to policy revisions and renewal periods. Timely submittal of all aforementioned documentation is a condition precedent to proposal, contract execution, and payment.

Subcontractor shall procure and maintain the following minimum insurance coverages in addition to any additional insurance policies necessary to obtain required permits or otherwise comply with applicable law, ordinances, or regulations regarding the performance of work:

The following limits or specific coverages do not restrict or limit any contractual obligation between the parties as may be defined elsewhere. Contractor's failure to identify insurance deficiencies does not relieve the Subcontractor from any insurance obligations.



EXHIBIT 11, INSURANCE RIDER REQUIREMENTS
RFP/CONTRACT: W0TC-XXX-X-KNXXXX-XXXX
CONTRACT TITLE

1. A) WORKERS' COMPENSATION AND OCCUPATIONAL DISEASE INSURANCE & EMPLOYER'S LIABILITY INSURANCE covering all Subcontractor's employees directly or indirectly engaged in the performance of the subcontract in accordance with State and Federal law. Coverage required herein is for off-site operations only. Coverage for on-site operations, with the exception of Electrical Subcontractors or lower tier Electrical Subcontractors, Asbestos Subcontractors or lower tier Asbestos Subcontractors, and Consultants and lower tier Consultants is provided by Owner's Contractors Insurance Program (OCIP). The off-site Workers' Compensation limits shall be statutory and the Employer's Liability limits shall be at least \$2,000,000 each accident/disease/employee including:
 - USL&H - 'if any' basis, where applicable.
 - Include all states endorsement, where applicable.
 - All insurers shall agree to waive the right of subrogation against the Owner and Contractor.
 - Certificate must clearly identify that coverage applies in state of operation.
 - B) WORKERS' COMPENSATION INSURANCE: The OCIP policy described in Exhibit 11A does not provide coverage for any workers compensation for the Subcontractors and their lower tier subcontractors who perform any asbestos, electrical and consulting work. Such Subcontractors and lower tier Subcontractors shall procure and maintain, at its own expense, workers' compensation insurance in limits not less than \$3 million dollars per accident.

The Subcontractor shall provide a copy of the WTC-Transportation Hub Incident Report to Contractor within twenty four(24) hours of any injury or illness to any employee of the Subcontractor arising out of, or alleged to have arisen out of or during the course of work performed on this project.
 - C) WORKERS' COMPENSATION INSURANCE: The OCIP policy described in Exhibit 11A does not provide coverage for any workers compensation for the Subcontractor and lower tier Subcontractors who perform electrical work or utilize electricians from the International Brotherhood of Electrical Workers Local Union 3, asbestos, and consulting work. In such cases, the Subcontractor shall procure, maintain, and provide evidence of the workers compensation insurance provided by the Subcontractor or from IBEW Local Union 3 in accordance with the statutory requirements of the State of New York and employer's liability insurance in limits of not less that \$3 million per accident. The Subcontractor and lower tier Subcontractors shall provide an original insurance certificate, stating the contract number from the insurer. A duplicate certificate evidencing the above insurance shall also be provided.
2. DISABILITY INSURANCE:
As required by state law. Coverage is required for all operations.



- 3 COMMERCIAL GENERAL LIABILITY:
Commercial General Liability Form 1988 ISO Occurrence Form or equivalent (identify form # and edition date on certificate). Coverage required herein is for off-site operations only. Coverage for on-site operations is provided by Owner's Contractors Insurance Program.

LIMITS:

- \$2,000,000 - Each occurrence for Bodily Injury and Property Damage
\$4,000,000 - Products, Completed Operations Aggregate Limit
\$4,000,000 - General Aggregate* Limit (other than Products/Completed Operations)
\$2,000,000 - Personal Injury Liability

*General Aggregate MUST include per project endorsement (must evidence on certificate).

Above limits will be revised to coincide with Owner's requirements if necessary.

Policy coverage terms and conditions to include:

- Premises/Operations - must cover all work to be performed by Subcontractor & their Subcontractors
- Contractual Liability shall include coverage sufficient to meet the obligations in this agreement (must evidence on certificate).
- Products/Completed Operations must include a two year extension beyond acceptance date (refer to attached wording)
- Broad Form Property Damage including completed operations
- Independent Contractors
- Blanket Explosion, Collapse & Underground Property Damage Liability
- Employees as additional insureds
- Supplementary payments in addition to limit of liability
- Contractual exclusion pertaining to operations performed within 50' of railroad must be eliminated (must evidence on certificate)
- Additional Insureds to be included on a primary basis. (must evidence on certificate)
- Any deductible clauses, exclusions or special endorsements must be approved by contractor prior to inclusion
- Insuring agreement to read "to pay on behalf of"
- Waiver of subrogation for Owner, Contractor, all additional insureds and their directors, officers, agents, successors, assignees, employees, partners, subsidiaries and affiliates (must evidence on certificate)
- Severability of interests (cross liability)

- Coverage shall not include any exclusions unacceptable to the Contractor and Owner.

4. **COMMERCIAL BUSINESS AUTOMOBILE:**

Covering all owned, non-owned & hired vehicles including and to be provided by all Subcontractors

- LIMIT: \$3,000,000 any one loss for Bodily Injury (including death) & Property Damage combined. Coverage is required for all operations.
- Contractual Liability
- Waiver of subrogation for Owner, Contractor, all additional insureds and their directors, officers, agents, successors, assignees, employees, partners, subsidiaries and affiliates.
- LIMIT: \$5,000,000 and MCS-90 Endorsement required if transporting hazardous waste/materials from the Site.

5. **POLLUTION LIABILITY INSURANCE:**

If required, Subcontractor shall furnish evidence that it has provided Pollution Liability Insurance covering all lead, asbestos and any other pollution operations with limits not less than \$5,000,000* each occurrence combined single limit for bodily injury, property damage and clean-up costs including completed operations (5 year continuation beyond final acceptance), broad form contractual (including coverage for third party over claims), and independent contractors coverage. If policy contains a general aggregate, this aggregate must apply on a per project basis, all of which must be evidenced on certificate. All insurers agree to waive their rights of subrogation against the Owner, Contractor, all additional insureds and their directors, officers, agents, successors, assignees, employees, partners, subsidiaries, and affiliates.

- Defense costs must be payable in addition to limit of liability
- Any deductibles, clauses, exclusions or special endorsements must be approved by Contractor prior to inclusion.
- Coverage must include on-site, off-site and in-transit exposures.
- Policy to read "to pay on behalf of" (in lieu of indemnify).
- Must include loading and unloading coverages.
- Must be written on occurrence form.
- Policy to be submitted to the Contractor for review and approval.

*Higher limit to be obtained, if mandated.

6. **RAILROAD PROTECTIVE LIABILITY INSURANCE:**
If required by the Contractor, in the name of the applicable railroad, covering property damage and bodily injury liability, including death, with a minimum limit of \$2 million per occurrence and \$6 million in the aggregate, or with coverages and limits as specifically required by such railroad.
7. **PROTECTION AND INDEMNITY INSURANCE:**
If required by the Contractor, Protection and Indemnity Insurance, and Chartered Legal Liability Insurance, where applicable. Prior to commencement of any work using watercraft, the Subcontractor shall furnish to the Contractor and Port Authority Engineers, evidence of protection and Indemnity Insurance, and Chartered Legal Liability Insurance, where applicable, relating to the operation, maintenance, or use of any vessel (whether self-propelled or being towed) in connection with work to be performed in this contract, in a limit of liability of not less than \$5 million for any one occurrence.
8. **EXCLUDED SUBCONTRACTORS:**
In addition to the requirements of Articles 1, 2, 3, 4, 5, 6, and 7, any subcontractor excluded from Owner's Contractors Insurance Program will maintain and evidence the following insurance coverage:
- Excess (Umbrella) Insurance: With limits of \$10,000,000 any one occurrence and general aggregate annually and \$10,000,000 annual aggregate products and completed operations. Insurance will be on a "follow form" basis and sit atop the coverage required in Articles 1, 2, and 4.
- Professional Liability Insurance: With limits of \$10,000,000 per claim and aggregate covering actual or alleged negligent acts, errors or omissions committed by subcontractor and/or his agents or employees arising out of the performance of this contract. This requirement only applies to those subcontractors performing Professional Services for this contract.
9. **ADDITIONAL INSURED ENDORSEMENTS:**
With the exception of the Railroad Protective Insurance Policy, the Contractor, the Authority, the Port Authority Trans-Hudson Corporation (PATH), the Government (FTA), and the Metropolitan Transportation Authority and its affiliated agencies, and their officers, directors, employees, agents, successors, assignees, partners, subsidiaries and affiliates shall be named as additional insureds, and shall stipulate that this insurance is primary, that any other insurance or self-insurance maintained by Owner and Contractor shall be excess only and shall not be called upon to contribute with this insurance, shall be named as an additional insureds on the liability policies set forth above. Moreover, the Commercial General Liability Insurance and the Automotive Liability Insurance Policies shall not contain any provisions for exclusions from liability other than provisions for exclusion forming part of the most up-to-date ISO forms, or their equivalent, of the Commercial General Liability and Automotive Liability insurance Policies. The Liability policy or policies stated above shall contain evidence of coverage for cross-liability/severability of interests, and both the Authority as an addition insured and the coverage for cross-liability/severability of interests shall be stated on the Certificate(s) of Insurance. ISO Additional Insured Endorsement



form number CG2010 1185 under GL. Contractors Form B must be utilized and accompany the Certificate of Insurance. This listing of additional insureds may change from time to time during the course of the Project. Subcontractors will be required to endorse their policies to reflect any changes to this listing of additional insureds as changes occur.

10. WAIVER OF SUBROGATION:

The General Liability, Automobile Liability, Employers' Liability, Pollution Liability and Umbrella Liability policies are required to contain a waiver of all subrogation rights of both the Subcontractor and its insurance carrier against Owner, Contractor, all additional insureds and their directors, officers, agents, successors, assignees, employees, partners, subsidiaries and affiliates. The certificate of insurance shall indicate that such waiver is in effect.

11. APPLICABLE TO ALL INSURANCES:

1. Higher limits required depending upon particulars of each specific contract may be obtained. The above limits may be written by combination of CGL & Umbrella policies.
2. Policies must include endorsements in acceptable form with provision and certificates shall be furnished as evidence of the required coverages, satisfactory to Contractor, from each insurance company showing that the above insurance is in force, stating policy numbers, dates of expiration, limits of liability, and other requirements as specified hereunder, must include an insurer obligation to provide sixty (60 days) prior written notice of cancellation, material change and non-renewal by certified mail, return receipt requested. Notification must be sent to and received by

**PHOENIX CONSTRUCTORS, JV
OFFICE OF RISK MANAGEMENT
ATTENTION: SHARON QUINN
115 BROADWAY, 18TH FLOOR, NEW YORK, NY 10006**

3. Certificates and endorsements as required must be submitted to Contractor prior to commencement of any work and must remain in force, as is required during performance and up to the date of final acceptance by Contractor and/or Owner.
4. Contractor has the right, but not the duty to receive copies of all insurance policies upon request. Policies shall not contain any exclusions that are unacceptable to Contractor and Owner. If requested by Contractor or Owner, all policies must be certified by an insurance carrier as being true and complete.

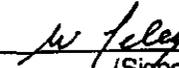
5. Contractor must be provided updated renewal certificates and required endorsements as appropriate. Failure of Contractor to request renewal certificates or endorsements does not relieve the Subcontractor from the obligation to maintain such insurances as required herein.
6. Any deductibles or self-insured retention included within any of the above insurances shall be the responsibility of the Subcontractor. Any deductibles or self-retention above \$25,000 will require approval from the Contractor.
7. Owner and Contractor have no obligation for premium payments. Subcontractor acknowledges that any sums necessary for premium payment related to this subcontract will not be in addition to the price of this subcontract.
8. If at any time during the period of this subcontract, insurance as required is not in effect or proof thereof is not provided to Contractor, Contractor shall have the option to:
 - a) direct the Subcontractor to suspend work with no additional cost of extension for time due on account thereof, or
 - b) treat such failure as a material breach/default in respect of the Subcontract
9. If subcontracted operations involve or are anticipated to involve hazardous operations including, but not limited to lead, pollution or asbestos liability, aircraft or watercraft, special insurance must be implemented for same. Subcontractor will be responsible for premium.
10. Property Insurance by Subcontractor: Subcontractor shall have sole responsibility to place property insurance coverage for tools and equipment owned, leased or provided by the Subcontractor or its employees. Subcontractor shall procure and maintain at its own expense property and equipment insurance for portions of the Work stored off the Project or in transit, when such portions of the Work are to be included in Requisition.
11. Claims made policies are not acceptable.
12. The amount of insurance contained in aforementioned insurance coverages, shall not be construed to be a limitation of the liability on the part of the Subcontractors or any of their Subcontractors in any tier.
13. Subcontractor shall file certificates of insurance prior to the commencement of work and/or payment with the Contractor, which shall be subject to the Contractor's approval of adequacy of protection and the satisfactory character of the Insurer.

14. Subcontractor shall immediately notify Contractor within twenty-four (24) hours of all accidents or occurrences resulting in injury to the Subcontractor's employees, or third parties or damage to property of another, Subcontractor shall submit to Contractor a written report on Contractor's form and further shall provide a Monthly Accident/Incident Status Report. Subcontractor shall furnish Contractor with a copy of any reports prepared for submission to Subcontractor and / or Contractor's insurance carrier.

DOM ERETTAS INC
Subcontractor

PHOENIX CONSTRUCTORS, JV
Contractor

By: 
(Signature)

By: 
(Signature)

LARRY DAVIS PRESIDENT
Name and Title

William Feley
Name and Title

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT

ATTACH CERTIFICATE OF INSURANCE TO THIS FORM WITH THE FOLLOWING REQUIREMENTS:

- **ORIGINAL CERTIFICATE AND DUPLICATE COPY MUST BE PROVIDED**
- **CERTIFICATE MUST CONTAIN THE CONTRACT NUMBER**
- **CERTIFICATE MUST CONTAIN THE COVERAGE LIMITS**
- **CERTIFICATE MUST CONTAIN TWO ENDORSEMENTS**
 - **ENDORSEMENT OF ADDITIONAL INSURED**
 - **ENDORSEMENT OF THE WAIVER OF SUBROGATION**
- **CERTIFICATE MUST BE IN ACCORDANCE WITH THE INSURANCE RIDER**

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**

OCIP FORMS

Please submit all of the following forms for Subcontractor and ALL known lower-tier subcontractors and vendors **PRIOR TO PROPOSAL**:

- 11A.1: OCIP Enrollment Application submit to Phoenix

Please submit all of the following forms for subcontractor and ALL known subcontractors and vendors **PRIOR TO EXECUTION OF CONTRACT**:

- 11A.1: OCIP Enrollment Application to AON for subcontractor and ALL known lower-tiers, as well as to Phoenix for ALL NEW known lower-tiers

Please submit all of the following forms **PRIOR TO COMMENCEMENT OF WORK**:

- 11A.1: OCIP Enrollment Application for ALL new known lower-tier subcontractors and vendors
 - Email Description: OCIP Enrollment 11A.1 (Month 20??)
- 11A.2: Certificate of Insurance for subcontractor and ALL known lower-tier subcontractors and vendors
 - Email Description: OCIP Certificate 11A.2 (Month 20??)

Please submit all of the following forms for subcontractor and ALL known lower-tier subcontractors and vendors **PRIOR TO MONTHLY PAYMENT**:

- 11A.1: OCIP Enrollment Application
 - Email Description: OCIP Enrollment 11A.1 (Month 20??)
- 11A.2: Certificate of Insurance
 - Email Description: OCIP Certificate 11A.2 (Month 20??)
- 11A.3: On-site Man hour Payroll
 - Email Description: OCIP On-site Payroll 11A.3 (Month 20??)
- 11A.4: Daily Incident Reports within 24 hours of incident to AON
 - Email Description: Incident Report 11A.4 (Month 20??)
- 11A.5: *Monthly Subcontractor Incident Summary Report*
 - Email Description: Monthly Summary Incident Report 11A.5 (Month 20??)

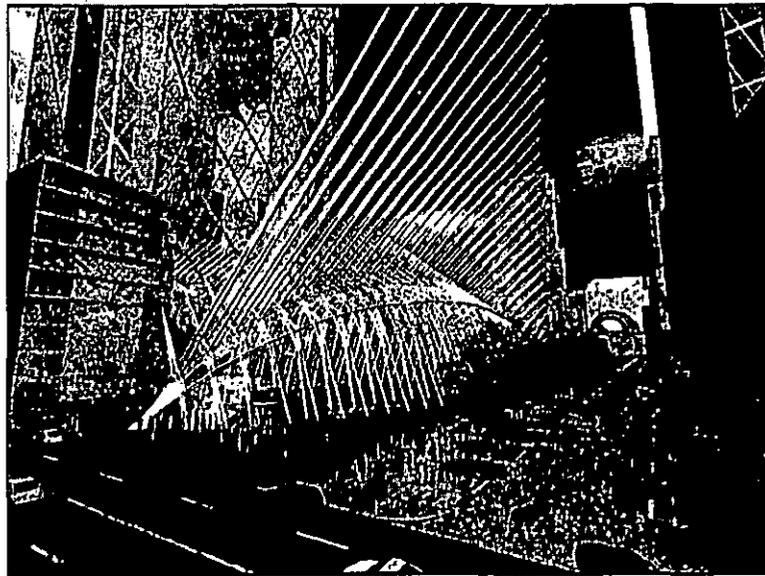
**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION, COMMENCEMENT OF WORK, PAYMENT**

INSURANCE GUIDE FOR CONTRACTORS

THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

World Trade Center Transportation Hub Owner Controlled Insurance Program



This guide is a general outline of the Owner Controlled Insurance Program with reference to the World Trade Center Transportation Hub Project. It is not intended to modify, amend, or alter any provision of your contract, the insurance policies, or insurance certificate. In any matter in which this guide conflicts, in any respect, with the language of such documents, the provisions of the actual contract or insurance document will govern.

Edition: April 4, 2007

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I. INTRODUCTION

The Port Authority of New York and New Jersey has elected to purchase and administer an Owner Controlled Insurance Program (O.C.I.P.) for the construction activity of specific Contractors and their Port Authority approved Sub-Contractors at the World Trade Center Transportation Hub (WTC-TH) Project.

Only Port Authority designated Contractors and their approved Sub-Contractors will be subject to the provisions of the Owner Controlled Insurance Program. The provision for insurance shall in no way be interpreted as relieving any of the parties of any responsibility whatsoever. Contractors and approved Sub-Contractors may carry, at their own expense, such additional insurance as they may deem necessary.

This guide is intended to be informative as to the insurance afforded, the procedures to be followed in administering the program, a general program overview, and the Contractors' obligations. This guide is neither the insurance policy nor does having this guide imply coverage. All questions concerning the program and/or confirmation of coverage should be referred to:

Jon Huxel
Operations Manager
Treasury, Risk Management
Port Authority of N.Y. & N.J.
Tel: 212-435-5852
Fax: 212-435-5861

Adrian Rabinowitz
Vice President
Port Authority Service Team
Aon Risk Services, Inc. of New York
Tel: 516-342-2706
Fax: 516-342-2727

Note: This guide contains Enrollment Forms. It is critical that these forms be completed by the Contractor and returned to Aon immediately. Failure to return the completed forms in a timely manner may result in denial of coverage by the carrier.

II. DEFINITIONS

For the purpose of this Guide, the following terms shall have the following meanings:

THE PORT AUTHORITY (or P.A.)

The Port Authority of New York & New Jersey, Port Authority Trans-Hudson Corporation and all subsidiary, affiliated, managed, owned and controlled entities now in existence or hereafter formed or acquired.

INSURANCE BROKER (Aon)

Aon Risk Services, Inc. of New York
Port Authority Service Team
300 Jericho Quadrangle, Suite 300
P.O. Box 342
Jericho, NY 11753
(516) 342-2706

PRIME CONTRACTOR (Phoenix Constructors, JV, General Contractor)

The joint venture undertaking to perform construction work, or other construction related services, under contract with the Port Authority requiring labor at the work site and designated as participants in the Port Authority's Owner Controlled Insurance Program (O.C.I.P.).

Coverage **EXCLUDES** vendors, suppliers, dealers, and others who merely transport materials, parts, or equipment to or from the project work site.

Contact: Sharon Quinn 646-467-7126

CONTRACTOR (and/or SUB-CONTRACTOR)

Any individual, partnership, joint venture, firm, or corporation to whom the Prime Contractor sublets work, with the written consent of the Port Authority, requiring labor at the project work site and designated as participants in the Port Authority's O.C.I.P. The Prime Contractor must apply for written consent by submitting a properly completed Sub-Contractor Approval Request (S.A.R.) form to the Port Authority's Senior Engineer of Construction. The term Sub-Contractor includes sub-Sub-Contractors.

It is the responsibility of the Prime Contractor to obtain written consent from the Port Authority for any and all Contractors prior to the Contractor's start of work.

Again, coverage **EXCLUDES** vendors, suppliers, dealers, and others who merely transport materials, parts, or equipment to or from the project or work site.

Asbestos contractors, as well as electrical contractors, are excluded from Workers' Compensation coverage under this program.

OWNER CONTROLLED INSURANCE PROGRAM (O.C.I.P.)

The insurance coverages provided by the Port Authority to designated Contractors as further defined in the contract with the Port Authority.

INSURED

The Port Authority, its Contractors, and approved Sub-Contractors.

INSURERS

- AIG
- *Lloyd's and London Companies*
- Lexington Insurance Co.
- Bermudan markets
- European markets
- U.S. markets

PROJECT

All work to be performed or provided at the WTC-TH project work site, as defined in the contract.

CONTRACT

The Contract entered into between the Port Authority and the Prime Contractor.

PROJECT MANAGER

A person, firm, or corporation (e.g., the Construction Manager, Prime Contractor, and/or other entity) as designated in the project documents, responsible for supervising and controlling all construction work performed on the project.

PROJECT SUPERVISOR

The individual designated by a Contractor who has overall authority and responsibility for work performed by that Contractor, in accordance with the project's Health and Safety Program (H.A.S.P.).

PROJECT HEALTH AND SAFETY PROGRAM (H.A.S.P.)

The written program developed by the Project Manager specifically for the project that describes the requirements and procedures for implementing a site-specific site safety program. This program will apply to all Contractors and all other individuals at the project work site.

P.A. SITE SAFETY MANAGER

The representative of the Port Authority's Inspection & Safety Division at the project work site.

SUB-CONTRACTOR APPROVAL REQUEST (S.A.R.)

The form completed by the Prime Contractor used to request for approval from the Port Authority to utilize an individual Contractor. A Sub-Contractor Approval Request (S.A.R.) form must be submitted for each Contractor.

III. PROGRAM OVERVIEW

The O.C.I.P. is administered by Port Authority Risk Management in conjunction with Aon, who performs all services usual of a broker-client relationship, with respect to each individual Contractor insured under the insurance provided.

The following pages provide a brief explanation of the insurance coverages that apply to the O.C.I.P., and include incident reporting requirements, procedures, and samples of the forms to be used in the administration of the O.C.I.P. It is the responsibility of the Prime Contractor and approved Contractors to review the actual insurance policies (available at the office of the Port Authority, Treasury Risk Management Dept. by special appointment) for coverage, terms, and conditions of such policies.

The O.C.I.P. will provide Workers' Compensation, Commercial General Liability, Excess Liability, Contractors Pollution Liability, and Builders Risk coverage for each Contractor where applicable. Each Contractor may, therefore, at its individual discretion, exclude this project from its regular Workers' Compensation and/or Commercial General Liability policies.

Contractors should maintain their own insurance for their operation outside of this contract and for coverages NOT afforded under this O.C.I.P.

It is recommended that Contractors consult their own insurance representatives.

IV. INSURANCE COVERAGE PROVIDED

The insurance described below applies ONLY to the operations of each Insured at the project work site as

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, 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 Prime Contractor; P.A. Treasury, Risk Management; or Aon for clarification.

B. Commercial General Liability Insurance

The Insurer will provide Commercial General Liability Insurance to each Contractor, as follows:

1. Primary \$2,000,000 Combined Single Limit (CGL) each one occurrence.
 2. \$998,000,000 each occurrence in excess of the \$2,000,000 primary limit.
 3. Losses insured under the Commercial General Liability and Excess Liability policies may be subject to certain annual, or period, aggregation of limits of liability as more fully described in the insurance policy documents.
 4. 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. The discovery clause requires that all claims must be reported within three (3) years of the start of the completed operations period.
 - ◆ Personal Injury Liability
 - ◆ Contractual Liability
-

- ◆ Cross Liability
- ◆ Incidental Malpractice Liability
- ◆ Advertising Liability
- ◆ Notice and Knowledge of Occurrence provision
- ◆ Unintentional Errors and Omissions provision

- ◆ EXCLUSIONS include, but are not limited to:
 - Aircraft Liability
 - Asbestos/Environmental
 - Automobile Liability and Physical Damage
 - Intentional acts
 - Nuclear Losses
 - Pollution
 - Professional Liability
 - Watercraft Liability

C. Builder's Risk Insurance

Builder's Risk Insurance coverages are as follows:

1. Limits - \$1 Billion per occurrence for the WTC Transportation Hub project combined (subject to a \$50 Million annual aggregate for flood and earthquake damage and \$500 Million per occurrence as respects windstorm) and a limit of \$10 Million per occurrence for materials stored off-site. There is also a limit of \$10 Million per occurrence for materials in transit.
2. Deductible - \$250,000 per occurrence for all losses except those caused by water damage where a \$500,000 per occurrence deductible applies, by collapse/subsidence where a \$500,000 per occurrence deductible applies, by flood where a \$500,000 per occurrence deductible applies, by wind where a \$500,000 per occurrence deductible applies, and by earthquake where a \$500,000 per occurrence deductible applies. The Contractor is responsible for all losses within the deductibles and losses not covered by the Builder's Risk policies.
3. 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, including but not limited to:

- Builders Risk
 - Debris removal
 - Demolition and increased cost of construction
 - EDP equipment and media and extra expense
 - Expediting expense
 - Extra expense
-

- Fire brigade charges and extinguishing expenses
- Materials
- Off-Site
- Partial payment of loss
- Permission to occupy
- Plans, blueprints, drawing, renderings, etc.
- Pollutant clean-up (covered perils)
- Professional fees
- Removal charges
- Resulting damage from error in design, faulty workmanship, or faulty material recovered
- Temporary works
- Testing
- Transit including shipments on inland or coastal waters, excluding ocean
- Valuable papers and records
- Waiver of Subrogation, if in writing

4. The policies contain various EXCLUSIONS, including but not limited to:

- Aircraft
- Automobiles
- Contents/Personal Property
- Cranes (not to become permanently fixed, but used as a part of contract)
- Machinery, Contractor's machinery, tools, temporary structures, and equipment not destined to become a permanent part of a building or structure
- Watercraft

C. Contractors Pollution Liability

Contractors Pollution Liability coverage is as follows:

1. Limits - \$100 Million each loss for the WTC Transportation Hub project with a \$100 Million aggregate.
 2. Deductible - \$50,000 each loss / \$250,000 aggregate / \$10,000 maintenance.
 3. Sub-limit - \$10 Million Microbial Matter.
 4. Bodily injury, property damage, or environmental damage caused by pollution conditions resulting from covered operations only, and must be unexpected and unintended from the standpoint of the Insured.
 5. The bodily injury, property damage, or environmental damage must occur during the policy period.
-

V. OBLIGATION of CONTRACTORS

Contractors are required to furnish to Aon such information as the Insurer deems necessary. (See Enrollment Forms included in Appendix A.) Contractors are also required to maintain, and make available to the Insurer for the purposes of insurance audits, payroll records relating to the work as may be necessary to compute premiums. **Certified payroll data relative to your Port Authority contract must be kept separate and submitted monthly. Electronic payroll data is preferred.** (See sample On-Site Payroll Report form in Appendix B, furnished for your reference, but not required.)

After completion of your work on this project, the insurance carrier will contact you to perform payroll audits necessary to compute the premium paid on your behalf by the Port Authority.

- B. Contractors shall comply and cooperate with all obligations of the Insured as stated in the policies.
- C. Contractors should maintain their own insurance for their operations outside the project and for coverages NOT afforded under the O.C.I.P.

VI. PROGRAM ADMINISTRATION

A. Management

1. Premiums for the insurance provided by this O.C.I.P. will be paid by the Port Authority.
 2. All insurance coverages will be effective on the date of the award of the contract and, in the case of a sub-contractor, on the date the P.A. Sr. Engineer of Construction has approved the sub-contractor. The insurance shall extend until issuance of a Certificate of Final Completion by the Port Authority.
 3. When the Port Authority notifies Aon of the P.A. Sr. Engineer of Construction's approval of the sub-contractor, Aon will contact the sub-contractor by mail to request insurance information (see Enrollment and Assignment by Contractor Forms included). When Aon receives the completed forms, arrangements will be made for the issuance of policies and/or Certificates of Insurance for all coverages provided under the program. The Certificate and/or policy will be mailed to the contractor. The Contractor must notify Aon when they have completed work on the project. The insurance carrier will then contact you to perform payroll audits.
-

B. Workers' Compensation Experience Modification

Payroll and claim information for each Contractor will be filed with the NY Compensation Insurance Rating Board by the insurance carrier, as required by law. The individual experience modification of each Contractor will be affected by the loss experience for work performed under the Port Authority project and may directly affect the Contractor's future insurance costs.

C. Failure to Submit Enrollment Forms

1. All Contractors must complete and return the Enrollment and Assignment by Contractor Forms to Aon immediately to avoid delay in or denial of coverage by the Insurer. Please return completed forms to:

Aon Risk Services, Inc. of New York
Port Authority Service Team
Victoria M. Lomp, AVP
300 Jericho Quadrangle, Suite 300
P.O. Box 342
Jericho, NY 11753
(516) 342-2710

Phoenix Constructors, JV
Sharon Quinn
Risk Management
115 Broadway - 18th Floor
New York, NY 10006
P: 646-467-7126
F: 646-300-7898

2. Contractors must notify Aon when they have completed their work at the project site.

D. Premium Audit

Contractors shall keep and maintain an accurate and classified record of their payroll data and information in accordance with the requirements of the Insurer, separately documenting payrolls applicable to this WTC-TH project.

Payroll information must be maintained, by Workers' Compensation classifications, separately from your other operations. Maintaining electronic payroll is preferred. (See sample On-Site Payroll Report form in Appendix B, furnished for your reference, but not required.)

VII. LOSS CONTROL

A. Program Objectives

1. A requirement of this Owner Controlled Insurance Program is a strong commitment to loss control and safety on the part of all Contractors performing work at this project work site. The program objectives are to:
 - a. Minimize conditions and actions that could lead to accidents involving the general public, worker injuries, and damage to property.
 - b. Minimize conditions and actions that could contribute to equipment and material damage.
 - c. Accomplish cost effective construction activities.
2. The effectiveness of the Safety/Loss Control Program will depend on the active participation and cooperation of all parties involved in construction operations. Experience has confirmed that an effective loss control program improves overall project efficiency, on-time performance, controlled costs, retention of skilled workers, and maintenance of a good public image.
3. Each Contractor is responsible for the safety of its employees. It shall ensure that all employees obtain the training and certification to perform all work in compliance with any applicable federal, state and local safety codes, as well as these O.C.I.P. guidelines.
4. As stated elsewhere in this Guide, Contractors should be aware that all Workers' Compensation claims arising from this project will be reported by the insurance carrier to the NY Compensation Insurance Rating Board, as required by law. This is required for experience rating purposes and will be included in the experience modification calculations used to determine the Contractor's future insurance rates.

B. Loss Control Program Requirements

The following loss control procedures are to be incorporated into the project:

1. All work is to be planned to minimize the potential for injury, property damage and loss of productive time.
 2. A system must be established and maintained which will provide for the prompt detection and timely correction of unsafe conditions and practices.
 3. The Contractor is responsible for the prompt investigation and written report (General Liability Loss Report, see Appendix B) of all accidents to determine the condition responsible for the accident and the initiation of timely corrective measures.
-

4. Provide training and educational materials to encourage cooperation and participation by all employees in the safety program. This shall include at least the following:
 - a. New employee safety orientation
 - b. Contractor toolbox safety sessions
 - c. Project supervisory safety meetings
5. Require full compliance with all Federal Occupational Safety and Health Standards, and any applicable State and Local laws.

C. Responsibilities and Authority

Each Contractor's Senior Project Supervisor, with respect to their own companies involvement in the project, shall:

1. Have overall responsibility for all construction, maintenance, and related activities.
2. Regularly monitor all construction activities to insure compliance with the project H.A.S.P. and must immediately notify the responsible party of any conditions or practices that may cause illness, injury, or damage.
3. Authorize timely action to correct or abate hazardous safety conditions reported or observed. **Where imminent danger exists, appropriate action may include immediate suspension of operations in the affected area.**
4. Regularly schedule project safety meetings, which all Project Supervisors will be required to attend.
5. Cooperate with Port Authority Safety Engineers, Aon Loss Control Specialists and Authorized Consultants.
6. Provide and enforce the use of personal protective equipment as required under applicable Federal Occupational Safety and Health Standards, State and Local laws.

D. P.A. Site Safety Manager

1. Will review proposed construction activities and procedures, then submit recommendations or comments to Port Authority Risk Management and the P.A. Sr. Engineer of Construction.
 2. Provides technical support to the P.A. Sr. Engineer of Construction or his representatives on Loss Control and Safety matters.
 3. Conducts surveys of construction activities in order to monitor compliance with Loss Control guidelines and implementation of the project H.A.S.P.
 4. Reviews Accident Investigation Reports for proposed corrective action and implementation.
-

5. Coordinates activities of the Loss Control Engineers and Consultants as designated by Port Authority Risk Management.

VIII. ACCIDENT REPORTING AND CLAIM PROCEDURES

A. First Aid Treatment

All Contractors must make First Aid available to their employees working at the project work site. Incidents requiring only First Aid, without further treatment or loss of time from work, do not have to be reported.

B. Employee Injuries (Workers' Compensation Claims)

If a worker is injured at the project work site, the Contractor must:

1. **IMMEDIATELY** report the incident to the Port Authority WTC Police (212-608-5111/5115), Port Authority Sr. Engineer of Construction (or in their absence, other Port Authority Representatives at the site) and the Senior Project Supervisor.
2. Call the Port Authority O.C.I.P. **TeleClaim Reporting System** toll free at 1-866-844-7703 to report the accident. (Refer to your "Posting Notice for WC Claim Reporting", sample included in Appendix B, for reporting procedure.)
3. You will be asked for the specific "**Line Number**" assigned to you company only for work specifically at the Port Authority/Phoenix WTC-TH project under contract number WTC 284.458.
4. The Claim Specialist will ask questions regarding the accident, then send you a fully complete printed Employer's First Report of Injury (C-2) form. You must verify all the information, sign it and send the form to the NY State Workers' Compensation Board. Be sure to keep a copy for your records.

Important Note: If any information on the Employer's First Report of Injury (C-2) form you receive from the TeleClaim Reporting System needs to be corrected, you must advise Risk Management Planning Group, Inc. (RMPG) at 1-800-549-2723. RMPG handles all aspects of the Workers' Compensation claims for this O.C.I.P. after they have been reported.

C. General Liability Incidents

1. All Bodily Injury or Property Damage Incidents involving the general public or third-party property (rather than damage to the work itself) must be reported immediately to the P.A. Sr. Engineer of Construction and Senior Project Supervisor, or their representative, as well as the Port Authority WTC Police Desk (212-608-5111/5115).
 2. Complete the O.C.I.P. Loss Report Form (see Appendix B) and immediately forward it to Aon for handling. Copies should also be sent to the P.A. Sr. Engineer of Construction and to Port Authority Treasury, Risk Management, Attn.: WTC-TH Claims, and Phoenix Constructors, JV, Attention: Sharon Quinn.
-

Aon Risk Services, Inc. of New York
Management

Port Authority Service Team
300 Jericho Quadrangle, Suite 300
P.O. Box 342
Jericho NY 11753
Attn: Adrian Rabinowitz, V.P.
Tel: (516) 342-2706
Fax: (516) 342-2727

Port Authority Treasury, Risk

225 Park Avenue South, 12th floor
New York, New York 10003
Attn: Jon Huxel, Operations Manager
Tel: (212) 435-5858
Fax: (212) 435-5861

Phoenix Constructors, JV
Attention: Sharon Quinn
115 Broadway – 18th Floor
New York, NY 10006
646-467-7126 Direct
646-300-7898 Facsimile

D. Builder's Risk Claims

Any occurrence that might fall under the Builders Risk coverage should immediately be reported to the P.A. WTC Police Desk (212-608-5111/5115), P.A. Sr. Engineer of Construction, Project Manager, and Sr. Project Supervisor so they may begin their investigation and documentation of the incident.

All claim documentation, including material cost data and the O.C.I.P. Loss Report, should be forwarded to Aon immediately so that a Insurance Carrier's Representative can schedule an inspection of the damage BEFORE repairs are begun.

E. Serious Incident Reporting

1. In the event of, or potential for, a serious incident, immediately notify:
 - a. Port Authority WTC Police Desk (212-608-5111/5115)
 - b. P.A. Sr. Engineer of Construction (Bill Foley, 917-560-5361)
 - c. P.A. Operations Services (Jim Keane, ph:201-216-2821, cell:917-837-1464)
 - d. Aon (Adrian Rabinowitz, 516-342-2706)
 - e. Phoenix Constructors, JV (Sharon Quinn 646-467-7126)

2. Serious Incidents include, but are not limited to:

- a. Fatality.
- b. Any incident that involves an amputation or possible loss of use of a limb or body part.
- c. Incidents that might result in loss of bodily functions, senses, or abilities.
- d. Head injuries resulting in unconsciousness.
- e. Falls from a height.

- f. Major property damage including collapse, explosion, or fire.
- g. Utility disruption causing interruption to facility operations.
- h. Impairment to Facility Fire Protection Systems.
- i. Any incident resulting in injury to two or more workers/individuals.

F. Correspondence and Legal Documents

Immediately send all correspondence or legal documents received relative to injury or damage incidents by Registered Mail/Return Receipt Requested to:

Aon Risk Services, Inc. of New York
Port Authority Service Team
300 Jericho Quadrangle
P.O. Box 342
Attn: Adrian Rabinowitz, V.P.
Jericho, New York 11753
Tel.: (516) 342-2706

Phoenix Constructors, JV
115 Broadway
18th Floor
New York, NY 10006
Attn: Sharon Quinn
646-467-7126 - Direct
646-300-7898 -Facsimile

(SAMPLE)

**Posting Notice for Workers' Compensation
Claim Reporting**

The Port Authority of NY & NJ
WORLD TRADE CENTER TRANSPORTATION HUB
Poenix Contractors JV – PA Contract WTC 284.458
Owner Controlled Insurance Program

Toll Free Phone Number: **1-866-844-7703**

Open 24 hours, 7 Days a week

LINE NUMBER:

Report a Claim:

The main goal of telephone first notice reporting is to promptly and accurately report the employee's injury. This alerts all parties involved of the injury so the employee may receive the appropriate medical care.

Step 1:

Assemble the information that pertains to the injury and the accident. While it is desirable to have answers to every question, it is more important to report the injury in a timely manner.

Step 2:

Call the Port Authority's WTC-TH Workers' Compensation Reporting Center. Answer each question as completely as possible. If you do not have the answer the operator will move to the next question. You will find some of the more important questions listed below. **In addition to these, there may be more questions. Each incident will require approximately 10 minutes to report.**

- Line Number (shown above)
- Employer's name, address, phone, and Federal Tax ID Number
- Employee's name, address, and phone number
- Employee's Social Security number
- Wage information
- Date, time, and location of the accident
- Complete description of the accident
- Complete description of the injury
- Name and phone number of person calling in the report
- Medical status and/or physician's/hospital's name and phone number

Step 3:

Before the call ends the operator will give you a reference number. Please note this number and keep it with your records. It is confirmation that you reported the claim.

NOTE: For first notice reporting only! No claim or payment information is available at this location. For claim or payment information, call RMPG at 1-800-549-2723.

PLEASE POST THIS NOTICE NEAR TELEPHONE

World Trade Center Transportation Hub Project
Phoenix Contractors JV - PA Contract WTC 284-458
GENERAL LIABILITY LOSS REPORT FORM

SECTION 1. CONTRACTOR INFORMATION

NAME of CONTRACTOR: _____ CONTACT PERSON: _____
ADDRESS: _____
PHONE NO.: (_____) _____ SUB-CONTRACT / WORK ORDER NO.: _____

SECTION 2. DESCRIPTION of INCIDENT

DATE of INCIDENT: _____ TIME: _____ EXACT LOCATION of INCIDENT (attach diagram if possible): _____
DESCRIPTION (in detail): _____

SECTION 3. INJURIES

CLAIMANT'S NAME: _____ AGE: _____
ADDRESS: _____ HOME PHONE NO.: (_____) _____
EMPLOYER: _____ OCCUPATION: _____
INJURY: _____
WHERE WAS INJURED TAKEN AFTER INJURY?: _____
WHAT WAS INJURED DOING WHEN HURT?: _____

SECTION 4. DAMAGE to PROPERTY (of others)

WHAT WAS DAMAGED?: _____
OWNER'S NAME: _____ CONTACT (if different) _____
ADDRESS: _____ PHONE: (_____) _____

SECTION 5. WITNESS INFORMATION

WITNESS NAME: _____
ADDRESS: _____ PHONE: (_____) _____

SECTION 6. REMEDIAL ACTION TAKEN (use addition sheet if necessary)

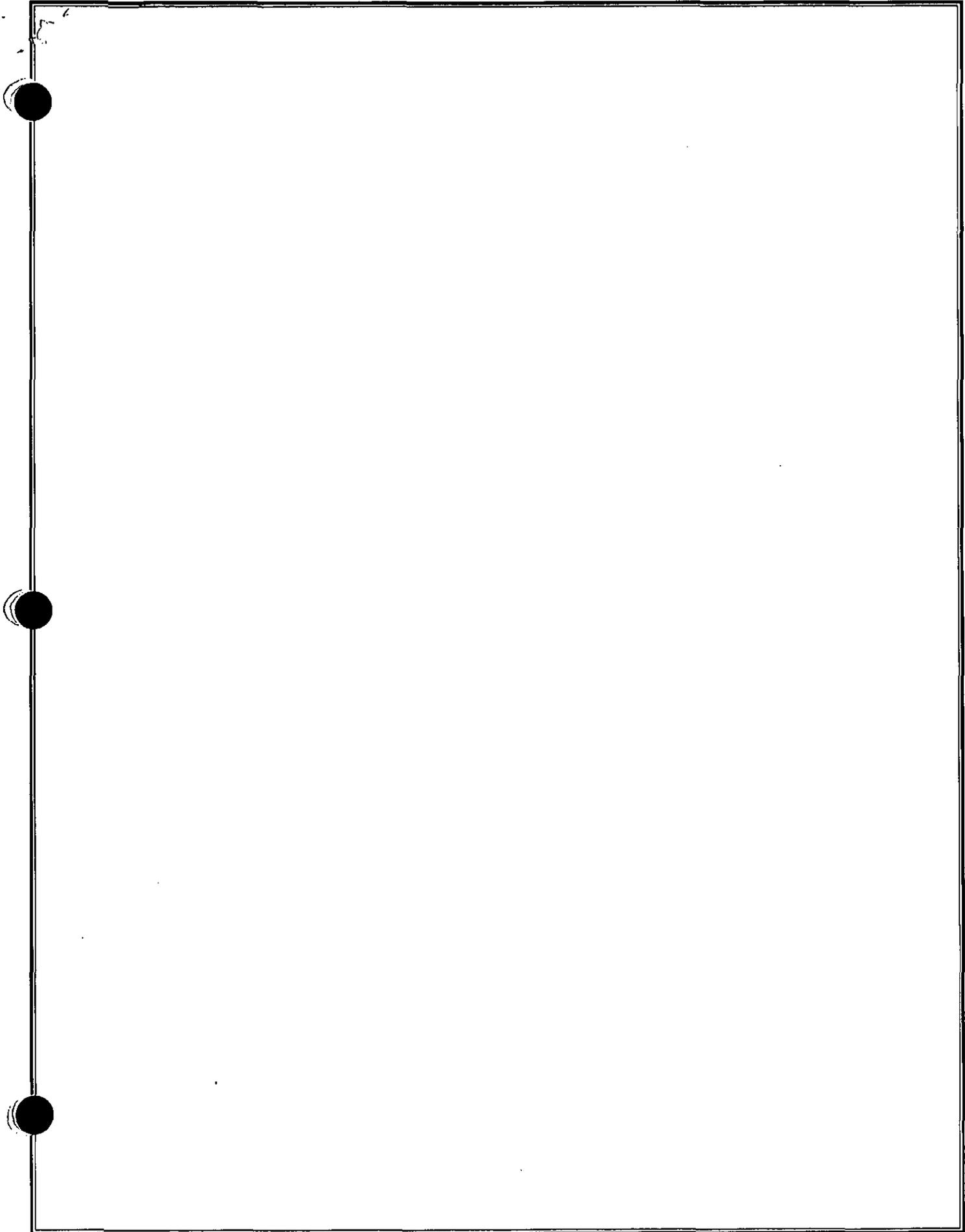
WHEN? WHAT? BY WHOM? ETC.? _____

SECTION 7. VERIFICATION (required)

PRINT NAME: _____ PHONE: (_____) _____
SIGNATURE: _____ DATED: _____

Fax or Mail to: Adrian Rabinowitz, VP
Fax: (516) 342-2702
Phone: (516) 342-2706

Aon Risk Services, Inc. of New York
Port Authority Service Team
P.O. Box 342





OCIP ENROLLMENT APPLICATION

FORM: 11A.1

FORM A

Assignment by Contractor

The undersigned hereinafter called Contractor under **World Trade Center Transportation Hub Project** Contract No. WTC 284.458 between The Port Authority of N.Y. & N.J. and its subsidiary and affiliated companies, and Phoenix Constructors, JV ("Prime Contractor"), in consideration of the agreement of The Port Authority of N.Y. & N.J. to arrange insurance as provided in the Contract for the Prime Contractor, and for each Contractor, thereunder, and for other good and valuable consideration, hereby assigns to **The Port Authority of N.Y. & N.J.** all return premiums, premium refunds, dividends and any monies due or to become due to the undersigned in connection with said insurance as procured by The Port Authority of N.Y. & N.J. and referred to in said Contract.

DCM ERECTORS INC
(Company Name):


(Authorized Signature):

MAY 12 / 09
(Date)

LARRY DAVIS PRESIDENT
(Please Print Name and Title):

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**



OCIP ENROLLMENT APPLICATION

FORM: 11A.1

Aon Form-3 Page 1 of 2

The Port Authority of NY & NJ
Owner Controlled Insurance Program (O.C.I.P.)
Enrollment Information Form

WTC Transportation Hub Project
Phoenix Constructors, JV
WTC 284.458

Examine your current Workers' Compensation and General Liability policies or contact your insurance representative to assist you with completing this form. *** NOTICE *** Enrollment is not automatic and requires the satisfactory completion of Aon Form-A and Form-3. Please refer to the Insurance Guide for Contractors.

A. Contractor Information:

Federal ID # or Soc. Sec. #: _____

Business Information (headquarters)

Contact Information (address questions to...)

Company Name & dba:
Contact Name & Title:

Address:

City, State Zip Code:

Telephone:

Fax:

E-mail Address:

Indicate your Organization's Structure:
Corporation Partnership S-Corporation
Joint Venture Sole Proprietor Other

B. Contract Information:

Sub-contract / Work Order No. (required): _____

Description & Location of Individual Contractor's/Sub-Contractor's Work:

Proposed Contract Price \$: _____

Port Authority Line Number: _____

State Where Work Performed NY

Start Date: _____

Actual
Estimated

Completion Date: _____

Actual
Estimated

C. Contacts:

Table with 5 columns: Position, Name & Title, Phone, Fax, email address. Rows include Project Manger, Project Engineer, Insurance, Contract Admin, Payroll, Claims, Safety Rep.

D. Workers' Compensation Insurance Information for Work Described Above: (attach a separate sheet if necessary)

Table with 4 columns: a State, b Class Code, c Description, d Estimated Payroll. Rows 1 and 2.

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK & PAYMENT



OCIP ENROLLMENT APPLICATION

FORM: 11A.1

3 _____

4 _____

Totals _____

E. Provide your current Workers' Compensation information:

Your WC Insurance Carrier: _____

Policy #: _____ Effective Date: _____ Expiration Date: _____

Experience Modification: _____ Effective Date: _____ Expiration Date: _____

(You may attach a photocopy of your policy and experience modification endorsement)

| | | |
|--|---|--|
|  Page 2 of 2 | The Port Authority of NY & NJ Owner Controlled Insurance Program (O.C.I.P.) <i>Enrollment Information Form</i> | WTC Transportation Hub Project Phoenix Constructors, JV WTC 284.458 |
|--|---|--|

F. State Unemployment Identification No. _____

G. Other Insurance Information

Current GENERAL LIABILITY Carrier: _____

Policy Number: _____

Effective Date: _____ Expiration Date: _____

Current AUTO LIABILITY Carrier: _____

Policy Number: _____

Effective Date: _____ Expiration Date: _____

INSURANCE BROKER: _____

Address: _____

City, State ZipCode: _____

Phone Number: _____

H. Signature: I verify the information presented above and attachments are correct:

Name: _____ Date: _____

(please print)

Title: _____ Signature: _____

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**



OCIP ENROLLMENT APPLICATION

FORM: 11A.1

Fax or Mail to: Victoria M. Lomp, AVP
Aon Risk Services, Inc. of New York
Port Authority Service Team

Phone: (516) 342-2710
Fax: (516) 342-2727

P.O. Box 342
Jericho, New York 11753

Sharon Quinn
Phoenix Constructors, JV
115 Broadway 18th floor
New York, NY 10006

Phone: (646) 467-7126
Fax: (646) 300-7898

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**

11A.1



OCIP CERTIFICATE OF INSURANCE

FORM: 11A.2

ATTACH A COPY OF THE OCIP CERTIFICATE OF INSURANCE TO THIS FORM

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK & PAYMENT**

11A.2



ON-SITE MAN HOUR PAYROLL REPORT

FORM: 11A.3

AON Form-4

The Port Authority of NY & NJ
On-Site Payroll Report

WTC Transportation Hub Project
Phoenix Constructors, JV
WTC 284.458

Complete a Separate Form for Each Contract with The Port Authority of NY & NJ.
Your report is due to the Aon Insurance Administrator, identified below, no later than the 10th day of the succeeding each month.
Complete this report even though no work was performed, enter zero (0) for the Reportable Payroll.
Delay in providing this report may result in payments being withheld.

A. Report Identification

Period Beginning: 1 Period Ending: 2 Year: 3
Contractor: 4
Under Contract with: 5
Sub-contract / Work Order No.: 6

B. Activity Report

Table with 6 columns: a State, b Workers Compensation Class Code, c Work Description, d Man-Hours, e Gross Payroll, f Reportable Payroll. Includes a TOTALS row at the bottom.

*Do not include premium (excess) overtime wages, use straight time wage rates only. You must also comply with all rules set forth by the Workers' Compensation Bureau in the state in which the work is performed.

C. Additional Data Requirements :

1.
2.
3.

D. Signature Block : I verify the information presented above and attachments are correct:

Name: (please print) Date:
Title: Signature:

CHECK IF THIS IS YOUR LAST PAYROLL REPORT. COMPLETE AN AON FORM-5 "NOTICE OF WORK COMPLETION" AND INCLUDE WITH THIS PAYROLL REPORT.

CONDITION PRECEDENT TO PAYMENT



ON-SITE MAN HOUR PAYROLL REPORT

FORM: 11A.3

Fax or Mail to: Victoria M. Lomp, AVP
Aon Risk Services, Inc. of NY
300 Jericho Quadrangle Suite 300, P.O. Box 342
Jericho, New York 11753

Phone: (516) 342-2710
Fax: (516) 342-2727

**CONDITION PRECEDENT TO
PAYMENT**



INCIDENT REPORT

FORM: 11A.4



INCIDENT REPORT

Claimant: Last Name: Enter Last Name First Name: Enter First Name ←
 Company: Select Company ←
 Trade: Select Trade ↑
 Date of Incident: Month: Enter Month Day: Enter Day Year: Enter Year ↑
 Job Name: Select Project ↑
 Job Number: Enter Job Number ← X if JV: _____
 Insurance Carrier: Select Carrier ←
 Investigated by: Last Name: Enter Last Name First Name: Enter First Name ←

INCIDENT TYPE ↓ PLEASE CHECK OUT ONE AND ONLY ONE BOX
 Employee Injury or illness: Brief Description of Incident: _____
 Near Miss: _____
 Environmental Incident: _____

ACCIDENT CLASSIFICATION ↓ PLEASE CHECK OUT ONE AND ONLY ONE BOX
 First Aid Case Date _____
 Recordable Only Full Return To Work Received (if yes attach) _____
 Recordable Restricted Number _____
 Loss Time Total Number of Restricted Days: _____
 Alleged Total Number of Lost Time Days _____
 Non Work Related

DISTRIBUTION Date _____
 Safety Director _____ All incidents require:
 - Paul Haining _____ C2 Complete and attached to report
 Corporate Claims _____
 Project Executive _____ Any Serious / Recordable / Lost Time
 Project Manager _____ also requires:
 Superintendent _____ Root Cause Analysis / CAR complete
 Safety Manager _____
 Owner _____ Any incident that requires medical:
 Other (specify below) _____ Attach Doctor paperwork for each visit

File Complete and Closed _____
WHITESTONE USE ONLY
 INJURY CODE: _____ BODY CODE: _____ INJURY TYPE: _____
 File Complete and Closed Date: _____

CONDITION PRECEDENT TO PAYMENT



INCIDENT REPORT

Claimant Name: _____ Soc. Sec. #: _____

Address: _____

Male Female Phone # _____

Date of Birth: Month: Enter Month Day: Enter Day Year: Enter Year

Date of Hire: Month: Enter Month Day: Enter Day Year: Enter Year

Salary: \$ _____ per hour Trade: _____

Did the incident happen on Phoenix project / premises? Yes No

Was a Construction Plan or Take 5 prepared for this activity? Yes No If yes, attach field copy

Foreman: Last Name: Enter Last Name First Name: Enter First Name

Superintendent: Last Name: Enter Last Name First Name: Enter First Name

Hour of Incident: Enter Minute: Enter AM or PM Enter Time of Incident: _____

Lost Time: Yes No If yes, date last worked: _____

Has the employee returned to work? Yes No If yes, date returned: _____

Did the incident result in death? Yes No If yes, date of death: _____

Type of Injury: Select Type of Injury Body Code: Select Body Part Injury Code: Select Incident Code

Was first aid given on site? Yes No By: _____

Name/Address of Clinic/Hospital: _____

Where did the accident or exposure occur? (specific location)

Describe the activity at time of incident (be specific)

How did the incident occur? (describe fully)

What steps will be taken to prevent recurrence?

Object or substance that directly caused incident:

Forms - Incident Report Rev 6 Oct-08 Page 2

CONDITION PRECEDENT TO
PAYMENT



INCIDENT REPORT

TO BE FILLED OUT BY THE CLAIMANT

Please describe the incident to the best of your ability:

Do you have any suggestions to help prevent future incidents such as this?

Do you have any other discomforts other than the injured area?

Claimant's Signature

Date

TO BE FILLED OUT BY THE WITNESS: If none, please specify so.

Please describe the incident to the best of your ability:

Do you have any suggestions to help prevent future incidents such as this?

Witness Name (Print)

Witness Signature

Date

TO BE FILLED OUT BY THE WITNESS: If none, please specify so.

Please describe the incident to the best of your ability:

Do you have any suggestions to help prevent future incidents such as this?

Witness Name (Print)

Witness Signature

Date

CONDITION PRECEDENT TO
PAYMENT



INCIDENT REPORT

PROJECT INFORMATION

Project Type
 Project Owner
 Standard Time or Overtime
 Total Project Workforce
 Crew Size
 Project Percent Complete

Select Project Type
 Select Owner
 Select Type
 Select Workforce Size
 Select Crew Size
 Select Percent Complete

↑
↑
↑
↑
↑
↑

EMPLOYEE ADDITIONAL INFORMATION

Hrs Worked in Prev. 7 Days
 Days Worked Consecutively (Including Weekends)
 Incident Occurred Day Before/After a Vacation/Holiday
 SSL Rank
 Time Employee has Worked at Project
 Proper PPE Worn at Time of Incident

Select Hours Worked
 Select Days Worked
 Yes/No
 Select SSL Rank
 Select Time Range
 Yes/No

↑
↑
↑
↑
↑
↑

ACTIVITY INFORMATION - X all that apply to Activity.

Architectural - Tiles / Ceiling / Etc.
 Caissons / Cofferdams / Compressed Air
 Concrete Demolition
 Concrete / Masonry Construction
 Confined Space Work
 Driving / Drilling Piles
 Excavations
 Hazwoper
 Housekeeping
 Form Work

Maintenance and Protection of Traffic
 Marine Work
 Material Handling / Storage / Disposal
 Mechanical Pipe / Equipment Installation
 Rebar Installation
 Steel Erection
 Track / Rail Work
 Underground Construction
 Other

Triggers - X for all Hazards present during task work.

Asbestos Exposure
 Chemical Burn
 Confined Space
 Electrocution / Shock
 Exposure to Live Utilities
 Fall from Height
 Flammable / Fire
 Foreign Material in the Face
 Gaseous Environment / Stagnant Air
 Heat Cramps / Exhaustion / Stroke
 Histoplasmosis (Bird Droppings)
 Hypothermia

Inadequate Illumination
 Lacerations / Hand Tool Injuries
 Lead Exposure
 Manlift Work
 Noise Exposure
 Rigging Failure
 Silica Exposure
 Slips, Trips, & Falls
 Spill / Leak
 Strains & Pulled Muscles
 Struck By / Caught Between
 Trenching & Excavation Cave In

CONDITION PRECEDENT TO
 PAYMENT

OFF-SITE STORED MATERIAL

Please submit all of the following forms **PRIOR TO COMMENCEMENT OF WORK** for Subcontractor and ALL Known Lower-tier Subcontractors and Vendors:

- 12.1: Certificate of Stored Materials
 - o Email Description: Cert. Stored Materials 12.1 (Month 20??)
- 12.2: Stored Material Statement
 - o Email Description: Stored Material Statement 12.2 (Month 20??)
- 12.3: Warehouse Receipt
 - o Email Description: Warehouse Receipt 12.3 (Month 20??)
- 12.4: Manufacturer Form
 - o Email Description: Manufacturer's Form 12.4 (Month 20??)
- 12.5: Material Delivery and Storage Plan
 - o Email Description: Material Delivery and Storage 12.5 (Month 20??)

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT** for Subcontractor and ALL Known Lower-tier Subcontractors and Vendors:

- 12.1: Certificate of Stored Materials
 - o Email Description: Cert. Stored Materials 12.1 (Month 20??)
- 12.2: Stored Material Statement
 - o Email Description: Stored Material Statement 12.2 (Month 20??)
- 12.3: Warehouse Receipt
 - o Email Description: Warehouse Receipt 12.3 (Month 20??)
- 12.4: Manufacturer's Form
 - o Email Description: Manufacturer's Form 12.4 (Month 20??)
- 12.5: Material Delivery and Storage Plan
 - o Email Description: Material Delivery and Storage 12.5 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK & PAYMENT**



CERTIFICATE OF STORED MATERIALS

FORM: 12.1

To: _____ ("Owner")
c/o [INSERT COMPANY NAME]

The below listed materials, supplies and equipment (hereinafter defined as material) are stored at

_____ Address
and can be inspected upon reasonable notification:

Table with 4 columns: Stored Material Item - Description, Stored Location, Quantity, Invoice Value *. Contains 4 rows of blank lines for data entry.

*Invoice copy attached

(Append additional sheets as needed.)

Subcontractor's Material Cost \$
Total Cost (Invoice Value Plus Handling Cost) \$

Upon receipt of payment (payment defined as invoiced cost plus material handling cost without overhead and profit) as petitioned by Subcontract's Application For Payment _____ Item 6, dated _____

the undersigned hereby certifies the following:

- 1. Full, clear and unencumbered title and ownership of the material is transferred, assigned and vested to Owner.
2. The material is to be held in trust for the benefit of Owner and for the exclusive use of Owner until such time as the materials are incorporated into the work.
3. A current Certificate of Insurance coverage is attached or presently on file with Phoenix Constructors JV
4. This Certificate Of Stored Materials shall constitute a Bill Of Sale if accompanied by proof of payment for the referenced materials.
As evidence and surety of this obligation and for the protection of Owner, the Subcontractor (see Owner Contract) will provide and maintain an "ALL RISKS" insurance policy for the invoice value of material.

Subcontractor:

Sworn to and subscribed before me this
_____ day of _____, _____
Day Month Year

_____ Company Name

_____ Notary Public

By: _____ Authorized Signature

My commission expires: _____

Title: _____
Date: _____

CONDITION PRECEDENT TO COMMENCEMENT OF WORK & PAYMENT



STORED MATERIAL STATEMENT

FORM: 12.2

Stored Material Statement



Subcontractor Name: _____

| Item No. | Description of Materials Stored | Location Where Stored | Subcontractor or Supplier | Opening Inventory | Additions to Inventory | Usage of Inventory | Closing Inventory | Retained Amount |
|--------------|---------------------------------|-----------------------|---------------------------|-------------------|------------------------|--------------------|-------------------|-----------------|
| 1 | | | | | | | | |
| 3 | | | | | | | | |
| 5 | | | | | | | | |
| 7 | | | | | | | | |
| 9 | | | | | | | | |
| 11 | | | | | | | | |
| 13 | | | | | | | | |
| 15 | | | | | | | | |
| 17 | | | | | | | | |
| 19 | | | | | | | | |
| 21 | | | | | | | | |
| 23 | | | | | | | | |
| 25 | | | | | | | | |
| 27 | | | | | | | | |
| 29 | | | | | | | | |
| Total | | | | | | | | |

CONDITION PRECEDENT TO COMMENCEMENT OF WORK & PAYMENT



Warehouse Receipt Non-Negotiable

RE: Contract#. WTC-284.458GC

This Receipt is to the Order of: PANYNJ & Phoenix Constructors, JV

The warehouse where the goods are stored is located at: _____

The date of issue of the receipt is: _____

The consecutive number of the receipt: _____

The goods received will be delivered to a specified person and/or as notified by: Phoenix Constructors, JV

| The goods stored consists of the following items: | Cust. Item | Qty. | Value |
|---|------------|------|-------|
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |
| | | | |

Signature of Warehouse Authorized Agent _____

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK & PAYMENT**



MANUFACTURER'S FORM

FORM: 12.4

Project: _____

Subcontractor: _____

Date: _____

Trade: _____

Produced by: _____

Name of Manufacturer: _____

Equipment: _____

Delivery Date: _____

1. **Manufacture on Schedule** Yes No

2. **Problems with Manufacture**

Materials Yes No

Awaiting Information Yes No

Awaiting Approval Yes No

Extra Works Yes No

3. **Quality Control**

Compliance with Specifications and Drawings Yes No

Compliance with Scope Yes No

Workmanship Acceptable Yes No

Test Results Received Yes No

Test Results Accepted Yes No

Quality Control Notification Issued Yes No

4. **Non-Compliances Observed**

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK & PAYMENT**

Please submit all of the following forms **PRIOR TO PROPOSAL**:

- 13.1:** Subcontractor Request Form for Subcontractor and ALL known lower tier subcontractors
- 13.2:** Vendor Request Form for ALL known lower tier vendors
- 13.3:** Subcontractor Approval Request Form for Subcontractor and ALL known Lower tier subcontractors

Please submit all of the following forms prior to **EXECUTION OF CONTRACT**:

- 13.1:** *Subcontractor Request Form for all new known lower tier subcontractors*
- 13.2:** Vendor Request Form for all new known lower tier vendors
- 13.3:** Subcontract Approval Request Form for all new known lower tier subcontractors

Please submit all of the following forms **PRIOR TO COMMENCEMENT OF WORK**:

- 13.1:** Subcontractor Request Form for all new known lower tier subcontractors
 - o Email Description: Subcontractor Request 13.1 (Month 20??)
- 13.2:** Vendor Request Form for all new known lower tier vendors
 - o Email Description: Vendor Request 13.2 (Month 20??)
- 13.3:** Subcontract Approval Request Form for all new known lower tier subcontractors
 - o Email Description: Subcontractor Request 13.3 (Month 20??)

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT**:

- 13.1:** Subcontractor Request Form for all new known lower tier subcontractors
 - o Email Description: Subcontractor Request 13.1 (Month 20??)
- 13.2:** Vendor Request Form for all new known lower tier vendors
 - o Email Description: Vendor Request 13.2 (Month 20??)
- 13.3:** Subcontract Approval Request Form for all new known lower tier subcontractors
 - o Email Description: Subcontractor Request 13.3 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**



SUBCONTRACTOR REQUEST FORM

FORM: 13.1

IMPORTANT REQUIREMENT/PREREQUISITE: PRIOR TO THE USE OF A SUBCONTRACTOR THE CONTRACTOR MUST SUBMIT A SUBCONTRACTOR APPROVAL REQUEST FORM (SAR) AND OBTAIN APPROPRIATE APPROVAL FROM THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY FOR YOURSELF AND ALL LOWER TIER SUBCONTRACTORS THAT YOU INTEND TO USE. IN ADDITION TO THE COMPLIANCE WITH ALL OF THE TERMS AND CONDITIONS OF THE CONTRACT, ALL LOWER TIER SUBCONTRACTORS MUST MAINTAIN APPROPRIATE INSURANCE AS SPECIFIED IN EXHIBIT 11 - INSURANCE RIDER.

THIS FORM, ALONG WITH THE SAR, IS TO BE SUBMITTED BY CONTRACTOR WITH ITS PROPOSAL FOR THE CONTRACTOR'S OWN SERVICES. THE CONTRACTOR IS TO SUBMIT THIS FORM, AS WELL AS THE SAR, FOR ALL LOWER TIER SUBCONTRACTORS AT CONTRACT EXECUTION AND THEREAFTER UPDATED ON A MONTHLY BASIS. ALL FORMS ARE CONDITIONS PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, AND PAYMENT, RESPECTIVELY.

CONTRACT _____ NUMBER: _____ DATE: _____

CONTRACTOR: _____

CONTRACTOR HEREBY ADVISES PHOENIX CONSTRUCTORS JV OF ITS INTENT TO SUBCONTRACT WORK UNDER THE ABOVE CONTRACT AS INDICATED BELOW AND REQUESTS PHOENIX CONSTRUCTORS JV'S NOTICE OF NON-OBJECTION TO THIS ACTION.

1. PROPOSED SUBCONTRACTOR'S NAME AND ADDRESS

2. DESCRIPTION OF WORK TO BE PERFORMED BY PROPOSED SUBCONTRACTOR:

3. SCHEDULE:

ATTACH A SCHEDULE OF PROPOSED SUBCONTRACT WORK INCLUDING DESIRED AWARD DATE, MILESTONES, COMPLETION DATE AND MANPOWER AND EQUIPMENT LOADINGS

4. PROPOSED SUBCONTRACTORS QUALIFICATIONS:

PRIOR TO THE USE OF A SUBCONTRACTOR THE CONTRACTOR MUST SUBMIT A SUBCONTRACTOR APPROVAL REQUEST FORM (SAR) AND OBTAIN APPROPRIATE

CONDITION PRECEDENT TO
PROPOSAL, EXECUTION & PAYMENT



SUBCONTRACTOR REQUEST FORM

FORM: 13.1

APPROVAL FROM THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY

ATTACH INFORMATION ON EACH OF THE FOLLOWING

1. PRIOR EXPERIENCE WITH SIMILAR WORK INCLUDING CLIENT AND OR PHOENIX CONSTRUCTORS JV REFERENCES
 2. LICENSES, CERTIFICATES AND REGISTRATIONS HELD BY PROPOSED SUBCONTRACTOR WHICH ARE REQUIRED FOR OR PERTAIN TO THE WORK TO BE PERFORMED.
 3. SUBCONTRACTOR ORGANIZATION FOR ABOVE WORK INCLUDING NAMES AND RESUMES OF KEY PERSONNEL.
 4. DATA THAT SHOWS THAT THE PROPOSED SUBCONTRACTOR HAS ADEQUATE MANPOWER AND EQUIPMENT AVAILABLE FOR THE WORK.
 5. SUBCONTRACTORS SAFETY PROGRAM, STATISTICS.
 6. MOST RECENT ANNUAL REPORT, CERTIFICATE OF PAYMENT BEHAVIOR ETC.
5. CONTRACTOR AGREES THAT IT WILL:
1. SUBMIT A SUBCONTRACTOR APPROVAL REQUEST FORM AND OBTAIN ALL APPROPRIATE APPROVALS FROM THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY FOR SUCH SUBCONTRACTOR PRIOR TO THE SUBCONTRACTOR'S COMMENCEMENT OF WORK ON THE SITE
 2. INCLUDE ALL APPLICABLE CONTRACT REQUIREMENTS IN ITS CONTRACT WITH PROPOSED SUBCONTRACTOR.
 3. PROVIDE SUBCONTRACTOR WITH ALL INFORMATION THAT IT RECEIVES ON SITE WORK RULES, SAFETY REQUIREMENTS AND OTHER WORK CONDITIONS.
 4. PROVIDE SUBCONTRACTOR'S COMPLETED INSURANCE CERTIFICATE TO PHOENIX CONSTRUCTORS JV PRIOR TO MOBILIZATION OF SUBCONTRACTOR AT THE SITE.
 5. RETAIN FULL RESPONSIBILITY FOR THE PERFORMANCE OF THE ABOVE REFERENCED CONTRACT.

| | CONTRACTOR | PHOENIX CONSTRUCTORS JV NOTICE OF NON-OBJECTION |
|---------|------------|--|
| BY : | _____ | _____ |
| NAME : | _____ | _____ |
| TITLE : | _____ | _____ |
| DATE : | _____ | _____ |

**CONDITION PRECEDENT TO
PROPOSAL, EXECUTION & PAYMENT**



SUBCONTRACTOR REQUEST FORM

FORM: 13.1

**CONDITION PRECEDENT TO
PROPOSAL, EXECUTION & PAYMENT**



SUBCONTRACTOR REQUEST FORM

FORM: 13.1

**CONDITION PRECEDENT TO
PROPOSAL, EXECUTION & PAYMENT**



SUBCONTRACTOR REQUEST FORM

FORM: 13.1

**CONDITION PRECEDENT TO
PROPOSAL, EXECUTION & PAYMENT**



VENDOR REQUEST FORM

FORM: 13.2

IMPORTANT REQUIREMENT/PREREQUISITE: PRIOR TO THE USE OF A LOWER TIER VENDOR, THE CONTRACTOR MUST SUBMIT THIS VENDOR REQUEST FORM. IN ADDITION TO THE COMPLIANCE WITH ALL OF THE TERMS AND CONDITIONS OF THE CONTRACT, ALL LOWER TIER VENDORS MUST MAINTAIN APPROPRIATE INSURANCE AS SPECIFIED IN EXHIBIT 11 - INSURANCE RIDER.

THE CONTRACTOR IS TO SUBMIT THIS FORM FOR ALL LOWER TIER SUBCONTRACTORS AT CONTRACT EXECUTION AND THEREAFTER SUBMITTED PRIOR TO ANY LOWER-TIER VENDOR BEING AWARDED A PURCHASE ORDER. ALL FORMS ARE CONDITIONS PRECEDENT TO CONTRACT EXECUTION AND PAYMENT, RESPECTIVELY.

CONTRACT _____ NUMBER: _____ DATE: _____

VENDOR: _____

FEDERAL TAX ID #: _____

CONTRACTOR HEREBY ADVISES PHOENIX CONSTRUCTORS JV OF ITS INTENT TO USE THE SERVICES OF THE AFOREMENTIONED VENDOR AS INDICATED BELOW AND REQUESTS PHOENIX CONSTRUCTORS JV'S NOTICE OF NON-OBJECTION TO THIS ACTION.

1. PROPOSED VENDOR'S NAME AND ADDRESS

2. DESCRIPTION OF THE SERVICES TO BE PERFORMED BY PROPOSED VENDOR:

3. SCHEDULE:

IF APPLICABLE, ATTACH A SCHEDULE OF VENDOR'S SERVICES INCLUDING DESIRED AWARD DATE, MILESTONES, COMPLETION DATE AND MANPOWER AND EQUIPMENT LOADINGS

4. PROPOSED VENDORS QUALIFICATIONS:

ATTACH INFORMATION ON EACH OF THE FOLLOWING

- 1. PRIOR EXPERIENCE WITH SIMILAR SERVICES INCLUDING CLIENT AND OR PHOENIX CONSTRUCTORS JV REFERENCES

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK & PAYMENT



VENDOR REQUEST FORM

FORM: 13.2

- 2. LICENSES, CERTIFICATES AND REGISTRATIONS HELD BY PROPOSED VENDOR WHICH ARE REQUIRED FOR OR PERTAIN TO THE SERVICES TO BE PERFORMED.
 - 3. VENDOR ORGANIZATION FOR ABOVE WORK INCLUDING NAMES AND RESUMES OF KEY PERSONNEL.
 - 4. DATA THAT SHOWS THAT THE PROPOSED VENDOR HAS ADEQUATE MANPOWER AND EQUIPMENT AVAILABLE FOR THE WORK.
 - 5. VENDOR'S SAFETY PROGRAM, STATISTICS.
 - 6. MOST RECENT ANNUAL REPORT, CERTIFICATE OF PAYMENT BEHAVIOR ETC.
5. PLEASE LIST THE FOLLOWING BELOW FOR ALL PRINCIPALS:

| | | |
|------|---------|-----------|
| NAME | _____ | PHONE NO. |
| | _____ | |
| | ADDRESS | |
| | _____ | |

| | | |
|------|---------|-----------|
| NAME | _____ | PHONE NO. |
| | _____ | |
| | ADDRESS | |
| | _____ | |

| | | |
|------|---------|-----------|
| NAME | _____ | PHONE NO. |
| | _____ | |
| | ADDRESS | |
| | _____ | |

| | | |
|------|---------|-----------|
| NAME | _____ | PHONE NO. |
| | _____ | |
| | ADDRESS | |
| | _____ | |

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK & PAYMENT

5. CONTRACTOR AGREES THAT IT WILL:

1. INCLUDE ALL APPLICABLE CONTRACT REQUIREMENTS IN ITS PURCHASE ORDER WITH PROPOSED VENDOR.
2. PROVIDE VENDOR WITH ALL INFORMATION THAT IT RECEIVES ON SITE WORK RULES, SAFETY REQUIREMENTS AND OTHER WORK CONDITIONS.
3. PROVIDE VENDOR'S COMPLETED INSURANCE CERTIFICATE TO PHOENIX CONSTRUCTORS JV PRIOR TO MOBILIZATION OF VENDOR AT THE SITE.
4. RETAIN FULL RESPONSIBILITY FOR THE PERFORMANCE OF THE ABOVE REFERENCED CONTRACT.

| | CONTRACTOR | PHOENIX CONSTRUCTORS JV NOTICE OF NON-OBJECTION |
|---------|------------|---|
| BY : | _____ | _____ |
| NAME : | _____ | _____ |
| TITLE : | _____ | _____ |
| DATE : | _____ | _____ |

**CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION,
COMMENCEMENT OF WORK & PAYMENT**



SUBCONTRACTOR APPROVAL REQUEST FORM

FORM: 13.3

PA 2337/10-03 THE PORT AUTHORITY OF NEW YORK & NEW JERSEY SUBCONTRACTOR APPROVAL REQUEST CONTRACT No. WTC-254-458GC

- 1 NO PERFORMANCE AND PAYMENT BOND IS REQUIRED TO BE PROVIDED BY THE GENERAL CONTRACTOR
- 2 A PERFORMANCE AND PAYMENT BOND IS REQUIRED TO BE PROVIDED BY THE GENERAL CONTRACTOR
- 3 PARTICIPATION IN NEW YORK STATE APPRENTICESHIP PROGRAM IS REQUIRED for Subcontracts over \$1 million

Part One: (To be completed by General Contractor)
 Prime Contractor's Name: Phoenix Constructors, JV Telephone No. (212) 618-5800
 Address: 115 Broadway, New York, NY 10005

Facility: World Trade Center Transportation HUB
 Contract Title _____
 Request Approval of:
 Subcontractor's Name: _____
 Address: _____
 Telephone No. _____
 Amount of Sub-Contract
 Materials \$ _____
 Labor \$ _____
 Total \$ _____

Type of Work: _____
 Has the Subcontractor done work under Port Authority contract? Yes No
 Est. Start Date _____ Actual Start Date _____

Part Two (To Be Completed by General Contractor)
Subcontractor References:
 PA Contract Nos. or Three References (Including Name and Telephone Numbers of Owner Rep. Contract Numbers and Estimate of Work Performed).

 Signature of Prime Contractor's Officer _____ Title _____ Date _____

Part Three (To Be Completed by Subcontractor)
Notification To Contractor:
 The Subcontractor should note that it has no recourse against the Port Authority for payments due from the General Contractor under the subcontract.
 If box 1 is checked the Subcontractor should also note that the General Contractor has NOT been required to furnish a Performance Bond in connection with the contract.
 If box 2 is checked the Subcontractor should also note that the General Contractor has been required to furnish a Performance Bond in connection with the contract. A copy of such Bond is on file in the Office of the Secretary of the Port Authority.
Subcontractor Certification:
 By executing this form you certify that you have not been indicted or convicted in any jurisdiction or suspended, debarred or otherwise disqualified from entering into contracts with any governmental agency or had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; and further, that you have not taken any action which would be proscribed by the current Port Authority Code of Ethics or entered into any arrangement for the payment of a fee of any kind to any person or agency (other than a bona fide established commercial or selling agency maintained by you for the purpose of securing business) to solicit or secure the Authority's approval or you as a subcontractor. This Certification shall be deemed, if made by a Corporation, to include the officers, directors and shareholders with an equity interest in excess of 10% and to have been authorized by your Board of Directors and, if a partnership, to be made by each partner. If you cannot so certify, then you shall submit to the contractor submitting this Request an explanatory statement directed to the Port Authority setting forth in detail why the certification cannot be made. The foregoing certification or signed statement shall be deemed to have been made by you with full knowledge that it would become a part of the records of the Authority and that the Authority will rely on its truth and accuracy in approving you as a subcontractor. Knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal Law, Section 175.30 et seq.)

 Signature of Subcontractor's Officer _____ Date _____

 Title _____

Part Three A (To Be Completed by Subcontractor only if box 3 is checked for New York State Apprenticeship program AND in addition to certification at left)
Subcontractor Certification:
 You participate in a State registered apprenticeship program unless you are certified by the Port Authority as a Minority Business Enterprise, Women-Owned Business Enterprise, Small Business Enterprise firm that is located in New York and New Jersey and whose average gross income for the past three years did not exceed \$8 million annually) or Disadvantaged Business Enterprise and the value of the subcontract is less than \$1 million. Participation in such an apprenticeship program shall mean that you either (1) are signatory to a collective bargaining agreement with a labor organization which sponsors an apprenticeship program registered in New York State or (2) individually sponsors an apprenticeship program registered in New York State.
 If you cannot so certify, then you shall submit to the contractor submitting this Request an explanatory statement directed the Port Authority setting forth in detail why the certification cannot be made. The foregoing certification or signed statement shall be deemed to have been made by you with full knowledge that it would become part of the records of the Authority and that the Authority will rely on its truth and accuracy in approving you as a subcontractor. Knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., N.Y. Penal Law, Section 175.30 et seq.)

 Signature of Subcontractor's Officer _____ Date _____

 Title _____

Part Four: (To be Completed by Port Authority)
 Subject to the provisions of subject contract, the subcontractor submitted for approval on this application is hereby disapproved
 Subject to the provisions of the subject contract, the subcontractor submitted for approval on this application is hereby approved for performance of work at the site only. Any materials to be furnished by this subcontractor shall be subject to inspection and approval as by the contract.

 Date _____ Signature _____ Title _____

Part Five: (For Port Authority Use Only)
 Subcontractor Certification/Status (check all that applies) Initial/Date _____
 MBE DBE LBE
 WBE SBE NONE

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK, AND PAYMENT

INTENTIONALLY OMITTED



EXHIBIT 15A



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Exhibit 15A is included

In Enclosed CD

FLUOR.

Slattery
SKANSKA

GRANITE
CONSTRUCTION
NORTHEAST, INC.


Bovis
Lend Lease



EXHIBIT 15B



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Exhibit 15B Is Included

In Enclosed CD

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CONSTRUCTION
NORTHEAST, INC.


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EXHIBIT 15C



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Exhibit 15C is included

In Enclosed CD

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EXHIBIT 15D



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

**Exhibit 15D is included
in Enclosed CD**

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EXHIBIT 15E



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Exhibit 15E is Included

in Enclosed CD

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SUSTAINABILITY

Please submit all of the following forms for **PRIOR TO PROPOSAL**:

- 15F.1: Sustainability Compliance Statement**

Please submit all of the following forms **PRIOR TO COMMENCEMENT OF WORK**:

- ALL Mandatory Documents Enumerated in Clause 1 of Exhibit 15F**
 - o Email Description: Sustainability (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**



EXHIBIT 15F, SUSTAINABILITY COMMITMENTS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

SUSTAINABILITY COMMITMENTS

The World Trade Center Transportation Hub Projects shall be constructed by Phoenix Constructors and all of its subcontractors in a manner that is consistent with a Sustainable or "Green" construction practices.

As Sustainability is mandated by the Port Authority as well as the Federal Transit Authority (FTA), no relaxation or reduction of these requirements will be accepted; further it is assumed that each subcontractor had provided sufficient training to their crews as well as provide appropriate and ongoing supervision and management to achieve the project sustainability objectives.

1. GENERAL SUSTAINABILITY REQUIREMENTS

The sustainable requirements that each subcontractor is required to adhere to shall be as documented herein as well as within the contract documentation, specifically specification section number 01352 titled "Sustainable Design Requirements", which can be found in the enclosed CD under the file entitled "Exhibit 15F Sustainability Requirements."

In addition, all subcontractors are expected to become familiar with a Port Authority reference documents titled "Sustainable Design Guidelines for WTC Redevelopment Projects" (SDG) dated March 25, 2005; this reference document is available through the LMDC website at:

http://www.renewnyc.com/plan_des_dev/design_guidelines_manual.asp

The subcontractor is responsible to develop and submit the following Sustainable Plans as is relevant for their scope of work:

- Construction Environment Plan
- Construction Storm Water Runoff and Pollution Prevention Plan
- Waste Material Management Plan (for landfill diversion)
- Construction Indoor Air Quality Management Plan
- Material Management Plan (for use of Recycled, locally-harvested and low-emitting materials including certified wood products)

2. SUSTAINABLE SUBMITTAL REQUIREMENTS

Sustainable Design Submittals are required for all installed materials included under Divisions 2 through 14. Sustainable Design Submittals are also required select materials in Division 15 and 16. Each Sustainable Design Submittals shall include the Sustainable Design Materials Certification Form (SDMCF) which can be found in the enclosed CD under the file entitled "Exhibit 15F Sustainability Requirements" after page 13.



EXHIBIT 15F, SUSTAINABILITY COMMITMENTS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

All values from approved Sustainable Design Materials Certification Forms and submittals shall be tabulated per division once per month and submitted to Phoenix Constructors Sustainable Manager for review.

3. SUSTAINABLE PROGRESS REVIEW MEETINGS

Subcontractor shall be available to attend regular Sustainable Progress Review Meetings and be prepared to discuss progress to date as well as issue a forecast of Sustainable submittals and sustainable field operations.

End of Sections



EXHIBIT 15F, SUSTAINABILITY COMMITMENTS
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

SUSTAINABILITY COMMITMENTS COVER SHEET



SUSTAINABILITY COMPLIANCE STATEMENT

FORM: 15F.1

PLEASE PREPARE ON LETTERHEAD

On behalf of the Subcontractor, I LARRY DAVIS (Principal/Officer Name and Title) am in a position to certify and acknowledge that the Subcontractor DCM ERECTORS INC (Name of Subcontractor) understand the terms of the Sustainability Commitments and Requirements enumerated in Exhibit 15F. Furthermore, I certify that the Subcontractor will be in compliance with all Sustainability Commitments and Requirements imposed on them by all of the following regulations, including but not limited to the Port Authority Documents and Federal Transit Authority Regulations, as well as any mandated Clauses as per the Contract Documents.

LARRY DAVIS
Principal/Officer Printed Name
[Signature]
Principal/Officer Signature
MAY 12 / 09
Date



**HAZARDOUS AND TOXIC SUBSTANCES DISCLOSURE
REQUIREMENTS**

CHECKLIST 16

Please submit all of the following forms for **PRIOR TO PROPOSAL** for Subcontractor and ALL known lower tier subcontractors and vendors:

- 16.1: Hazardous and Toxic Substances Disclosure Requirements:**
 - Contractor Disclaimer Statement AND/OR
 - Material Safety Data Sheet, Form OSHA-20

Please submit all of the following forms **PRIOR TO CONTRACT EXECUTION:**

- 16.1: Hazardous and Toxic Substances Disclosure Requirements:**
 - Contractor Disclaimer Statement (for ALL new known subcontractors and vendors); AND/OR
 - Material Safety Data Sheet, Form OSHA-20 (for subcontractor and ALL known lower tier subcontractors and vendors)

Please submit all of the following forms **PRIOR TO COMMENCEMENT OF WORK:**

- 16.1: Hazardous and Toxic Substances Disclosure Requirements:**
 - Contractor Disclaimer Statement (for ALL new known subcontractors and vendors); AND/OR
 - Material Safety Data Sheet, Form OSHA-20 (for subcontractor and ALL known lower tier subcontractors and vendors)
 - Email Description: Hazardous and Toxic Substance 16.1 (Month 20??)

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT:**

- 16.1: Hazardous and Toxic Substances Disclosure Requirements:**
 - Contractor Disclaimer Statement (for ALL new known subcontractors and vendors); AND/OR
 - Material Safety Data Sheet, Form OSHA-20 (for subcontractor and ALL known lower tier subcontractors and vendors)
 - Email Description: Hazardous and Toxic Substance 16.1 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO PROPOSAL,
CONTRACT EXECUTION, COMMENCEMENT OF WORK AND PAYMENT**



HAZARDOUS & TOXIC DISCLOSURE REQUIREMENTS

FORM: 16.1



HAZARDOUS AND TOXIC SUBSTANCES DISCLOSURE REQUIREMENTS

CONTRACTOR:
ATTENTION:
ADDRESS:
ZIP:
PHONE NUMBER: ()

HAZARDOUS AND TOXIC SUBSTANCES DISCLOSURE REQUIREMENTS

The Occupational Safety and Health Act (OSHA) of 1970, and OSHA regulation 29 CFR 1910.1200 contain hazardous and toxic substances reporting requirements. Contractor shall be required to provide the following documents, as applicable, to Company at the time of Contract award, if possible, but no later than ten (10) days thereafter.

MATERIAL SAFETY DATA SHEET, FORM OSHA-20

The Material Safety Data Sheet Form OSHA-20, or equivalent, is required for each material containing a chemical substance which: (i) is regulated by any Federal law or rule, (ii) is listed in the latest edition of the National Institute for Occupational Safety and Health Registry of Toxic Effects of Chemical Substances, (iii) testing has yielded positive evidence of an acute or chronic health hazard, or (iv) has a Material Safety Data Sheet available to the Contractor indicating that the material may pose a hazard to human health.

- AND/OR -

CONTRACTOR DISCLAIMER STATEMENT

Contractor may alternatively submit a disclaimer statement set forth below:

HAZARDOUS AND TOXIC SUBSTANCES DISCLAIMER
The Contractor hereby swears or affirms that the material furnished on this Contract does not, to its best knowledge, contain any toxic substances or harmful physical agents as defined under 29 CFR 1910.1200. In the event Contractor discovers that such hazardous and toxic substances or agents are to be supplied, an appropriate Material Safety Data Sheet (Form OSHA-20), or equivalent, shall be immediately supplied to the Company.
Signature of Contractor's Company Officer Date
Title

NONCOMPLIANCE

Except as specifically allowed by Company, any goods, or process of whatever kind or type furnished by Contractor shall be considered to be non-compliant with the Contract unless such goods, or process contains zero percent asbestos and zero percent refractory ceramic fibers. In the event, based on conditions stated above, shipments are allowed containing asbestos; Contractor shall clearly mark all containers holding products containing asbestos or refractory ceramic fibers, and such containers shall be sealed in a manner adequate to prevent leakage of asbestos or refractory ceramic fibers from such containers.

Contractor assumes all responsibility for its failure to supply Company a complete Material Safety Data Sheet, Form OSHA-20 or equivalent, or a Contractor Disclaimer Statement, as applicable.

CONTRACT MODIFICATIONS

Contract Modifications which increase or decrease quantities or cancel items do not require the Contractor to submit additional Material Safety Sheets (Form OSHA-20), or equivalent, or Disclaimer Letters. However, Contractor shall submit a new Material Safety Data Sheet (Form OSHA-20), or equivalent, or a new Disclaimer Letter for all items which are revised or added by a contract modifications within ten (10) days after receipt of the contract modification unless waived in writing by Company.

CONDITION PRECEDENT TO PROPOSAL, CONTRACT EXECUTION, COMMENCEMENT OF WORK & PAYMENT 16.1



EXHIBIT 17 — TEMPORARY FACILITIES
CONTRACT NO.: W0TC-GCI-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE-
STRUCTURAL STEEL AND METAL DECK

TEMPORARY FACILITIES

All *Temporary Project Site Facilities*, including but not limited to, storage, sheds, shanties, material storage rooms, field offices, power, hoists, scaffolding, cold weather protection, etc, and any necessary or utilized offsite field office rental or purchase, (all being referred to as "Temporary Facilities") required in performing the Work shall be furnished by, and at the sole expense of the Subcontractor.

Subcontractor agrees to furnish, at Subcontractor's expense, sufficient Temporary Facilities for the efficient performance of the Work. If on site, Subcontractor agrees to place its Temporary Facilities in locations designated by Contractor. When it becomes necessary, in the opinion of the Contractor, for Subcontractor to provide Temporary Facilities, Subcontractor will do so in an expeditious manner and at no additional cost. On site Temporary Facilities shall be equipped with fire extinguishers and shall be of fireproof material only, such as concrete, gypsum block, rated drywall, or sheet metal. All necessary offsite office space rental, lease or purchase, or other agreement relating to the utilization of Real Property, and any and all costs relating to such, shall be at the sole cost and expense of the Subcontractor and such costs must be included in the Subcontractor's Proposal if such facilities are necessary.



EXHIBIT 18



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Exhibit 18 is included

in Enclosed CD

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CONSTRUCTION
NORTHEAST, INC.


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Lend Lease



EXHIBIT 19A



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Exhibit 19A is included

In Enclosed CD

FLUOR.

Slattery

SKANSKA

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CONSTRUCTION
NORTHEAST, INC.


Bovis
Lend Lease



EXHIBIT 19B



115 Broadway 18th Floor

New York, NY 10006

Tel. 212-616-5800

Exhibit 19B is included

in enclosed CD

FLUOR.

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NORTHEAST, INC.


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Lend Lease

**WTC PATH ID GUIDELINES
FOR SUBCONTRACTORS**

Please submit the following form **PRIOR TO COMMENCEMENT OF WORK FOR ALL WORKERS:**

- Form 19C.1:** WTC PATH ID Checklist for Subcontractors
 - o Email Description: WTC ID Badge 19C.1 (Month 20??)
- Form 19C.2:** WTC PATH ID Security Identification Form
 - o Email Description: WTC ID Badge 19C.2 (Month 20??)

Please submit the following form on a **MONTHLY BASIS PRIOR TO NEW INDIVIDUALS WORKING ON SITE AND PRIOR TO PAYMENT:**

- Form 19C.1:** WTC PATH ID Checklist for Subcontractors
 - o Email Description: WTC ID Badge 19C.1 (Month 20??)
- Form 19C.2:** WTC PATH ID Security Identification Form
 - o Email Description: WTC ID Badge 19C.2 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK & PAYMENT**



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

The Port Authority of New York and New Jersey has established a new program to enhance the background screening process, which all individuals requiring access to the site must participate in. The Port Authority of New York and New Jersey, assisted by the Secure Worker Access Consortium (S.W.A.C.) has implemented a program management, database administration, and identification card/badge processing system.

As one of your contractual obligations, in order for you, your employees, and any of your Subcontractors and Suppliers to gain access to the World Trade Center Site to perform any of your associated work, you must obtain appropriate Site Security Badging and comply with the following WTC Path ID Guidelines for Subcontractors as set forth herein and as established by The Port Authority of New York and New Jersey and S.W.A.C. PLEASE NOTE that in order to obtain a permanent security badge, an individual must be previously entered into the SWAC system. Furthermore, in order to obtain a day pass ALL individuals must have been previously entered into the SWAC system. Only a maximum of five day passes will be issued for any individual.

Subcontractors and their respective employees, subcontractors, and suppliers must comply with all security requirements set forth in this Subcontract including this Exhibit 19C "WTC PATH Identification Guidelines For Subcontractors;" and all additional security requirements imposed by The Port Authority of New York and New Jersey, Phoenix Constructors, or any additional party that Phoenix Constructors in their sole determination believes shall have the ability to request such requirements. The Subcontractor shall be solely responsible for all costs and/or expenses associated with the security, enrollment and identification procedures and requirements set forth within this Subcontract including but not limited to the actual Secure Worker Access Consortium (SWAC) enrollment cost of \$250.00 per individual and all associated costs associated with such enrollment.

If there are any questions regarding such badging requirements or methodology for gaining Site Security badges, contact Phoenix Constructors JV's Designated Security Officer (DSO):

Suzanne Dobbins-Smith (DSO)
(646) 467 - 7125 (direct)
(212) 616 - 5800 (receptionist)
suzanne.dobbins@phoenixconstructors.com

I. SUBCONTRACTOR Company Approval

Once a Subcontractor is granted a contract the Subcontractor Company must submit, via email, the following company information as supplied on the Security Identification Form 19C.2, to Phoenix Constructors JV's (PCJV) Designated Security Officer (DSO), **Suzanne Dobbins-Smith at Suzanne.dobbins@phoenixconstructors.com**. Upon receipt the DSO will then submit the form to the PANYNJ WTC Site Manager, Davella May.



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

II. WTC Site Manager authorizes background screening and WTC ID Badge creation:

- Sends letter to Subcontractor with instructions and next steps regarding Secure Worker Access Consortium (SWAC)
- Sends letter to WTC Security Office (FJC Issuing Officer in Charge) authorizing company name to be entered into access control database, provides names of Issuing Officers, provides authorized access areas, etc., and authorizes the issuance of WTC Site IDs

III. SWAC On-Line Application (Setup of Subcontractor Account - Overall Subcontractor Membership/Enrollment - Corporate Member Enrollment)

Visit the web site: www.secureworker.com.

Once there you will click on the big blue "ENROLL NOW" Button on the right of the web page. Select "CORPORATE MEMBERSHIP APPLICATION." This should be filled out by the Issuing Officer/Designated Security Officer (Subcontractor DSO). **Do not enter a credit card number...this effort is funded by Phoenix Constructors. Read through the entire instruction before processing any individual applications.**

Select "CONTRACTOR, GC, A/E" and fill in all of the spaces with a red asterisk and click "CONTINUE."

1. Subcontractor will receive an email from SWAC immediately following the "CORPORATE MEMBERSHIP APPLICATION" submission. This email will contain a Sponsor Control ID. **Do not use this sponsor control ID number.**
2. Subcontractor must forward this email to Suzanne Dobbins-Smith (PCJV DSO) at Suzanne.dobbins@phoenixconstructors.com to enable the subcontractor account to be linked to the Phoenix-funded account. Once the accounts are linked inform them of their submitted application.
3. PCJV DSO allots money to the subcontractor account based on forecast of potential applicants for that Subcontractor.
4. Phoenix-sponsored Sponsor control ID is issued to Subcontractor via email. This number begins with PHO. **Use this sponsor control ID number.**
5. Subcontractor DSO completes his/her own Individual Membership Application using the Phoenix-sponsored Sponsor control ID. (See next step IV)
6. Subcontractor DSO contacts Bill Campbell (see contacts last page) of SWAC to request a login ID and Password.
7. When a security clearance of HIGH is returned - Subcontractor DSO visits VIP Site trailer on Tuesday, Thursday or Friday to show ID documents to SWAC Agent. (See list of Required Identification Documents on page 5 of this document).



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

IV. SWAC On-Line Application (Enrollment for Subcontractor's Employees - Individual Background Screenings)

Visit the web site: www.secureworker.com.

Once there you will click on the big blue "**ENROLL NOW**" Button on the right of the web page.

Select: *Individual Membership Application* and then click **ENROLL**.

Select *Site Worker* then Scroll down and Select *Corporate Sponsorship*.

In the box next to Corporate Sponsorship enter the *Corporate Sponsorship ID* that was provided to you by the PCJV DSO.

Enter the text from the image provided then click "**CONTINUE**"

Enter your social security number, birth date and mother's maiden name.

Choose the Port Authority of NY & NJ and select Contractor then click "CONTINUE"

After you have completed the information on this page (using the documents attached as a "go-by") you will select "**SUBMIT**"

There are a series of pages after this, please be sure to read each one carefully.

The next page is "**AUTHORIZATION AND RELEASE FOR THE PROCUREMENT OF A CRIMINAL HISTORY BACKGROUND REPORT**"

Please read and select "Yes, I agree."

The next page is "**A SUMMARY OF YOUR RIGHTS CRIMINAL HISTORY BACKGROUND REPORT**"

Please read and select "Yes, I agree."

The next page is "**CRIMINAL HISTORY BACKGROUND REPORT APPEALS PROCESS**"

Please read and select "Yes, I agree."

The next page lists the *TYPES OF IDENTIFICATION YOU MUST SHOW* in order to obtain the SWAC Card.

Please *select what you will show* and the click **CONTINUE**.



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

The next page is where you will select the *WORLD TRADE CENTER COMPLEX* as the processing center and click *CONTINUE*.

The last page is "Membership Acceptance Form"

Please read and select "Yes, I agree."

Your background will be screened within three (3) business days.

Please **CONTACT THE SUBCONTRACTOR DSO IN TWO TO THREE BUSINESS DAYS** after you have submitted your application in order to verify the status of your submission



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

V. Document Verification:

Applicants then *bring their documents to be verified by a SWAC agent*. Agents are available on Tuesdays and Thursdays in the VIP trailer at the WTC Site. Applicant must physically come to the site to **SHOW THEIR ID TO THE SWAC AGENT**.

The S.W.A.C. Processing Center is located on Trinity Place, between Rector Street and Exchange Place, directly across from Syms. The entrance is a black door just north of the Northeast corner of Trinity and Exchange Places. There are signs on the door. They are operational on Tuesday, Thursday, and Friday from 6:00 am to 11:30 am or sometimes at 2:00 pm. This will better coincide with the WTC training that takes place each Tuesday and Thursday. **PLEASE CONTACT SWAC** when you plan to visit, to have your name added to the list of authorized people to access the Site.

Once you have shown your ID to the SWAC Agent you will be able to **TAKE THE SITE SECURITY TRAINING** required to obtain a Site Pass.

These classes are held every Tuesday, Wednesday, and Thursday at 7:30 AM, 10:00 AM, or sometimes at 2:00 PM. The training class schedule will be modified in the future and subcontractors will be appropriately notified of these changes. **PLEASE NOTIFY YOUR DSO** as to when you plan to attend as the DSO will have to send your name over as authorized to attend the class. This class is held in the same location as the SWAC Processing Center.

After you complete the training you will be badged at the FJC Security trailer. **BRING YOUR IDENTIFICATION DOCUMENTS** - You will need to have your ID documents with you in order to obtain your Site Pass.

- The following original Government issued identification documentations must be presented at the SWAC Personnel Processing Center a SWAC badge can be issued:

Any one (1) of the following ORIGINAL identification documents MUST be presented to the Secure Worker Access Consortium trusted agent prior to the Background Screening applications being accepted for processing:

- U.S. Passport (unexpired or expired)
- U.S. Birth Certificate (original or certified copy)
- Unexpired Foreign Passport (with I-551 stamp or attached INS Form I-94 indicating unexpired employment authorization)
- Alien Registration Receipt Card (INS Form I-551 with photograph)
- Unexpired Temporary Resident Card (INS Form I-688)
- Unexpired Employment Authorization Card (INS Form I-688A)



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

- **AND** any two (2) of the following original forms of Government issued identification, at least one (1) of which is from Column A, MUST be presented to the SWAC Processing Clerk prior to the Background Screening application being accepted for processing.

(IF TWO OR MORE ARE FROM COLUMN A THEN COLUMN B IS NOT REQUIRED)

Column A
Passport (US or unexpired Foreign)
U.S. State Driver's License
U.S. State Learner's Permit
U.S. State ID
Public Assistance Card
U.S. Military ID Card
NY/NJ State or City Employee ID
Customs Zone Access
NY/NJ State Security Guard ID Card

Column B
United States Birth Certificate
Vehicle Registration (in your name)
U.S. Military ID Card
U.S. Voter Registration Card
NY/NJ State or City Employee ID
Native American Tribal Document
Marriage Certificate
Baptismal Certificate
Labor Union ID Card

Note: To expedite turnaround time, it is important that once the applicant submits his/her S.W.A.C. application, that he/she *immediately* take their identification documents to the processing center for positive identity verification (PIV). One-third to half of all applicants receives their clearance within the first 24 hours. It is the PIV that tend to hold up on receiving authorization to receive a WTC access ID card.

VI. WTC Security Office approves/denies WTC ID Applications

FJC Issuing Officer in Charge:

- Approves/denies WTC ID Badge applications (must wait for background screening approval to complete process)
- Sends email to company and Interpass with list of approved applications by last name/first and including DOB but no social security number.
- Creates ID badge in access control system and saves as invalid, without photo

VII. Schedule Training

- Company Issuing Officer schedules training with Interpass.
- Interpass sends email to FJC Issuing Officer in Charge with training schedule listed by date/time, company name, employee name (last, first)
- FJC Issuing Officer in Charge develops list of approved applicants and give to Gate 10 guard and to Interpass for entry on scheduled training dates. List by date/time, then company, then last/first name of approved applicants in alphabetical order, and the required original documents that must be shown to Gate 10 guard to authorize entry.



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

VIII. Conduct Training

- Applicants go to the SWAC Security Processing Center with original 3 to 4 documents required as per application.
- APPLICANTS SHOULD ARRIVE 30 MINUTES BEFORE THE SCHEDULED START OF CLASS.
- All required documents are checked by Training Instructor
- Applicants take training and testing – total one hour – must pass test. If applicant does not pass, he/she will be rescheduled for another class.

IX. WTC ID Badge Issued

After passing training, applicants are escorted directly to WTC Security Office, provide original required 3-4 documents for final verification, get photo taken, and receive site badge.

Should the employee be laid off, fired, or simply leave the project, you must have the employee surrender their badge and it must be returned to the FJC Security Office. Failure to do may lead to a compromise in security at the Site.

Note: Upon completion of the security clearance, PIV and Site Training class, a WTC access ID card can be issued – even if the SWAC card is not currently in your possession. The agents in the WTC ID trailer have the capability to access the S.W.A.C. data server and verify the individual---*only* if both steps are completed.

Due to the high degree of technology in the S.W.A.C. identification card, quality control is very carefully monitored. Once *both* steps noted above are completed, the printer in South Jersey receives the order. Chain of custody is required from the printer, to a S.W.A.C. agent, through to the company DSO. The DSO may then distribute the S.W.A.C. ID cards to the individual. The quicker the individual completes the PIV, the quicker will he/she receive the S.W.A.C. ID card.



WTC PATH ID GUIDELINES FOR SUBCONTRACTORS

CONTACTS:

Suzanne Dobbins-Smith
Designated Security Officer (DSO)
115 Broadway, 18th floor
New York, NY 10006
(646) 467 - 7127 (direct)
(212) 616 - 5800 (receptionist)
suzanne.dobbins@phoenixconstructors.com

Mike Hurley
WTC Site Manager
The Port Authority of New York and New Jersey
115 Broadway, 5th Floor
NYC, NY 10006
212.435.5501
201.954.3594
mhurley@panynj.gov

Davella May
Operations Manager
The Port Authority of New York and New Jersey
115 Broadway, 5th Floor
NYC, NY 10006
212.435.5552
dmay@panynj.gov

Patricia Clauberg - Lead Issuing Officer
FJC Security Services, Inc.
WTC Site
(v) 212.732.8415
(f) 212.732.8411
(c) 917.528.7235
OTHER FAX 212.608.9393
Email: pclauberg@fjcsecurity.com
Website: www.fjcsecurity.com

Carlton Cummings
Acting FJC Issuing Officer in Charge
FJC Security Services, Inc.
WTC Security Office
WTC Site - West Side of Church Street @ Cortlandt
Street
212.732.8412
ccummings@fjcsecurity.com

Kerri Hovnan
WTC Training - Interpass
212.566.2501
trainingwtc@aol.com

Erik Ronningen
The Port Authority of New York and New Jersey
241 Erie Street, Room 202
Jersey City, NJ 07310
201.595.4714
erroning@panynj.com

Bill Campbell
Secure Worker Access Consortium
www.secureworker.com
12000 Lincoln Drive West, Suite 308
Marlton, NJ 08053
856.810.0235 Phone
856.745.8573 Cell
856.810.0242 Fax
jcampbell@secureworker.com

Dan Krantz
IT
SWAC
908-782-6010 x110
dkrantz@industrysuite.com

Shawn Wood
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swood@industrysuite.com
908-782-6010 x 121

Tim Surface
IT
SWAC
tsurface@industrysuite.com
908-782-6010 x 222

THE FOLLOWING IS A CHECKLIST FOR APPLICANTS APPLYING FOR A PERMANENT WORLD TRADE CENTER ACCESS BADGE

Note: Please Check All Boxes so Phoenix as proof that ALL steps have been completed.

- Phoenix Constructors Site Orientation Safety Training. Please Contact: Caroline Diaz (646-300-7804). Classes are held Monday through Friday at 7:00 AM and 3:30 PM on the 14th floor of 115 Broadway.
- Complete background screening application online via Secure Worker Access Consortium (SWAC) website www.secureworker.com. A Sponsor Control ID is needed for this so please contact your company Designated Security Officer (DSO) or Suzanne Smith at 646-467-7125 or visit the SWAC agents at 61 Broadway. Or fill out the paperwork while at the Phoenix Constructors Site Orientation Safety Training.

Note: Anyone seeking a permanent pass must be entered into the SWAC System prior to obtaining their first day pass. Furthermore, a day pass will only be provided to those who have previously been entered into the SWAC system. Only a maximum of five day passes can be issued for an individual after being entered into the SWAC system.
- Attend two hour badging class at 61 Broadway – See Instructions and for the most up-to-date schedule please contact Suzanne Smith.
- Show identification to SWAC Agents at 61 Broadway to verify identity (have picture taken and electronic signature captured) at 61 Broadway – Hours of operation are from 6AM – 12 PM Monday – Friday, except for days where a 2 PM badge class is scheduled. Please also see list of acceptable documents on page 7 of 9 – THEY MUST BE ORIGINAL FORMS OF IDENTIFICATION.
- Background screening status returned – minimum 48 hours – contact your company DSO or Suzanne Smith at 646-467-7125 after 48 hours.
- Complete the WTC Badge Application for FJC Security and submit with letter of employment verification – contact your company DSO or Suzanne Smith at 646-467-7125, or submit to orientation trainer.
- With completed and signed FJC Security application and employment authorization letter, visit the FJC Security Trailer at 111 Washington Street @ carslisle to obtain permanent site access badge (212)732-8415.

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK AND PAYMENT**



SECURITY IDENTIFICATION FORM

Full Company Name: _____

Address of Headquarters: _____
Address

City State Zip Code

Telephone Number: _____

Fax Number: _____

Employer Identification Number (EIN) _____

What services will they be providing _____

Issuing Officer: Name: _____

Phone Number: _____

Email Address: _____

Principals: _____

Estimated Number of Individuals Needing Site Access over the Next 12 Months: _____

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK AND PAYMENT**

Please submit the following form **PRIOR TO COMMENCEMENT OF WORK FOR ALL VEHICLES TO BE LOCATED ON-SITE:**

- Form 19D.1: Vehicle Access Requirements**
 - o Email Description: Vehicle Access 19D.1 (Month 20??)

Please submit the following form on a **MONTHLY BASIS PRIOR TO NEW VEHICLES ENTERING SITE AND PRIOR TO PAYMENT:**

- Form 19D.1: Vehicle Access Requirements**
 - o Email Description: Vehicle Access 19D.1 (Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK & PAYMENT**



WORLD TRADE CENTER SITE APPLICATION FOR VEHICLE PASS

Name: _____

Company: _____

Drivers License Number: _____

State of Issue: _____ Expiration Date: _____

Telephone Number: _____

On-Site Telephone (cell phone): _____

REASON PASS IS BEING REQUESTED

VEHICLE INFORMATION

Make: _____

Model: _____

Year: _____ Color: _____

Registration Number: _____

Expiration Date: _____

License Plate Number: _____

Insurance Company: _____

Policy Number: _____

Expiration Date: _____

**CONDITION PRECEDENT TO
COMMENCEMENT OF WORK AND PAYMENT**



VEHICLE ACCESS REQUIREMENTS

FORM: 19D.1

Terms and Conditions

- 1. Upon receiving a parking placard, the Port Authority of NY & NJ grants you the privilege of driving designated vehicles onto the World Trade Center Site.
2. Parking placards must be scanned upon entering the site.
3. Failure to produce a valid placard will result in vehicle access being denied.
4. Placards must be displayed, unobstructed, in the drivers side front windshield at all times while on site.
5. Violation of Federal, New York State or New York City motor vehicle law is prohibited.
6. Transportation of propane onto the WTC site is prohibited; all other hazardous materials are restricted and prior clearance needs to be obtained.
7. The speed on the WTC site is 10 MPH unless otherwise noted.
8. Parking in areas prohibited by signs, pavement marking, cones, or other barricades is prohibited.
9. Obstructing roadways, vehicles, equipment, walkways, ramps, doors or gates is prohibited.
10. Disregarding the instructions of Port Authority personnel, security staff, flag persons, signs or traffic signals is prohibited.
11. Modifying, damaging, defacing, transferring or duplicating placards is prohibited.
12. Only Port Authority WTC Site Management Staff may authorize the issuance of parking placards.
13. Placards must be returned to the Site Security Office upon cessation of need.
14. Any changes to the information contained on the placard must be immediately reported to WTC Security.
15. Vehicles may not be left on the WTC Site overnight or when not engaged in actual use.
16. All Placards are the property of the Port Authority of NY & NJ and must be surrendered upon demand to Port Authority or Site Security Staff.
17. Lost or stolen placards must immediately be reported to the Port Authority Police, WTC Command or WTC Site Security.

The information provided on this application is truthful and accurate to the best of my knowledge. I understand that A) failure to provide accurate information, B) comply with the terms & conditions stated herein, and C) comply with all WTC Site rules & regulations will result in the immediate revocation of privileges to enter the WTC Site.

Signature: _____ Date: _____

WTC Security

Applicants Identification Verified/Valid: ___ Drivers License ___ Registration ___ Insurance

Issuing Security Officer: _____

Badging Officers Signature: _____ Date: _____

Attach copies of all documents

Port Authority / WTC Management Approval / Denial

Placard Type: ___ Permanent ___ Temporary ___ Day

Expiration Date: _____

Approvers Name: _____

Pass Recipient

Acknowledge receipt of WTC Vehicle Pass

Signature: _____ Date: _____

1-09

CONDITION PRECEDENT TO COMMENCEMENT OF WORK AND PAYMENT

19D.1

INTENTIONALLY OMITTED

DAILY REPORT

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT** for Subcontractor and **ALL** known lower tier subcontractors and vendors:

- 21A.1:** Daily Report (To be submitted by 10 AM the following morning after daily work has been completed)
 - o Email Description: Daily Report 21A.1 (Day, Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
PAYMENT**

Please submit all of the following forms **PRIOR TO MONTHLY PAYMENT** for subcontractor and **ALL** known lower tier subcontractors and vendors:

- 21B.1:** Standby Report (To be submitted by 10 AM the following morning after daily work has been completed)
 - o Email Description: Standby Report 21B.1 (Day, Month 20??)

- 21B.2:** Time & Material Ticket (To be submitted with Port Authority and Phoenix signatures by 10 AM the following morning after daily work has been completed)
 - o Email Description: T & M Ticket 21B.2 (Day, Month 20??)

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**

**CONDITION PRECEDENT TO
PAYMENT**



TIME AND MATERIAL TICKET

FORM: 21B.2

Phoenix Constructors, JV
Time & Material Summary

Page 1 of 1

| | | | |
|---------------------|---------------------------|------------------|--|
| Job #: | 485 | EWO #: | |
| Job Desc.: | WTC Transportation Hub | Date: | |
| Location: | World Trade Center, NY | Owner's #: | |
| Date Sent To Owner: | | Owner's # (EWO): | |
| Charge to: | Port Authority of NY & NJ | Phoenix: | |
| For: | | | |
| EWO Desc.: | Example | | |

| Labor | | | | | | |
|-------|-----------|-------|-------------------|------------|-----------|----------|
| Name | Worker ID | Trade | Total Hrs Reg Hrs | Hrs at 1.5 | Hrs at 2x | Other PT |
| | | X | | | | |
| | | X | | | | |

| Equipment | | | | | |
|-----------|-------------|------|------------|--------------|----------|
| Number | Description | Item | Hrs Worked | Hrs Overtime | Hrs Idle |
| x | | | | | |

| Material | | | |
|----------|-------------|--------|--------------------|
| Qty | Description | Vendor | Invoice # or P/N # |
| | | | |

The labor, material, and equipment listed above were checked & approved by

SIGNATURE FOR PORT AUTHORITY OF NY & NJ

SIGNATURE OF PHOENIX REPRESENTATIVE

PRINT NAME

PRINT NAME

----- End of Page -----

CONDITION PRECEDENT TO
PAYMENT

Please submit the following form **PRIOR TO FINAL PAYMENT**:

- 22.1: Notice of Completion**
 - o Email Description: Notice of Completion 22.1

**PLEASE SUBMIT ALL FORMS AS PER THE GUIDELINES UNDER EXHIBIT 1D,
PAGE 4 OF 14 [CLAUSE 2.9.3 AND 2.9.4]**



NOTICE OF COMPLETION

FORM: 22.1

Project: _____ Location: _____
Contract: _____
Contractor: _____
Notice of Completion Number: _____ Date: _____

NOTICE is hereby given by the above named Contractor that pursuant to Article 14.0 NOTICE OF COMPLETION AND FINAL ACCEPTANCE of Part III, General Terms – Standard of the above Contract for said Project all work for the above referenced Work Release is complete.

Dated: _____
Signed _____ (CONTRACTOR)

INTENTIONALLY OMITTED

FLUOR.

Slattery
SKANSKA

GRANITE
CONSTRUCTION
NORTHEAST, INC.


Bovis
Lend Lease



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

Perini Corporation
1022 Lower South Street
Peekskill, NY 10566

Attention: Mr. James Laing

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. ***These drawings are issued for general project information only and are NOT to be used for quantity take-off.*** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

In preparing your proposal, it is essential that you adhere to the requirements of the enclosed Request for Proposal (RFP). Please refer to the "Instructions to Offers" that is included in this RFP package for full details regarding submission of your bid proposal.

This RFP is comprised of two steps:

- 1) During the 1st Step of the RFP, the bidders will acknowledge receipt of the RFP documents, including any addenda, and will provide a statement of their intent to submit a proposal. The bidders will be required to attend a **MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, 1:00PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.** The bidders will also submit the required pre-qualification documents for their company and for their team members' / joint venture partners' companies. Based on review of the pre-qualification documents, Phoenix Constructors JV and The Port Authority will short-list the bidders who will be allowed to continue to the 2nd Step of the RFP. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 1st Step of the RFP.*



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

- 2) The selected subcontractor teams / joint venture partners will be invited to participate in the **2nd Step of the RFP**. The selected bidders will be required to attend a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day**. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 2nd Step of the RFP.*

Phoenix Constructors JV requires that each bidder provide a bid bond / guarantee equivalent to a minimum of **two and one half percent (2 1/2%)** of the bid price with their bid proposal that is submitted during the 2nd Step of the RFP. The "bid guarantee" shall consist of a firm commitment such as a bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual document as may be required within the time specified.

All proposals **MUST** be **SEALED** and **MUST** clearly state on the outside of the package:

**"SEALED PROPOSAL FOR RFP NUMBER: "W0TC-GC1-2-KN00186-020"
"CONTRACT TITLE: "STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING & PRECAST CONCRETE WORK" Option A or Option B, and Alternate Option C (if applicable).**

All proposals for the **1st Step of the RFP** must be received at our address below on or before **12/09/2008**, and will be opened only after that time.

All proposals for the **2nd Step of the RFP** must be received at our address below on or before **2/9/2009**, and will be opened only after that time.

Phoenix Constructors JV reserves the right to reject any proposals received after the deadlines.

All Requests For Information (RFIs) shall be written via Letter, E-mail or Facsimile, and should be addressed to:

Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, NY 10006
Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
Phone (646) 467-7219
Fax (212) 566-2302

All costs and expenses incurred by you in preparing your proposal will be borne solely by you. You will be informed whether or not your proposal has been successful. The award will be



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

made on a "BEST VALUE BASIS" to Phoenix Constructors JV and The Port Authority. We reserve the right to reject any or all proposals. Further, we may award any part or phase of the Work to any one or more of the bidders. Actual award of the Contract is contingent upon execution of formal documents satisfactory to both parties.

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It should be noted that Phoenix Constructors JV prohibits the participation of any of its respective affiliates in this solicitation process.

Very truly yours,

Javed I. Qureshi
Contract Administrator
Office 646-467-7219
Fax 212-566-2302
Cell 646-423-8317

Receipt Acknowledged: _____
(please sign)

Name _____
(please print)

Title: _____

Date: _____



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

PROPOSAL INVITATION LETTER

November 21, 2008

W&W Steel, LLC
1730 West Reno
Oklahoma City, Oklahoma 73106

Attention: Mr. Charles Dougherty, Mgr. Eastern Region

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. ***These drawings are issued for general project information only and are NOT to be used for quantity take-off.*** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

In preparing your proposal, it is essential that you adhere to the requirements of the enclosed Request for Proposal (RFP). Please refer to the "Instructions to Offers" that is included in this RFP package for full details regarding submission of your bid proposal.

This RFP is comprised of two steps:

- 1) During the 1st Step of the RFP, the bidders will acknowledge receipt of the RFP documents, including any addenda, and will provide a statement of their intent to submit a proposal. The bidders will be required to attend a **MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, 1:00PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.** The bidders will also submit the required pre-qualification documents for their company and for their team members' / joint venture partners' companies. Based on review of the pre-qualification documents, Phoenix Constructors JV and The Port Authority will short-list the bidders who will be allowed to continue to the 2nd Step of the RFP. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 1st Step of the RFP.*



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

- 2) The selected subcontractor teams / joint venture partners will be invited to participate in the 2nd Step of the RFP. The selected bidders will be required to attend a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day**. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 2nd Step of the RFP.*

Phoenix Constructors JV requires that each bidder provide a bid bond / guarantee equivalent to a minimum of **two and one half percent (2 1/2%)** of the bid price with their bid proposal that is submitted during the 2nd Step of the RFP. The "bid guarantee" shall consist of a firm commitment such as a bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual document as may be required within the time specified.

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115 Broadway, 18th Floor
New York, NY 10006
Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
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WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: WOTC-GC1-2-KN00186-020

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 Contract Administrator
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 Fax 212-566-2302
 Cell 646-423-8317

Receipt Acknowledged: _____
 (please sign)

Name _____
 (please print)

Title: _____

Date: _____



**WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020**

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

American Bridge
1000 American Bridge Way
Coraopolis, PA 15108.

Attention: Mr. Lanny Frisco

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



**WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020**

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. ***These drawings are issued for general project information only and are NOT to be used for quantity take-off.*** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

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WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

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Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
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WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W07C-GC1-2-KN00188-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERÉCT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

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Very truly yours,

Javed I. Qureshi
Contract Administrator
Office 646-467-7219
Fax 212-566-2302
Call 646-423-8317

Receipt Acknowledged: _____

(please sign)

Name _____

(please print)

Title: _____

Date: _____



**WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020**

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

Canam Steel
4010 Clay Street, P.O. Box 285
Point of Rocks, MD 21777

Attention: Mr. Peter Frantz

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

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1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
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Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

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As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W07C-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

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**WTC TRANSPORTATION HUB
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**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
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COATING, METAL DECK & PRECAST CONCRETE WORK

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You are requested to sign the attached copy of this letter in the space provided below and return it to us as acknowledging receipt of this RFP and the enclosures referenced therein and as confirmation of your intention to submit a proposal by the closing date. Should you not wish to submit a proposal you are requested to return all Request for Proposal materials.

It should be noted that Phoenix Constructors JV prohibits the participation of any of its respective affiliates in this solicitation process.

Very truly yours,

Javed I. Qureshi
 Contract Administrator
 Office 646-467-7219
 Fax 212-566-2302
 Cell 646-423-8317

Receipt Acknowledged: _____
 (please sign)

Name _____
 (please print)

Title: _____

Date: _____



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

Cornell & Company
244 Cornell Lane
Westville, NJ 08098

Attention: Ms. Marian Craig

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. ***These drawings are issued for general project information only and are NOT to be used for quantity take-off.*** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

In preparing your proposal, it is essential that you adhere to the requirements of the enclosed Request for Proposal (RFP). Please refer to the "Instructions to Offers" that is included in this RFP package for full details regarding submission of your bid proposal.

This RFP is comprised of two steps:

- 1) During the 1st Step of the RFP, the bidders will acknowledge receipt of the RFP documents, including any addenda, and will provide a statement of their intent to submit a proposal. ***The bidders will be required to attend a MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, 1:00PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.*** The bidders will also submit the required pre-qualification documents for their company and for their team members' / joint venture partners' companies. Based on review of the pre-qualification documents, Phoenix Constructors JV and The Port Authority will short-list the bidders who will be allowed to continue to the 2nd Step of the RFP. ***Please refer to the "Instructions to Bidders" for full details on the required submittals for the 1st Step of the RFP.***



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
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- 2) The selected subcontractor teams / joint venture partners will be invited to participate in the 2nd Step of the RFP. The selected bidders will be required to attend a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day**. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 2nd Step of the RFP.*

Phoenix Constructors JV requires that each bidder provide a bid bond / guarantee equivalent to a minimum of **two and one half percent (2 1/2%)** of the bid price with their bid proposal that is submitted during the 2nd Step of the RFP. The "bid guarantee" shall consist of a firm commitment such as a bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual document as may be required within the time specified.

All proposals **MUST** be **SEALED** and **MUST** clearly state on the outside of the package:

"SEALED PROPOSAL FOR RFP NUMBER: "W0TC-GC1-2-KN00186-020"
"CONTRACT TITLE: "STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING & PRECAST CONCRETE WORK" Option A or Option B, and Alternate Option C (if applicable).

All proposals for the **1st Step of the RFP** must be received at our address below on or before **12/09/2008**, and will be opened only after that time.

All proposals for the **2nd Step of the RFP** must be received at our address below on or before **2/9/2009**, and will be opened only after that time.

Phoenix Constructors JV reserves the right to reject any proposals received after the deadlines.

All Requests For Information (RFIs) shall be written via Letter, E-mail or Facsimile, and should be addressed to:

Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, NY 10006
Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
Phone (646) 467-7219
Fax (212) 566-2302

All costs and expenses incurred by you in preparing your proposal will be borne solely by you. You will be informed whether or not your proposal has been successful. The award will be



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00188-020

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Contract Administrator
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Cell 646-423-8317

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**WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00188-020**

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

DCM Erectors, Inc.
110 East 42nd Street
New York, NY 10017

Attention: Mr. Larry Davis

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00188-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station**.

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall**.

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. **These drawings are issued for general project information only and are NOT to be used for quantity take-off.** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

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WTC TRANSPORTATION HUB
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FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
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- 2) The selected subcontractor teams / joint venture partners will be invited to participate in the 2nd Step of the RFP. The selected bidders will be required to attend a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day**. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 2nd Step of the RFP.*

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All proposals MUST be **SEALED** and MUST clearly state on the outside of the package:

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Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, NY 10006
Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
Phone (646) 467-7219
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RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020**

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FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

High Steel Structures, Inc.
1915 Old Philadelphia Pike
P.O. Box 10008
Lancaster, PA 17605-0008

Attention: Mr. Steve Bussanmas

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

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1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
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3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station.**

Option B:

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WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W07C-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
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As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:

Alternate Option C:

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For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

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STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
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Contract Administrator
Office 646-467-7219
Fax 212-566-2302
Cell 646-423-8317

Receipt Acknowledged: _____
(please sign)

Name _____
(please print)

Title: _____

Date: _____



**WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020**

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COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

Koch Skanska, Inc.
400 Roosevelt Ave.
Carteret, NJ 07008

Attention: Mr. Tony Taddeo

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
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Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W07C-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. ***These drawings are issued for general project information only and are NOT to be used for quantity take-off.*** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

In preparing your proposal, it is essential that you adhere to the requirements of the enclosed Request for Proposal (RFP). Please refer to the "Instructions to Offers" that is included in this RFP package for full details regarding submission of your bid proposal.

This RFP is comprised of two steps:

- 1) During the 1st Step of the RFP, the bidders will acknowledge receipt of the RFP documents, including any addenda, and will provide a statement of their intent to submit a proposal. The bidders will be required to attend a **MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, 1:00PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.** The bidders will also submit the required pre-qualification documents for their company and for their team members' / joint venture partners' companies. Based on review of the pre-qualification documents, Phoenix Constructors JV and The Port Authority will short-list the bidders who will be allowed to continue to the 2nd Step of the RFP. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 1st Step of the RFP.*



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

- 2) The selected subcontractor teams / joint venture partners will be invited to participate in the 2nd Step of the RFP. The selected bidders will be required to attend a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day**. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 2nd Step of the RFP.*

Phoenix Constructors JV requires that each bidder provide a bid bond / guarantee equivalent to a minimum of **two and one half percent (2 1/2%)** of the bid price with their bid proposal that is submitted during the 2nd Step of the RFP. The "bid guarantee" shall consist of a firm commitment such as a bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual document as may be required within the time specified.

All proposals **MUST** be **SEALED** and **MUST** clearly state on the outside of the package:

"SEALED PROPOSAL FOR RFP NUMBER: "W0TC-GC1-2-KN00186-020"
"CONTRACT TITLE: "STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING & PRECAST CONCRETE WORK" Option A or Option B, and Alternate Option C (if applicable).

All proposals for the **1st Step of the RFP** must be received at our address below on or before **12/09/2008**, and will be opened only after that time.

All proposals for the **2nd Step of the RFP** must be received at our address below on or before **2/9/2009**, and will be opened only after that time.

Phoenix Constructors JV reserves the right to reject any proposals received after the deadlines.

All Requests For Information (RFIs) shall be written via Letter, E-mail or Facsimile, and should be addressed to:

Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, NY 10006
Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
Phone (646) 467-7219
Fax (212) 566-2302

All costs and expenses incurred by you in preparing your proposal will be borne solely by you. You will be informed whether or not your proposal has been successful. The award will be



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

made on a "BEST VALUE BASIS" to Phoenix Constructors JV and The Port Authority. We reserve the right to reject any or all proposals. Further, we may award any part or phase of the Work to any one or more of the bidders. Actual award of the Contract is contingent upon execution of formal documents satisfactory to both parties.

You are requested to sign the attached copy of this letter in the space provided below and return it to us as acknowledging receipt of this RFP and the enclosures referenced therein and as confirmation of your intention to submit a proposal by the closing date. Should you not wish to submit a proposal you are requested to return all Request for Proposal materials.

It should be noted that Phoenix Constructors JV prohibits the participation of any of its respective affiliates in this solicitation process.

Very truly yours,

Javed I. Qureshi
Contract Administrator
Office 646-467-7219
Fax 212-566-2302
Cell 646-423-8317

Receipt Acknowledged: _____
(please sign)

Name _____
(please print)

Title: _____

Date: _____



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK

PROPOSAL INVITATION LETTER

November 21, 2008

Owen Steel Co, Inc.
727-Mauney Drive
Columbia, SC 29201

Attention: Mr. Mike Cooke

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 –PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. ***These drawings are issued for general project information only and are NOT to be used for quantity take-off.*** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

In preparing your proposal, it is essential that you adhere to the requirements of the enclosed Request for Proposal (RFP). Please refer to the "Instructions to Offers" that is included in this RFP package for full details regarding submission of your bid proposal.

This RFP is comprised of two steps:

- 1) During the 1st Step of the RFP, the bidders will acknowledge receipt of the RFP documents, including any addenda, and will provide a statement of their intent to submit a proposal. The bidders will be required to attend a **MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, 1:00PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.** The bidders will also submit the required pre-qualification documents for their company and for their team members' / joint venture partners' companies. Based on review of the pre-qualification documents, Phoenix Constructors JV and The Port Authority will short-list the bidders who will be allowed to continue to the 2nd Step of the RFP. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 1st Step of the RFP.*



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

- 2) The selected subcontractor teams / joint venture partners will be invited to participate in the 2nd Step of the RFP. The selected bidders will be required to attend a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST** each day. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 2nd Step of the RFP.*

Phoenix Constructors JV requires that each bidder provide a bid bond / guarantee equivalent to a minimum of **two and one half percent (2 1/2%)** of the bid price with their bid proposal that is submitted during the 2nd Step of the RFP. The "bid guarantee" shall consist of a firm commitment such as a bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual document as may be required within the time specified.

All proposals **MUST** be **SEALED** and **MUST** clearly state on the outside of the package:

"SEALED PROPOSAL FOR RFP NUMBER: "W0TC-GC1-2-KN00186-020"
"CONTRACT TITLE: "STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING & PRECAST CONCRETE WORK" Option A or Option B, and Alternate Option C (if applicable).

All proposals for the **1st Step of the RFP** must be received at our address below on or before **12/09/2008**, and will be opened only after that time.

All proposals for the **2nd Step of the RFP** must be received at our address below on or before **2/9/2009**, and will be opened only after that time.

Phoenix Constructors JV reserves the right to reject any proposals received after the deadlines.

All Requests For Information (RFIs) shall be written via Letter, E-mail or Facsimile, and should be addressed to:

Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, NY 10006
Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
Phone (646) 467-7219
Fax (212) 566-2302

All costs and expenses incurred by you in preparing your proposal will be borne solely by you. You will be informed whether or not your proposal has been successful. The award will be



WTC TRANSPORTATION HUB
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made on a "BEST VALUE BASIS" to Phoenix Constructors JV and The Port Authority. We reserve the right to reject any or all proposals. Further, we may award any part or phase of the Work to any one or more of the bidders. Actual award of the Contract is contingent upon execution of formal documents satisfactory to both parties.

You are requested to sign the attached copy of this letter in the space provided below and return it to us as acknowledging receipt of this RFP and the enclosures referenced therein and as confirmation of your intention to submit a proposal by the closing date. Should you not wish to submit a proposal you are requested to return all Request for Proposal materials.

It should be noted that Phoenix Constructors JV prohibits the participation of any of its respective affiliates in this solicitation process.

Very truly yours,

Javed I. Qureshi
 Contract Administrator
 Office 646-467-7219
 Fax 212-566-2302
 Cell 646-423-8317

Receipt Acknowledged: _____
 (please sign)

Name _____
 (please print)

Title: _____

Date: _____



**WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00188-020**

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL INVITATION LETTER

November 21, 2008

Schuff Steel – Gulf Coast Inc.
14500 Smith Road
Humble, TX 77396

Attention: Mr. Randy Kerbow

Reference: Phoenix Constructors, JV
Request for Proposal (RFP) No.: W0TC-GC1-2-KN00186-020
Structural Steel, Intumescent Fire Resistant Coating, Metal Deck &
Precast Concrete Work

Phoenix Constructors, JV is pleased to invite you to submit a competitive proposal for Work Package No. 20 "Station Construction and Transit Hall-Structure to Grade" – Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City.

Work Package # 20 consists of three distinct Work Areas, identified as:

1. **Work Area 1 – PATH Station**
Approximately 10,500 US Tons of steel
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
Approximately 3,500 US Tons of steel
3. **Work Area 3 – Transit Hall**
Approximately 8,000 US Tons of steel

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to Work Area 1 –PATH Station.

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:



WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

For the purposes of general information, the preliminary quantity of structural steel for the entire Work Package #20 (all Work Areas) is approximately 22,000 US Tons, of which approximately 50% of the steel is classified as "Special Shape Exposed Steel" and the remaining 50% of the steel is classified as "Standard Profile and Built-Up Sections," including 1-Line Subway Box steel.

Due to the size and nature of the different specialty trade requirements, bidders are permitted to select a team of subcontractors or form a joint venture or consortium to bid the RFP.

For the 1st Step of the RFP, only select drawings for Work Package #20 are being issued to the bidders in order to provide the bidders with a general understanding of the scope of work. ***These drawings are issued for general project information only and are NOT to be used for quantity take-off.*** A complete set of drawings that can be used for quantity take-off will be issued to the short-listed bidders during the 2nd Step of the RFP. Additionally, drawings showing the work of other disciplines will not be issued with the 1st Step of the RFP, however such drawings are available for review at the Phoenix Constructors JV office. The remainder of the Work Package #20 drawings will be issued to the short-listed bidders during the 2nd Step of the RFP.

For the convenience of the bidders, one (1) copy of the select drawings issued for the 1st Step of the RFP will be sent directly to steel fabricators who are familiar with the "Special Shape Exposed Steel" structures. A list of these steel fabricators who are familiar with "Special Shape Exposed Steel" structures is attached to this letter for solicitation / consultation at the sole discretion of prime bidder. The list is provided for general information only.

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This RFP is comprised of two steps:

- 1) During the 1st Step of the RFP, the bidders will acknowledge receipt of the RFP documents, including any addenda, and will provide a statement of their intent to submit a proposal. The bidders will be required to attend a **MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, 1:00PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.** The bidders will also submit the required pre-qualification documents for their company and for their team members' / joint venture partners' companies. Based on review of the pre-qualification documents, Phoenix Constructors JV and The Port Authority will short-list the bidders who will be allowed to continue to the 2nd Step of the RFP. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 1st Step of the RFP.*



**WTC TRANSPORTATION HUB
RFP/CONTRACT NO.: W0TC-GC1-2-KN00186-020**

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
COATING, METAL DECK & PRECAST CONCRETE WORK**

- 2) The selected subcontractor teams / joint venture partners will be invited to participate in the **2nd Step of the RFP**. The selected bidders will be required to attend a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day**. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement. *Please refer to the "Instructions to Bidders" for full details on the required submittals for the 2nd Step of the RFP.*

Phoenix Constructors JV requires that each bidder provide a bid bond / guarantee equivalent to a minimum of **two and one half percent (2 1/2%)** of the bid price with their bid proposal that is submitted during the 2nd Step of the RFP. The "bid guarantee" shall consist of a firm commitment such as a bond, certified check, or other negotiable instrument accompanying the bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual document as may be required within the time specified.

All proposals **MUST** be **SEALED** and **MUST** clearly state on the outside of the package:

**"SEALED PROPOSAL FOR RFP NUMBER: "W0TC-GC1-2-KN00186-020"
"CONTRACT TITLE: "STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE - STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING & PRECAST CONCRETE WORK" Option A or Option B, and Alternate Option C (if applicable).**

All proposals for the **1st Step of the RFP** must be received at our address below on or before **12/09/2008**, and will be opened only after that time.

All proposals for the **2nd Step of the RFP** must be received at our address below on or before **2/9/2009**, and will be opened only after that time.

Phoenix Constructors JV reserves the right to reject any proposals received after the deadlines.

All Requests For Information (RFIs) shall be written via Letter, E-mail or Facsimile, and should be addressed to:

Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, NY 10006
Attention: Javed Qureshi

e-mail: javed.qureshi@phoenixconstructors.com
Phone (646) 467-7219
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All costs and expenses incurred by you in preparing your proposal will be borne solely by you. You will be informed whether or not your proposal has been successful. The award will be



WTC TRANSPORTATION HUB
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STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
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COATING, METAL DECK & PRECAST CONCRETE WORK

made on a "BEST VALUE BASIS" to Phoenix Constructors JV and The Port Authority. We reserve the right to reject any or all proposals. Further, we may award any part or phase of the Work to any one or more of the bidders. Actual award of the Contract is contingent upon execution of formal documents satisfactory to both parties.

You are requested to sign the attached copy of this letter in the space provided below and return it to us as acknowledging receipt of this RFP and the enclosures referenced therein and as confirmation of your intention to submit a proposal by the closing date. Should you not wish to submit a proposal you are requested to return all Request for Proposal materials.

It should be noted that Phoenix Constructors JV prohibits the participation of any of its respective affiliates in this solicitation process.

Very truly yours,

Javed I. Qureshi
 Contract Administrator
 Office 646-467-7219
 Fax 212-566-2302
 Cell 646-423-8317

Receipt Acknowledged: _____
 (please sign)

Name _____
 (please print)

Title: _____

Date: _____

INSTRUCTIONS FOR BIDDERS AND BID PROPOSAL FORM**1. FORM AND SUBMISSION OF PROPOSALS**

Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103 ("Construction Manager"), as agent for 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York 10003 ("1 WTC"), invites Proposals in the annexed form. Proposals will be received at a date and time designated by Construction Manager at Construction Manager's office located at 170 Broadway, New York, New York 10038. Each Proposal must be contained in the envelope furnished by the Construction Manager, which shall be sealed and conspicuously endorsed with the bidder's name and the number of this Contract in the space provided. This Contract booklet shall not be unstapled or taken apart.

The Proposal must be submitted upon the blank form bound herewith and must give all information required.¹ The Proposal must be signed and the acknowledgment taken on the appropriate form following the Proposal.

No effort is made to emphasize any particular provision of the Contract, but bidders must familiarize themselves with every provision and its effect. All Bid Proposal information (i.e., Lump Sum, unit price, alternates, etc.) is to be formatted on a spreadsheet prepared for the bid opening and available from Construction Manager. The spreadsheet should be prepared in a Lotus or Excel format and the computer file accessible to only the Construction Manager and approved personnel. Information to be contained on the spreadsheet may include, at the discretion of the Construction Manager, the following (or other additional items):

- a. Project date, trade
- b. Contractor's name, address, phone number
- c. Contact
- d. Lump Sum
- e. Budget (Adjusted to reflect bid package)
- f. Unit Prices
- g. Alternates
- h. Bidder's Alternates
- i. Schedule Duration
- j. Qualifications
- k. Exclusions.

All revised information is to be documented on a new spreadsheet and denoted as revised.

¹ While two or more copies of this booklet may be furnished to each prospective bidder, only one should be submitted. The extra copies are for the bidder's use.

Bidder shall assume for purposes of its Proposal that no New York State sales, use or other tax applies to any materials or equipment purchased in connection with the performance of the Bidder's Work. Therefore, Bidder represents that any prices in its Proposal including, but not limited to, the Lump Sum, Unit Prices and Alternates do not include any such tax. For more detailed information, please see the tax provisions in this Agreement, including, without limitation, Sections 19 and 20 herein.

2. PAPERS ACCOMPANYING PROPOSALS

Each Proposal must be accompanied by the following papers, which, unless otherwise indicated, should be enclosed with the Proposal:

- A. If the bidder be a corporation, a statement of the names and residences of its officers, which should be included on the page following the Proposal.

If the bidder be a partnership, a statement of the names and residences of its members, indicating which are general and which are special partners, which should be included on the page following the Proposal.

If the bidder be an individual, a statement of his residence, which should be included on the page following the Proposal.

B.

- 1.) If requested, Contractor may be required, within seven (7) days of such request, certified financial statements, including applicable notes, reflecting the bidder's assets, liabilities, net worth, revenues, expenses, profit or loss and cash flow for the most recent calendar year or the bidder's most recent fiscal year.
- 2.) Where such certified financial statements are not available, then either reviewed or compiled statements from an independent accountant setting forth the information described in paragraph 1, above.
- 3.) Where neither certified financial statements nor financial statements from an independent accountant are available, then financial statements containing the information described in paragraph 1, above, prepared directly by the bidder. However, such financial statements must be accompanied by a signed copy of the bidder's most recent federal income tax return and a statement in writing, signed by a duly authorized representative of the bidder, that such statements accurately reflect the current financial condition of the bidder.

Where statements submitted pursuant to either paragraph 1 or 2, above, show the position of the bidder as of a date more than forty-five (45) days prior to the date on which Proposals are opened, the bidder shall also submit a statement in writing signed by a duly authorized representative of the bidder, that the present financial condition of the bidder is at least as good as that shown on the statements submitted.
- 4.) A statement of work which the bidder has on hand, including any work on which a bid has been submitted, containing a description of the work, the dollar value, the location by city and state, the current percentage of completion and the expected date for completion.
- 5.) Fill in below the name and address of the bidder's chief banking representative handling the bidder's account.

Banking Institution: _____

Address: _____

Bank Representative: _____

Telephone Number: _____

- 6.) Fill in below the bidder's Federal Employer Identification Number (i.e., the number assigned to firms by the Federal Government for tax purposes); the bidder's Dun and Bradstreet number, if any; the name of any other credit service to which the bidder has furnished information and the number, if any, assigned by such service to the bidder's account.

Federal Employer Identification No.

Dun and Bradstreet No.

Other Credit Service

Account No

- 7.) A letter from bidder's surety (a letter from a broker is unacceptable) confirming that such bidder shall be capable of providing a payment and performance bond in the full amount of the bidder's bid.
- 8.) Bidder shall complete and submit the certifications and all necessary disclosure forms required under **Rider K** (Project Corruption Prevention Program) to this Contract.
- C. With the bid, the bidder's analysis of bid filled in on the form furnished herewith. The Contractor will be required to furnish a more detailed analysis of bid at a later date in accordance with the requirements of the Section of Division 1 of the Specifications referring to the Analysis of Bid.
- D. The Form of Contract bound herewith, with the bidder's Lump Sum inserted in the clause thereof entitled "General Agreement." The amount must be given both in figures and in writing and, in case of discrepancy, the writing shall control. One copy of each addendum, if any, issued during the bidding period shall be initialed and attached to the Proposal, but any Proposal submitted without such addendum initialed and attached will nevertheless be construed as though such addendum had been initialed and attached.

3. QUALIFICATION INFORMATION

At any time after the opening of Proposals, the Construction Manager may give oral or written notice to one or more bidders to attend a pre-award meeting and to furnish the Construction Manager with information relating to his qualifications to perform the Work, including the following, which information shall be furnished within seven (7) days thereafter:

- A. The bidders MBE/WBE Participation Plan submitted in accordance with Section 8, "Minority and Women's Business Enterprises Program," and a detailed list of the plant and equipment which the bidder proposes to use, indicating which portions it already possesses.
- B. Detailed information relating to work which the bidder has completed for others, including personal and corporate references, sufficient to the Construction Manager to determine the Contractor's responsibility, experience and capacity to perform the Work. If required by the Construction Manager, the foregoing information shall include information to demonstrate to the satisfaction of the Construction Manager that the contractor has within the past five years been a contractor on at least one contract of the same general type, extent and complexity as the Contract on which the Proposal has been submitted, and completed the work skillfully, in a satisfactory manner and on time.
- C. Information to supplement a) data shown in the financial statements and the statement of work on hand required to be submitted with the Proposal; and b) any statement submitted under the clause hereof 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", Certification of Participation in a State-Registered Apprenticeship Program or "Non-Collusive Bidding and Code of Ethics Certification; Certification of No Solicitation Based on Commission, Percentage, Brokerage, Contingent Fee or Other Fee".
- D. Moreover, in the event that the bidder's performance on a past Construction Manager or Authority or PATH contract or contracts has been rated less than satisfactory, the Construction Manager may give oral or written notice to the bidder to furnish information demonstrating to the satisfaction of the Construction Manager that, notwithstanding such rating, such performance was, in fact, satisfactory, or that the circumstances which gave rise to such unsatisfactory rating have changed or will not apply to performance of the Contract, and that such performance will be satisfactory.
- E. If the bidder has performed a contract for the States of New York or New Jersey, or any governmental entity within such States and has filed a questionnaire or other document required to be submitted in order for the bidder to qualify to perform the contract, the bidder may be requested by the Construction Manager to submit the most recent completed questionnaire or other such document, or if the most recent completed questionnaire or other such document is not available, to submit a written statement indicating the approximate date of the contract and the name of the governmental entity which awarded them the contract.
- F. Any additional information relevant to the bidder's Proposal including information to supplement the bidder's initial analysis of bid.

In the event that any of the foregoing is requested and is not furnished within seven days thereafter or within such additional time as the Construction Manager, in his sole discretion, may allow, the Construction Manager may not be in a position to determine whether the bidder is qualified, whether the bidder understands the requirements of the contract or whether the bid is responsive and may, in its sole discretion, reject the bidder's Proposal.

The giving of such notice to the bidder in connection with any of the foregoing lists, statement or information shall not be construed as an acceptance of his Proposal. However, the Construction Manager reserves the right in its sole and absolute discretion, to accept the Proposal of a bidder despite the fact that said bidder has not submitted any information, list or statement required pursuant to this Section within the above-stated time period.

4. ACCEPTANCE OR REJECTION OF PROPOSAL

Within one hundred twenty (120) days after the opening of the Proposals, the Construction Manager may, in its discretion, accept one of the Proposals, if Construction Manager accepts any. The acceptance of a Proposal will be only by mailing to or delivering at the office designated in the Proposal a notice in writing specifically indicating acceptance signed by Construction Manager. No other act of the Construction Manager shall constitute acceptance of a Proposal. Such notice will state whether or not the Construction Manager elects to require the bidder to furnish a Performance and Payment Bond. Rejection of a Proposal will be only by either (a) a notice in writing specifically stating that the Proposal is rejected, signed by Construction Manager and mailed to or delivered at the office designated in the Proposal or (b) omission of the Construction Manager to accept a Proposal within one hundred eighty (180) days after the opening of Proposals; and no other act of the Construction Manager shall constitute rejection of a Proposal, including any counter offer or other act of the Construction Manager.

The Construction Manager reserves the unqualified right, in its sole and absolute discretion, to reject all Proposals, seek modifications to one or more Proposals, or to accept that Proposal if any, which in its judgment will under all the circumstances best serve the public interest and to waive defects in any Proposal.

In the event that a successful bidder defaults upon the Contract by failing to furnish a satisfactory Performance and Payment Bond, if required, and the Construction Manager terminates the Contract, the Construction Manager reserves the option to accept the Proposal of any other bidder within one hundred eighty (180) days after the opening of Proposals, in which case such acceptance shall have the same effect as to such other bidder as though he were the originally successful bidder.

5. INTENTIONALLY DELETED

6. DISPOSAL OF CONTRACT DOCUMENTS

All recipients of Contract documents, including bidders and those who do not bid and their prospective Subcontractors and suppliers who may receive all or a part of the Contract documents or copies thereof, shall make every effort to ensure the secure and appropriate disposal of the Contract documents to prevent further disclosure of the information contained in the documents. Secure and appropriate disposal includes methods of document destruction such as shredding or arrangements with refuse handlers that ensure that third persons will not have access to the documents' contents either before, during, or after disposal. Documents may also be returned for disposal purposes to the Construction Manager.

7. AVAILABLE DOCUMENTS

Certain documents, specified in **Rider O (Reserved For Future Use)**, are available for reference and examination by bidders by contacting Construction Manager at Construction Manager's office to review such documents during regular business hours. These documents were not prepared for the purpose of providing information for bidders upon the present Contract but they were prepared for other purposes, such as for other contracts or for design purposes for this or other contracts, and they do not form a part of this Contract. The Construction Manager makes no representation or guarantee as to, and shall not be responsible for their accuracy, completeness or pertinence, and, in addition, shall not be responsible for the conclusions to be drawn therefrom. They are made available to the bidders merely for the purpose of providing them with such information as is in the possession of the Construction Manager, whether or not such information may be accurate, complete or pertinent or of any value to the bidders. Bidders accept all risks of inaccurate or incomplete information.

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

The Construction Manager and 1 WTC adopt the Authority's 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.

"Minority-owned business" or "MBE" means a business entity which is at least fifty-one percent (51%) owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least fifty-one percent (51%) of the stock of which is owned and controlled 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 fifty-one percent (51%) owned by one or more women, or, in the case of a publicly held corporation, fifty-one percent (51%) of the stock of which is owned and controlled 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:

- A. Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
- B. Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central, or South American culture or origin, regardless of race);
- C. 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);
- D. Native American 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).

To ensure meaningful participation of MBEs and WBEs on this Project, 1 WTC has set goals of twelve percent (12%) for firms owned and controlled by minorities, and five percent (5%) for firms owned and controlled by women. The MBE/WBE Participation Plan, described below, should meet or exceed these goals. If such goals are not met, Contractor shall be responsible for demonstrating its "good faith" efforts to achieve the goals.

Each Bidder's Proposal shall be accompanied by a complete Minority Business Enterprises/Women Business Enterprises Participation Plan ("MBE/WBE Participation Plan") on a form approved by Construction Manager. The MBE/WBE Participation Plan must be approved by Construction Manager before award of the Contract. The MBE/WBE Participation Plan shall include the following information:

- A. Name and telephone number of designated MBE/WBE contact person;
- B. Names and addresses of proposed MBE/WBE contractors; the proposed MBE/WBE contractors must be approved as described below in this Section 8;
- C. Description of work and approximate dollar value of work to be performed by each MBE/WBE contractor;
- D. Percent of participation in relationship to the cost of the overall Project for each MBE/WBE contractor.

Subsequent to contract award, the Contractor shall use and document every good faith effort to comply with its MBE/WBE Participation Plan and to permit its MBE/WBE Subcontractors to perform. Participation percentages shall be monitored throughout the performance of this Contract. Such good faith efforts shall include at least the following:

- A. Attendance at pre-bid meetings, if any, scheduled by the Construction Manager;
- B. Utilization of the Authority's Directory of certified MBE/WBEs available on-line (see MBE/WBE Directory Letter in back of Contract Book) 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 or Proposals 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 in order to increase the likelihood of achieving the MBE/WBE goals;
- F. Providing a sufficient supply of plans and specifications of prospective work to MBE/WBEs and providing appropriate materials to each in sufficient time to review;

- G. Utilizing the services of available minority and women's community organizations; contractor's groups; local, state and federal business assistance/development offices and other organizations that provide assistance to MBE/WBEs;
- H. Ensuring that progress payments are made in a timely fashion in accordance with the requirements of this Contract;
- I. Not requiring bonds from and/or providing bonds and insurance for Subcontractors where appropriate;
- J. Soliciting specific recommendations on methods for enhancing MBE/WBE participation from Construction Manager's staff responsible for such participation;
- K. 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.);
- L. Establishment of impress funds to facilitate MBE/WBE cash flow; and
- M. Directing other contractors to solicit MBE/WBE subcontractor participation.

Subsequent to contract award, the Contractor shall also provide the Construction Manager, at its 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 Construction Manager, on a monthly basis, the Statement of Subcontractor's Payments in a form approved by Construction Manager.

In order to assure that the planned goals are being met, a monthly Statement of Payments Reports reflecting the actual payments to MBE/WBE contractors must be submitted throughout the duration of performance of the Contract.

In calculating the progress toward meeting the goal, Contractor shall receive credit for only sixty percent (60%) of the amounts paid to materialmen/suppliers who are MBE/WBE firms, except in the case of firms who manufacture materials. Contractor shall receive one hundred percent (100%) credit for suppliers who manufacture products or make material changes to products before sale.

In the event that, prior to contract award and following review of the MBE/WBE Participation Plan submitted by the bidder pursuant to the clause hereof entitled "Qualification Information", the Construction Manager determines that the Contractor has not made a good faith effort to meet the MBE/WBE participation goals set forth above and that the Contractor has not demonstrated that a full or partial waiver of such goals is appropriate, the Construction Manager may advise the bidder that it is not responsible and may reject the bidder's Proposal.

If, during the performance of the Contract, the Contractor fails to demonstrate good faith in carrying out its MBE/WBE Participation Plan and in permitting its MBE/WBE Subcontractors to perform and the Contractor has not demonstrated that a full or partial waiver of the above referenced MBE/WBE participation goals is appropriate, then, upon receipt of a future Proposal or Proposals from the Contractor, the Construction Manager may advise the Contractor that it is not a responsible bidder and may reject such Proposal(s).

Either prior or subsequent to acceptance of the bidder's Proposal, the bidder may request a full or partial waiver of the above described MBE/WBE participation goals by providing a reasonable demonstration to the Construction Manager that its good faith efforts will not result in compliance with the goals set forth above because participation by eligible MBE/WBEs could not be obtained at a reasonable price or that such MBE/WBEs were not available or refused to perform as Subcontractors. The bidder shall provide such documentation to support its request as the Construction Manager may require.

Once approved, the MBE/WBE Participation Plan submitted by the bidder may be modified only with the written approval of the Construction Manager.

Following approval by the Construction Manager 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 Construction Manager in accordance with this numbered clause, 1 WTC may, at its sole option, provide to said approved MBE/WBEs; without charge, whatever appropriate consultant services may be available under the L.E.A.P. Program; provided, however, that such consultant services will only be furnished pursuant to a request in writing from the Contractor to the General Manager, Small Business Programs, Office of Regional and Economic Development 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 General Manager, Small Business Programs, Office of Regional and Economic Development 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 MBE/WBE Subcontractor. Prior to being accepted as a participant in the L.E.A.P. Program, the MBE/WBE Subcontractor will be required to release the Construction Manager, 1 WTC and the individuals furnishing consultant 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 Construction Manager 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 required MBE/WBE participation.

If the Contractor wishes to perform a portion of the Work through a firm not listed in the Directory² 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 General Manager, Small Business Programs, Office of Regional and Economic Development 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 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 Construction Manager 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</p> | <p>2. Hispanic American Chamber of Commerce of Essex County P.O. Box 9146 Newark, NJ 07104 (973) 484-5441 Fax (973) 350-9238</p> |
| <p>3. Association of Minority Enterprises of NY, Inc. 135-20 Liberty Avenue Richmond Hill, NY 11419 (718) 291-1641 Fax (718) 297-2986</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</p> |
| <p>5. Newark Opportunity Center 17 Academy Street, Suite 501 Newark, NJ 07102 (973) 622-4537 Fax (973) 622-3914</p> | <p>6. Jamaica Business Resource Center 90-33 16th Street Jamaica, NY 11432 (718) 206-2255 Fax (718) 206-3693</p> |

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 Construction Manager for a determination as to eligibility as provided above.

7. Council for Airport Opportunity
90-04 161st Street Jamaica,
NY 11432
(718) 523-7100
Fax (718) 526-3472
8. Urban Business Assistance Corp.
New York University Stern School of
Business
44 West 4th Street, Suite 5-61
New York, NY 10012
(212) 995-4404
Fax (212) 995-4255
9. Greater Jamaica Development Corp.
90-04 161st Street
Jamaica, NY 11432
(718) 291-0282
Fax (718) 291-7918
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
11. Professional Women in Construction
315 E. 56th Street, Suite 202
New York, NY 10022
(212) 486-7745
Fax (212) 486-0228
12. NY/NJ Minority Purchasing Council
205 East 42nd Street
New York, NY 10017
(212) 573-2385
Fax (212) 522-4004
13. Jamaica Chamber of Commerce
90-25 161st Street, Room 505
Jamaica, NY 11432
(718) 657-4800
Fax (718) 658-4642
14. Queens Overall Economic
Development Office
120-55 Queens Boulevard, Suite 309
Kew Gardens, NY 11424
(718) 263-0546
Fax (718) 263-0594

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|---|---|
| <p>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</p> | <p>16. Small Business Development Center - Rutgers University, University Heights 49 Bleeker Street Newark, NJ 07102 (973) 353-1927 Fax (973) 353-1110</p> |
| <p>17. Small Business Development Center - Kean University East Campus, Room 242 Union, NJ 07083 (908) 527-2946 Fax (908) 527-2960</p> | <p>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</p> |
| <p>19. Caribbean-American Chamber of Commerce Brooklyn Navy Yard Brooklyn, NY 11205 (718) 834-4544 Fax (718) 834-9774</p> | <p>20. Manhattan Hispanic Chamber of Commerce P.O. Box 3494 Grand Central Station New York, NY 10163 (212) 683-5955 Fax (212) 683-5999</p> |
| <p>21. Asian Women in Business 358 Fifth Avenue, Suite 504 New York, NY 10001 (212) 868-1368 Fax (212) 868-1373</p> | <p>22. Asian American Business Development Center 80 Wall Street, Suite 418 New York, NY 10005 (212) 966-0100 Fax (212) 966-2786</p> |

23. New York State Federation of Hispanic
Chambers of Commerce
2710 Broadway
New York, NY 10025
(212) 222-8300
Fax (212) 222-8412

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

Please note that the Contractor must 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. However only sixty percent (60%) of the amounts paid by the Contractor to such Materialmen who are MBEs/WBEs, except in the case of firms who themselves manufacture materials for use under the Contract, shall be allowed in computing the percentages of the Lump Sum required to be paid to MBEs/WBEs hereunder.

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

9. INSPECTION OF SITE

Each bidder or his authorized representative must make proper arrangements with the Construction Manager at the construction site before inspecting the construction site. To make such arrangements call Construction Manager at 212.748.1001.

10. QUESTIONS BY BIDDERS

Questions by prospective bidders concerning the Contract may be addressed to Construction Manager, who, however, is authorized only to direct the attention of prospective bidders to various portions of the Contract so that they may read and interpret such portions for themselves. Neither Construction Manager nor any other employee or representative of the Construction Manager is authorized to give interpretations of any portion of the Contract or to give information as to the requirements of the Contract in addition to that contained in the Contract. Interpretations of the Contract or additional information as to its requirements, where necessary, shall be communicated to bidders only by written addendum, which addendum shall be considered part of this Contract. Accordingly, nothing contained herein and no representation, statement or promise, oral or in writing, of the Construction Manager, or 1 WTC its Directors, officers, agents, representatives or employees shall impair or limit the effect of the warranties of the Contractor contained in the clause of the Form of Contract entitled "Contractor's Warranties" or elsewhere in this Contract. The provisions of this clause shall apply to questions addressed by prospective bidders both before and after their receipt of Contract documents.

11. AUTHORITY SECURITY REQUIREMENTS

Bidder shall comply with the security requirements set forth herein both pre- and post-contract award, including, without limitation, the requirements set forth in Rider S (Site Security Requirements).

The Authority has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. 1 WTC and Construction Manager reserve the right to impose multiple layers of security requirements on the Contractor, its staff and Subcontractors and their staffs depending upon the level of security required, as determined by 1 WTC. This includes the Contractor's responsibility to perform Contractor/Subcontractor identity checks and background screening, including, but not limited to: inspection of not less than two forms of valid/current government issued identification (at least one having an official photograph) to verify staff's name and residence; screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files; multi-year check of personal, employment and/or credit history. The Contractor shall, and shall instruct its Subcontractors, to cooperate with Construction Manager's staff in adopting security requirements. These security requirements may include, but are not limited to the following:

- a. Access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;
- b. Issuance of photo identification cards:

No person will be permitted on or about the construction site without a photo identification badge approved by the Construction Manager. The Construction Manager will provide such identification badges for Contractor and Subcontractor staff, and Materialmen, if necessary. All employees of the Contractor, Subcontractors and Materialmen shall wear identification badges in a conspicuous and clearly visible position whenever they are working at the construction site.

- c. Access control, inspection, and monitoring by security guards:

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

- d. Neither the Contractor nor any Subcontractors shall issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to 1 WTC or the Authority or the Work performed in connection with this Contract without first obtaining the written approval of 1 WTC. Such approval may be withheld if for any reason 1 WTC believes that the publication of such information would be harmful to the public interest or is in any way undesirable.
- e. Under no circumstances shall the Contractor nor any Subcontractor communicate in any way with any consultant, department, board, agency, commissioner or other organization or any person whether governmental or private in connection with the Work to be performed hereunder, unless required by Law, except upon prior written approval and instructions of 1 WTC, provided, however that data from manufacturers and suppliers of material may be obtained when such data is necessary to the performance of the Work.

- f. Neither the Contractor nor any Subcontractors shall provide access to the construction site to anyone other than their employees and others who are approved by 1 WTC to be directly involved in performing Work at the construction site.
- g. Neither the Contractor nor any Subcontractor is permitted to take photographs or video recordings or make sketches at the construction site, except when necessary to perform the Work under this Contract. Upon request, any photograph, video recording or sketch taken at the construction site shall be submitted to 1 WTC to ascertain compliance with this paragraph.

The Contractor shall be required to have its staff and that of its Subcontractors undergo a criminal history background check and shall furnish proof to 1 WTC, in a form acceptable to 1 WTC, that such check has been performed. No employee of the Contractor or any Subcontractor will be permitted at the construction site without proof that such check has been performed.

In addition, 1 WTC or Construction Manager may increase and/or upgrade security requirements for the Contractor, its staff and Subcontractors and their staffs during the term of this Contract to address changing security conditions and/or new governmental regulations.

Should 1 WTC or Construction Manager increase and/or upgrade security requirements after acceptance of the Contractor's Lump Sum Proposal, the Contractor will be compensated for the additional cost of such increase and/or upgrade in accordance with the clause of the Contract entitled, "Extra Work."

11A. PROTECTION OF SECURITY INFORMATION

1. The Contractor, Subcontractors and others requiring access to Confidential and Privileged (C&P) security information and Sensitive Security Information (SSI) shall also be required to implement uniform security procedures regarding the identification, handling, care and storage of C&P security information belonging to 1 WTC or Construction Manager; and SSI as defined in 49 CFR Parts 15 and 1520. 1 WTC or Construction Manager C&P security information is information that, if subject to unauthorized disclosure, access, alteration, loss or misuse would be detrimental to the public interest and/or might adversely affect, or compromise, public safety or security as it relates to Authority or 1 WTC property, facilities, systems and/or operations, or which might otherwise adversely affect homeland security.

The Authority has developed requirements and other safeguards that are necessary both to prevent unauthorized disclosure of C&P security information and to control the authorized disclosure of this information for use internally within the Authority and when released by the Authority to outside entities for legitimate business purposes. These requirements and safeguards may be found in the Handbook for Protecting Security Information (July 8, 2005) and the Sub-Project's Security Information Practices and procedures manual, both of which will be made available to the Contractor and each Subcontractor. Each Contractor, Subcontractor and their staffs shall follow and implement the requirements and safeguards set forth in the aforementioned Handbook. Further, the staffs of the Contractor, Subcontractors and others requiring access to C&P security information and SSI shall also be required to sign a Non-Disclosure/Confidentiality Agreement (NDA), or an Acknowledgement thereof where an executed NDA is in place, prior to performing work activities in connection with this Contract, the form of which is set forth in Rider F (Non-Disclosure and Confidentiality Agreement).

2. The Contractor, each Subcontractor and others requiring access to C&P security information and SSI, shall appoint a senior management level employee to be the company's Security Information Manager (SIM). The SIM is responsible for implementing and maintaining the firm's

Program For Protecting C&P security information and/or SSI. A deputy SIM (DSIM) shall also be appointed in case the SIM is unavailable for any reason.

3. The SIM shall prepare an Authorized Personnel Agreement Sub-Project List - a list of employees who are authorized to access C&P security information and the date each executed the NDA. A copy of this list shall be provided to 1 WTC and the Construction Manager and updated monthly. This list will be used to verify that individuals have been briefed into the program and are certified for access to C&P security information.

Protection of C&P security information and SSI is a material obligation of the Contractor hereunder and failure to do so is grounds for termination for cause.

In addition, an individual's access to C&P security information and SSI may be contingent upon the satisfactory completion of a security background check for such individual and proof of the implementation of satisfactory procedures for safeguarding such C&P security information and/or SSI.

Unauthorized disclosure of SSI may be grounds for a civil penalty and/or other enforcement or corrective action by the United States Department of Transportation and/or the United States Department of Homeland Security against individuals or entities they deem appropriate including but not limited to the Contractor, its Subcontractors and their staffs.

Corrective action may include issuance of an order requiring retrieval of SSI to remedy unauthorized disclosure or an order to cease future unauthorized disclosure.

4. The Contractor shall include and require the inclusion of this numbered provision in all subcontracts and contracts for Work, services or supplying materials required for this Contract of every tier.

11B. PREVAILING RATE OF WAGE CERTIFICATION

The bidders' attention is directed specifically to the clause of the Form of Contract entitled "Prevailing Rate of Wage" and to the fact that the Construction Manager requires a certification in writing from the successful bidder, in such form as may be required pursuant to such clause, that he has paid and caused his Subcontractors to pay at least the prevailing rate of wage and supplements required by such clause. This certification is required prior to his receipt of any payment from the Construction Manager hereunder as provided in the clauses of the Form of Contract entitled "Monthly Advances" and "Final Payment" or at any other time.

11C. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, SUSPENSION, DEBARMENT, DISQUALIFICATION, PREQUALIFICATION DENIAL OR TERMINATION, ETC; DISCLOSURE OF OTHER REQUIRED INFORMATION

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder and each parent and/or affiliate of the bidder has not (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal; (f) been denied a contract by any governmental agency for failure to provide the required security, including bid, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency, including an inspector general of a governmental agency or public authority; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local environmental law, rule or regulation; and (k) shared space, staff, or equipment with any business entity.

The foregoing certification as to "(a)" through "(k)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each director and officer, as well as, to the best of the certifier's knowledge and belief, each stockholder with an ownership interest in excess of 10%; if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to complete Rider K (Project Corruption Prevention Program) as part of its bid, require all Subcontractors and Materialmen to complete Rider K (Project Corruption Prevention Program) and to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by 1 WTC. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

As used in this clause, the following terms shall mean:

Affiliate - An entity in which the parent of the bidder owns more than fifty percent (50%) of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the bidder also owns more than fifty percent (50%) of the voting stock.

Agency or Governmental Agency - Any federal, state, city or other local agency, including departments, offices, quasi-public agencies, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

Employer Identification Number - The tax identification number assigned to firms by the federal government for tax purposes.

Investigation - Any inquiries made by any federal, state or local criminal prosecuting or investigative agency, including an inspector general of a governmental agency or public authority, and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil government agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or Federal, state, and local inquiries into tax returns.

Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the bidder by whatever titles known.

Parent - An individual, partnership, joint venture or corporation which owns more than fifty percent (50%) of the voting stock of the bidder.

Space Sharing - Space shall be considered to be shared when any part of the floor space utilized by the submitting business at any of its sites is also utilized on a regular or intermittent basis for any purpose by any other business or not-for-profit organization, and where there is no lease or sublease in effect between the submitting business and any other business or not-for-profit organization that is sharing space with the submitting business.

Staff Sharing - Staff shall be considered to be shared when any individual provides the services of an employee, whether paid or unpaid, to the bidder and also, on either a regular or irregular basis, provides the services of an employee, paid or unpaid, to one or more other business(es) and/or not-for-profit organization(s), if such services are provided during any part of the same hours the individual is providing services to the bidder or if such services are provided on an alternating or interchangeable basis between the bidder and the other business(es) or not-for-profit organization(s). "The services of an employee" should be understood to include services of any type or level, including managerial or supervisory. This type of sharing may include, but is not limited to, individuals who provide the following services: telephone answering, receptionist, delivery, custodial, and driving.

Equipment Sharing - Equipment shall be considered to be shared whenever the bidder shares the ownership and/or the use of any equipment with any other business or not-for-profit organization. Such equipment may include, but is not limited to, telephones or telephone systems, photocopiers, computers, motor vehicles, and construction equipment. Equipment shall not be considered to be shared under the following two circumstances: when, although the equipment is owned by another business or not-for-profit organization, the bidder has entered into a formal lease for the use of the equipment and exercises exclusive use of the equipment; or when the bidder owns equipment that it has formally leased to another business or not-for-profit organization, and for the duration of such lease the bidder has relinquished all right to the use of such leased equipment.

**12. NON-COLLUSIVE BIDDING AND CODE OF ETHICS CERTIFICATION;
CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION,
PERCENTAGE, BROKERAGE, CONTINGENT FEE OR OTHER FEE**

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that: (a) the prices in its bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; (b) the prices quoted in its bid have not been and will not be knowingly disclosed, directly or indirectly, by the bidder prior to the official opening of such bid to any other bidder or to any competitor; (c) no attempt has been made and none will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the Form of Contract entitled "No Gifts, Gratuities, Offers of Employment, etc.") or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Bidders"), nor does this organization have any knowledge of any act on the part of an Construction Manager employee or former Construction Manager employee relating either directly or indirectly to this

organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by the bidder for the purpose of securing business, has been employed or retained by the bidder to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency; the bidder has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made by the bidder as follows: if the bidder is a corporation, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each parent, affiliate, director and officer of the bidder, as well as, to the best of the certifier's knowledge and belief, each stockholder of the bidder with an ownership interest in excess of ten percent (10%); if the bidder is a partnership, such certification shall be deemed to have been made not only with respect to the bidder itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth in such statement the reasons for its uncertainty.

Notwithstanding that the bidder may be able to make the foregoing certification at the time the bid is submitted, the bidder shall immediately notify the Construction Manager in writing during the period of irrevocability of bids on this Contract or any extension of such period, of any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure. The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager should determine at any time prior or subsequent to the award of this Contract that the bidder has falsely certified as to any material item in the foregoing certification or has willfully or fraudulently furnished a signed statement which is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the foregoing certification required to be disclosed, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids on Construction Manager or 1 WTC contracts and may, in addition to exercising any other rights or remedies it may have, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC".

In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.). Bidders are also advised that the inability to make such certification will not in and of itself disqualify a bidder, and that in each instance the Construction Manager will evaluate the reasons therefor provided by the bidder.

Under certain circumstances the bidder may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent Monitor to be selected by the Authority. Said Monitor shall be charged with, among other things, auditing the actions of the bidder to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to continue business with 1 WTC and the Authority.

13. BIDDER ELIGIBILITY FOR AWARD OF CONTRACTS – DETERMINATIONS BY AN AGENCY OF THE STATE OF NEW YORK OR NEW JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC CONTRACTS

Bidders are advised that the Authority has adopted a policy, which Construction Manager and 1 WTC adopt as set forth herein, to the effect that in awarding its contracts it will honor any determination by an agency of the State of New York or New Jersey that a bidder is not eligible to bid on or be awarded public contracts because the bidder has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

The Authority policy permits a bidder whose ineligibility has been so determined by an agency of the State of New York or New Jersey to submit a bid on a Authority contract and then to establish that it is *eligible to be awarded the contract on which it has bid because (i) the state agency determination relied upon does not apply to the bidder, or (ii) the state agency determination relied upon was made without affording the bidder the notice and hearing to which the bidder was entitled by the requirements of due process of law, or (iii) the state agency determination was clearly erroneous or (iv) the state agency determination relied upon was not based on a finding of conduct demonstrating a lack of integrity or a violation of a prevailing rate of wage law.*

The full text of the resolution adopting the Authority policy may be found in the Minutes of the Authority's Board of Commissioners meeting of September 9, 1993.

14. CONSTRUCTION SKILLS 2000 – APPRENTICESHIP PROGRAM

The Authority is a participant in Construction Skills 2000, a cooperative program among New York City schools, unions and public agencies. Construction Skills 2000 creates career opportunities in the construction industry for high school graduates by providing a systematic pathway into union-sponsored, skilled trade apprenticeship programs. The Authority encourages Contractors and their Subcontractors to maximize the use of apprentices under the applicable collective bargaining agreements or as contained in the applicable program approved by the New York State Department of Labor. The Contractor's plan for utilizing apprentices will be discussed at the pre-construction meeting.

Each Subcontractor proposed for approval under the Contract whose total amount of subcontracts under this Contract is greater than \$1 Million Dollars and each bidder (except as set forth in the certification below) will be required to certify as to their participation in a New York State-registered apprenticeship program.

15. CERTIFICATION OF PARTICIPATION IN A STATE-REGISTERED APPRENTICESHIP PROGRAM

By bidding on this Contract, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, that the bidder participates in an apprenticeship program registered by the New York State Department of Labor. Participation in such an apprenticeship program shall mean that the bidder either (a) is a signatory to a collective bargaining agreement with a labor organization which sponsors an apprenticeship program registered with the New York State Department of Labor or (b) individually sponsors an apprenticeship program registered by the New York State Department of Labor and, in the case of both (a) and (b) above, such apprenticeship program shall be in the trade(s) in which Work is to be performed. This clause shall not apply to bidders who will perform all Work at the construction site through the use of Subcontractors.

The foregoing certification, if made by a corporate bidder, shall be deemed to have been authorized by the Board of Directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the signed bid a signed statement which sets forth in detail the reasons therefor. If the bidder is uncertain as to whether it can make the foregoing certification, it shall so indicate in a signed statement furnished with its bid, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the bidder's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the bid is submitted, the bidder agrees to immediately notify the Construction Manager in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the bidder with full knowledge that it would become a part of the records of the Construction Manager and that the Construction Manager will rely on its truth and accuracy in awarding this Contract. In the event that the Construction Manager determines at any time prior or subsequent to the award of the Contract that the bidder has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Construction Manager may determine that the bidder is not a responsible bidder with respect to its bid on this Contract or with respect to future bids and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of 1 WTC". In addition, bidders are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see, e.g., New York Penal Law, Section 175.30 et seq.).

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

To Tishman Construction Corporation, a Delaware corporation:

The undersigned³

BIDDERS NAME:

TYPE OF ENTITY (see Note "3" below):

(hereinafter called, "the Contractor") hereby offers to perform all the obligations and to assume all the duties and liabilities of the Contractor provided for in the annexed Contract on the terms and conditions contained therein, in all Riders referenced therein and all terms and conditions contained in these Instructions to Bidders Sections 1 through 15, at the price set forth in the attached Bid Proposal.

This offer shall be irrevocable for one hundred eighty (180) days after the date on which the Construction Manager opens this Proposal.

To induce the acceptance of this Proposal, the undersigned hereby makes each and every certification, statement, assurance, representation and warranty made by the Contractor in said Contract. Moreover as a condition to receipt and consideration by the Construction Manager of the Proposal whether or not it is accepted, the undersigned agrees that all information of any nature whatsoever, regardless of the form of the communication, received from the undersigned (including its officers, agents, or employees) by the Construction Manager and 1 WTC, its Directors, officers, agents or employees, and notwithstanding any statement therein to the contrary, has not been given in confidence and may be used or disclosed by or on behalf of the Construction Manager or 1 WTC without liability of any kind except as may arise under letters patent of the undersigned, if any.

Unless expressly stated otherwise, the Instructions for Bidders and Bid Proposal Form, all papers required by it and submitted in connection herewith at any time, said Form of Contract, and all papers made part of the Contract by the terms of the Form of Contract are made part of this Proposal

(PAGE 1 OF 6)

³ Insert bidder's name at the top of the page. After the bidder's name, insert one of the following phrases:

If a corporation, give state of incorporation, using the phrase, "a corporation organized under the laws of the State of _____"

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

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

If a joint venture, give the information required above for each participant in the joint venture.

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

In accordance with the bid documents listed below and pursuant to your letter dated _____, we submit our Proposal herewith:

1. General Form of Agreement
2. Rider "A", General Addendum, dated November 30, 2006, as modified
3. Rider "B", List of Drawings and Specifications
4. Rider "C", Alternatives & Unit Prices
5. Rider "D", Insurance Rider, dated November 30, 2006, as modified
6. Rider "DX" Owner Controlled Insurance Program (or OCIP) [Used Only If OCIP Provided]
7. Rider "E", [Intentionally Deleted]
8. Rider "F", Non-Disclosure and Confidentiality Agreement
9. Rider "G", Sustainable Construction Requirements, dated April 11, 2007, as modified
10. Rider "H", Requirements for Work in PATH Right of Way, dated June 16, 2006
11. Rider "I", Port Authority of New York & New Jersey Sales and Use Tax Requirements:
Port Authority of New York & New Jersey Sales Tax Letter, dated _____
New York State Contractor Exempt Purchase Certificate Form S120.1
New York State Certificate of Capital Improvement Form ST-124
12. Rider "J", Temporary Services, dated October 2, 2006
13. Rider "K", Project Corruption Prevention Program, dated January 8, 2007
14. Rider "L", Payment Procedures
15. Rider "M", Tishman Construction Safety Guidelines, dated November 3, 2005
16. Rider "N", Port Authority of New York & New Jersey WTC Site Rules and Regulations, dated January 1, 2006
17. Rider "O", Available Documents
18. Rider "P", [Intentionally Deleted]
19. Rider "Q", Above and Below Grade Site Logistics Plans
20. Rider "R", [Intentionally Deleted]
21. Rider "S", Site Security Requirements
22. Rider "T", Milestone Dates and Liquidated Damages
23. Rider "U", Additional Provisions [Used Only for Certain Trades]

BIDDER'S NAME: _____

**BID PROPOSAL FORM (6 Pages)
 WORLD TRADE CENTER - TOWER ONE
 NEW YORK, NEW YORK**

DATE: _____

TRADE: _____
BID DUE DATE: _____

A. BASE BID BREAKDOWN

Perform the following (INSERT TRADE NAME) work in strict accordance with the bid documents (Cost for Performance/Payment Bond not included). The amount of the "Total Base Bid", including any price adjustment resulting from Bid Addenda, shall be filled in by the Bidder in Clause 17 of the Contract entitled "General Agreement" and such amount shall be defined as the "Lump Sum" for purposes of this Contract.

1. _____ \$ _____
 2. _____ \$ _____
 3. _____ \$ _____
 TOTAL BASE BID: \$ _____

B. BIDDER'S ALTERNATES

Bidder to fully describe suggested changes to expedite Project and/or reduce costs. (Reduction on cost to be indicated and not included in Base Bid). (Attach additional sheets as required).

C. SCHEDULE

1. Time required from contract award to start of field work _____/wks.
2. Time required from start of field work to completion _____/wks

D. WORK EXPERIENCE

1. This bidder has performed work directly for the Port Authority Of New York & New Jersey in the past ten (10) years yes no

| | |
|--|-------------------------|
| The undersigned hereby designates the following as the bidder's name and office ⁴ : | _____ _____ _____ |
| The telephone number of the bidder is: | _____ |
| The fax number of the bidder is: | _____ |
| The E-Mail address of the bidder is: | _____ |

(PAGE 3 OF 6)

⁴ Insert office address.

BID PROPOSAL FORM (6 Pages)
WORLD TRADE CENTER - TOWER ONE
NEW YORK, NEW YORK

DATE:

TRADE:
BID DUE DATE:

SIGNATURE AND CERTIFICATE OF AUTHORITY⁵

Dated, _____, 20

| | |
|---|-------------------------|
| (Signature of individual or name of corporation or partnership) | _____ |
| (Signature of agent, partner or corporate officer) | By ^{6,7} _____ |
| (Acknowledgment of signature to be taken on proper form on following page(s)) | _____ |

CERTIFICATE OF AUTHORITY, IF BIDDER IS A CORPORATION

I, the undersigned, as Secretary of the corporation submitting the foregoing Proposal, hereby certify that under and pursuant to the by-laws and resolutions of said corporation, each officer who has signed said Proposal on behalf of the corporation is fully and completely authorized so to do.

(Corporate Seal)

(PAGE 4 OF 6)

⁵ If bidder is a joint venture, insert signatures as appropriate for one participant of the joint venture on this page and attach and complete an additional signature sheet in the same form as appears on this page for each other participant as required.

⁶ If Proposal is signed by an officer or agent, give title.

⁷ **NOTE:** The foregoing signature shall be deemed to have been provided with full knowledge that the foregoing Proposal, the accompanying Contract booklet, as well as any certification, statement, assurance, representation, warranty, schedule or other document submitted by the bidder with the Proposal will become a part of the records of the Construction Manager and that the Construction Manager will rely in awarding the Contract on the truth and accuracy of such Proposal and each such certification, statement, assurance, representation, warranty and schedule made therein by the Contractor. Knowingly submitting a false statement in connection with any of the foregoing may be the basis for prosecution for offering a false instrument for filing (see, e.g., N.Y. Penal Law, Section 175.30 et seq.).

**BID PROPOSAL FORM (6 Pages)
 WORLD TRADE CENTER - TOWER ONE
 NEW YORK, NEW YORK**

DATE: _____

**TRADE:
 BID DUE DATE:** _____

ACKNOWLEDGMENT⁸

ACKNOWLEDGMENT OF BIDDER, 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 BIDDER, 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)

(PAGE 5 OF 6)

⁸ If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Acknowledgment sheet in the same form as appears on this page for each other participant as required

**BID PROPOSAL FORM (6 Pages)
 WORLD TRADE CENTER - TOWER ONE
 NEW YORK, NEW YORK**

DATE:

**TRADE:
 BID DUE DATE:**

ACKNOWLEDGMENT OF BIDDER, 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)

STATEMENT ACCOMPANYING PROPOSAL⁹

Names and residences of officers, if bidder is a corporation:

| Name | Title | Residence ¹⁰ |
|------|-------|-------------------------|
| | | |
| | | |
| | | |
| | | |

Names and residences of partners, if bidder is a partnership:

| Name | General or Limited Partner | Residence ¹¹ |
|------|----------------------------|-------------------------|
| | | |
| | | |
| | | |
| | | |

Bidder's residence, if an individual¹²

(PAGE 6 OF 6)

⁹ *If bidder is a joint venture, insert signature as appropriate for one participant of the joint venture on this page and attach and complete an additional Statement Accompanying Proposal sheet in the same form as appears on this page for each other participant as required.*

¹⁰ Give street and number of residence. Do not give business address.

¹¹ Give street and number of residence. Do not give business address.

¹² Give street and number of residence. Do not give business address.

**FORM OF CONTRACT
CHAPTER I
GENERAL PROVISIONS**

16. DEFINITIONS

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

"1 WTC" shall mean 1 World Trade Center LLC, a Delaware Limited Liability Company, having an office c/o The Port Authority of New York and New Jersey, 225 Park Avenue South, New York, New York, 10003 ("1 WTC"). Any reference to 1 WTC in the context of performing any duty, conducting any action, rendering a decision, or having any discretion shall be performed by the 1 WTC Representative. 1 WTC shall have all rights and benefits of Construction Manager as set forth herein.

"1 WTC Indemnitee Group" shall mean 1 WTC, Authority, Construction Manager, Silverstein Freedom Tower Development LLC and all other Additional Insureds referred to in **Rider D** (Insurance Rider).

"1 WTC Representative" shall mean the Director of the World Trade Center Construction Department or his designee. 1 WTC Representative is the only authorized representative to act, or receive, on behalf of 1 WTC with respect to any duty, obligation, notice or other action set forth in this Contract.

"Authority" shall mean the Port Authority of New York and New Jersey.

"Construction Manager" shall mean Tishman Construction Corporation, a Delaware corporation, having an office at 666 Fifth Avenue, New York, New York 10103, acting as agent for 1 WTC hereunder, and shall be generally responsible for the managing, supervision, coordination, and direction of all contractors in regards to the Work.

"Contract" shall mean, in addition to this Form of Contract, the Instructions for Bidders and Bid Proposal Form, Sections 1-15, the Proposal, all Riders listed herein under "List of Riders," the Construction Manager's acceptance, the Specifications and the Contract Drawings (including written addenda issued over the name of the Construction Manager), 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. However, the Riders may be unilaterally amended from time to time by 1 WTC, which amendments constitute terms and conditions of the Contract. To the extent there is any conflict between documents forming the Contract, the provisions of the Riders shall control over all other provisions, followed by the terms of this Form of Contract followed by all other terms and conditions that form the Contract. All Riders that include blanks or forms shall be filled in or completed by Contractor, who shall also obligate Subcontractors and Materialmen to fill in such blanks and complete such forms.

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

"Design Team" shall mean all of the design professionals hired by 1 WTC, either directly or indirectly to provide professional services with respect to the Project including without limitation Architect of Record, Engineer of Record and Design Consultants.

The term "construction site" or words of similar import shall mean the World Trade Center, New York, New York.

"Work" shall mean all structures, equipment, plant, labor, materials (including materials and equipment, if any, furnished by the Construction Manager) and other facilities and all other things necessary or proper for or incidental to performing the construction at the World Trade Center site; and "performance of Work" and words of similar import shall mean the furnishing of such facilities and the doing of such things.

"Work required by the Contract Drawings in their present form" or words of similar import shall include all Work required by or reasonably inferable from the Specifications in their present form (whether or not shown upon the Contract Drawings), all Work shown upon or reasonably inferable from the Contract Drawings in their present form (whether or not mentioned in the Specifications), and all Work involved in or incidental to the accomplishment of the results intended by the Specifications and Contract Drawings in their present form (whether or not mentioned therein or shown thereon)."

"Equipment" and "plant" shall include construction equipment and plant rented as agent for the Construction Manager.

"Extra Work" shall mean Work required by the Construction Manager pursuant to the clause hereof entitled "Extra Work Orders" which is in addition to that required by the Contract Drawings in their present form.

"Contract Drawings" shall mean the drawings and specifications designated in **Rider B** (List of Drawings and Specifications), and, except as used in the phrase "Contract Drawings in their present form", shall include any future alterations and revisions to such drawings and specifications. Any reference herein to Specifications shall mean specifications contained within the Contract Drawings.

"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 Construction Manager 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 Construction Manager to illustrate some portion of the Work.

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

"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.

"Architect of Record" shall mean Skidmore Owings & Merrill LLP.

"Engineer(s) of Record" shall mean the engineers hired by 1 WTC to perform professional engineering services for the Project who have provided professional stamps to one or more of the Contract Drawings.

"Design Consultant" shall mean members of the Design Team who are not the Architect of Record or the Engineer of Record.

"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.

"Integrity Monitor" shall have the meaning set forth in Section 18 (Access to Records) of this Form of Contract.

The term "permanent construction" shall include all construction, installation, structures, equipment and materials (including materials and equipment, if any, furnished by the Construction Manager to be constructed, installed or left by the Contractor at or about the construction site (or elsewhere in the possession of the Construction Manager 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.

"Lump Sum" shall mean the amount stipulated in the clause hereof entitled "General Agreement".

"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 Construction Manager; and "approved", "acceptable", "satisfactory" and words of similar import shall mean approved by or acceptable or satisfactory to the Construction Manager; and "necessary", "reasonable", "proper", "correct" and words of similar import shall mean necessary, reasonable, proper or correct in the judgment of the Construction Manager.

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.

17. GENERAL AGREEMENT³

The Contractor agrees to perform the construction at the World Trade Center site and to furnish all structures, equipment, plant, labor, materials and other facilities and to do all other things necessary or proper therefor or incidental thereto, all in strict accordance with the Contract Drawings designated in **Rider B** (Contract Drawings and Specifications) and any future changes therein; and the Contractor further agrees to assume and perform all other duties and obligations imposed upon him by this Contract. The furnishing of equipment and plant, however, shall be subject to the provisions of the clause hereof entitled "Agency for Rental of Construction Equipment".

The Construction Manager agrees to pay to the Contractor and the Contractor agrees to accept from the Construction Manager, in full consideration for the performance by the Contractor of his duties and obligations under this Contract and the whole thereof, a compensation of:

Two Hundred Fifty Six Million Dollars and Zero Cents (\$256,000,000.00) (throughout this Contract called the "Lump Sum"), and such compensation only, subject only to the express provisions of this Contract specifically setting forth actual, defined additions to or deductions from such compensation.

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 Construction Manager, 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, whatsoever Work may be required in addition to that required by the Contract Drawings in their present form, and whatsoever obstacles or unforeseen conditions may arise or be encountered.

18. ACCESS TO RECORDS

The Construction Manager and 1 WTC 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 it should be compensated, by the Construction Manager 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 Construction Manager; 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 Construction Manager and/or 1 WTC 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 (3) year period the Construction Manager or 1 WTC has notified the Contractor in writing of a pending claim by the Construction Manager or 1 WTC 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 six (6) years from the date of Final Payment with respect to the records and documents involved.

³ For sales tax exemptions, if any, see clause entitled "Exemptions from New York State and New York City Sales Taxes".

In the event that the Authority hires an integrity monitor in connection with the Project ("Integrity Monitor"), then the Contractor, and all Subcontractors and Materialmen of any tier, will cooperate fully with the Integrity Monitor, 1 WTC and the Authority, including but not limited to providing complete access to all personnel and records related to the performance of this Contract. Failure to comply with this provision shall be a material breach of this Contract.

No provision in this Contract giving the Construction Manager and/or 1 WTC a right of access to records and documents is intended to impair or affect any right of access to records and documents which the Construction Manager and/or 1 WTC and would have in the absence of such provision.

19. AGENCY FOR RENTAL OF CONSTRUCTION EQUIPMENT AND PURCHASE OF MATERIALS NOT INCORPORATED IN PERMANENT CONSTRUCTION

With respect to the performance of Work in the State of New York:

A. General Provisions

In light of the fact that the Authority has designated 1 World Trade Center LLC as its agent for certain purposes, the Contractor further agrees to act as the agent of the Authority, subject to the provisions of this numbered clause relating to such agency (i) for the rental of all construction equipment necessary or desirable for or incidental to the performance of the Contract (other than construction equipment owned and also used by the Contractor or owned and also used by any subcontractor) and (ii) for the purchase of materials not to be incorporated in the Permanent Construction but to be used or consumed in the performance of the Contract as provided in the clause in the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes" and, in the exercise of such agency, to assume all the obligations and duties imposed upon him by this Contract. The Contractor may authorize any subcontractor to act as his subagent for such rental or purchase, subject to all the provisions of this Contract. "Construction equipment" as used in this numbered clause shall include plant.

The Authority will pay the (i) rental charges for said equipment directly to the lessors thereof, and (ii) purchase prices for said materials directly to the vendors thereof, but the charges so paid shall be deducted from the compensation payable to the Contractor under the Contract; provided, however, that the Authority will pay such charges, and the Contractor is authorized by the Authority to act as such agent, to the extent only that the charges or prices payable for such rental or purchase, as the case may be, do not exceed the compensation payable to the Contractor under the Contract; and provided further that the Contractor performs all the obligations relating to said agency imposed upon him by this Contract.

The Authority will provide the Contractor with a statement or other documentation to be furnished by him and the subcontractors to such lessors and materialmen who will identify this Contract as the one under which the Contractor is authorized to rent said equipment or purchase said materials and which will identify the site to which delivery must be made. The Contractor shall arrange for delivery of said equipment or materials directly to the construction site. Payment of the rental charges or purchase prices shall be made by the Authority on the basis of invoices made out to the Authority in which is contained the place of delivery and on which the Contractor has certified by endorsement that such construction equipment or materials is or are being or has or have been used in the performance of the Contract, said invoices to be submitted through the Contractor to the Authority at the time said equipment or materials is used at the construction site. In the event said invoices are not submitted promptly, at the time stated above, but are submitted at a time when, by reason of prior advances and payments to the Contractor or for his account, the amounts still payable to the Contractor in connection with the Contract are

insufficient to pay said invoices, then the Authority shall not be liable to the lessors or vendors for any amounts in excess of said amounts still payable to the Contractor which remain in the possession of the Authority.

Notwithstanding the above agency arrangement, the Authority shall not be liable to lessors of construction equipment for any amounts except rental charges based on time of use of such equipment, nor shall the Authority be liable to vendors of construction materials for any amounts except the purchase price thereof, and the Contractor's agency is limited accordingly. All obligations incurred by the Contractor or subcontractors for any other expenses, including repairs and damages for breach of the rental agreement, shall be obligations incurred by the Contractor or subcontractors as principal not as agent of the Authority. Moreover, as between the Authority and the Contractor, the Contractor shall be responsible for all amounts due to lessors of construction equipment *and vendors of construction materials* notwithstanding the above agency arrangement.

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

The agency provided for under this numbered clause shall not relieve the Contractor of any of his duties and obligations elsewhere provided for under this Contract.

B. Option Not to Act as Agent

Notwithstanding the provisions of A above, the Contractor shall have the right to elect not to act as agent of the Authority for the (i) rental of any particular item or items of said construction equipment, *or (ii) purchase of any construction materials*, in which event, with regard to any such rentals *or purchases* by the Contractor as principal and not agent, the provisions of A of this numbered clause shall be inapplicable as well as those provisions of the clause of the Form of Contract entitled "Exemption From New York State and New York City Sales Taxes", which relate to rental of construction equipment *and purchase of materials not incorporated in the Permanent Construction*.

20. EXEMPTION FROM NEW YORK STATE AND NEW YORK CITY SALES TAXES

A. Materials Incorporated in Permanent Construction

The attention of the Contractor is directed to the following provision of the New York Tax Law:

"§1115. Exemptions from sales and use taxes. (a) Receipts from the following shall be exempt from the tax on retail sales imposed under subdivision (a) of section eleven hundred five and the compensating use tax imposed under section eleven hundred ten:

* * *

(15) Tangible personal property sold to a contractor, subcontractor or repairman for use in (i) erecting a structure or building (A) of an organization described in subdivision (a) of section eleven hundred sixteen, * * * or (ii) adding to, altering

or improving real property, property or land (A) 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.

In view of the foregoing, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such tangible personal property.

If (i) any claim is made against the Contractor by the State of New York or City of New York for such sales or compensating use taxes, 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 or compensating use taxes, 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 requirements of law, provided that:

- 1.) 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 taxes and have filed all the forms and certificates required by the applicable laws, rules and regulations in connection therewith;
- 2.) 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
- 3.) 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.

B. B. Rental of Construction Equipment

The rental by the Contractor or a subcontractor of construction equipment not owned by the Contractor or a subcontractor for use in the performance of the Contract will also not be subject to New York State or New York City sales or compensating use taxes, provided that:

- 1.) the Contractor's and any subcontractor's use of construction equipment rented from others, and any agreement for such rental, is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
- 2.) delivery of said equipment is to the construction site;

- 3.) the Contractor or subcontractor has furnished to the lessor the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to rent said equipment and identifying the construction site to which delivery must be made;
- 4.) the invoice for said equipment is made out to the Authority and prescribes the place of delivery; and
- 5.) the amounts payable for rental of said equipment do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such rentals of equipment.

If (i) any claim is made against the Contractor by the State of New York or the City of New York for sales or compensating use taxes on such rental of construction equipment or (ii) any claim is made against the Contractor by a materialman, lessor or a subcontractor on account of a claim against such materialman, lessor or subcontractor by the State of New York or the City of New York for sales or compensating use taxes on rental of said equipment, 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 requirements of law, provided that the provisos listed above in this numbered clause as A.1 through A.3 and B.1 through B.5 are complied with.

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

C. Materials Not Incorporated in Permanent Construction

The purchase by the Contractor or a subcontractor of *materials not incorporated in the Permanent Construction, but used or consumed* in the performance of the Contract, including but not limited to, *tangible personal property for use in (i) maintaining, installing, repairing or servicing tangible personal property or (ii) the Permanent Construction, excluding tools and equipment, and construction supplies or otherwise taxable services used or consumed by the Contractor or subcontractors at the construction site, excluding tools and equipment*, will also not be subject to New York State or New York City sales or compensating use taxes provided that:

1. the Contractor's and any subcontractor's *purchase of materials* is based upon the agency arrangement provided for in the clause hereof entitled "Agency for Rental of Construction Equipment And Purchase of Materials Not Incorporated in Permanent Construction" and the Contractor and subcontractors have performed all their obligations under said clause;
2. delivery of said *materials* is to the construction site;
3. the Contractor or subcontractor has furnished to the *vendor* the statement or other documentation from the Authority identifying this Contract as the one under which the Contractor or subcontractor has been authorized to *purchase said materials* and identifying the construction site to which delivery must be made;

4. the invoice for said *materials* is made out to the Authority and prescribes the place of delivery; and
5. the amounts payable for said purchase of *materials* do not exceed the amount of compensation payable in connection with the Work.

In view of the above, the Contractor should not include in his price(s) any amounts for New York State and New York City sales and compensating use taxes on such *purchases of materials*. If (i) any claim is made against the Contractor by the State or City of New York for sales or compensating use taxes on such *purchases of materials* 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 or City of New York for sales or compensating use taxes on *purchases of said materials*, 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 requirements of law, provided that the provisions listed above in this numbered clause as A.1 through A.3 and C.1 through C.5 are complied with.

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

20A. PERFORMANCE AND PAYMENT BOND

At the time of accepting a Contractor's Proposal, Construction Manager shall notify Contractor if payment and performance bonds will be required. If bonds are so required, Contractor shall furnish any required bond for the faithful performance of all obligations imposed upon Contractor by the Contract and also for the payment of all lawful claims of Subcontractors, Materialmen, and workers 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 equal to the Lump Sum and such bond shall be signed by one or more sureties⁴ satisfactory to the Construction Manager, and shall include both Construction Manager and 1 WTC as dual Obligees. 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.

If the Construction Manager elects to require the Contractor to furnish a bond, he shall deliver such bond to the Construction Manager within seven days after receipt by him of the acceptance of his Proposal, and the sureties thereon shall be as proposed by him, provided, that if the Construction Manager 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 Construction Manager.

The Construction Manager 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.

⁴ 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 Treasury Department of the United States in effect at the time of submission of the Performance and Payment Bond to the Construction Manager 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.

In the event of a default by the Contractor in its obligation to furnish a satisfactory bond within seven (7) days after he received an acceptance of his Proposal, such default shall entitle the Construction Manager in its discretion to terminate this Contract at any time within forty-five (45) days after the acceptance of the Proposal, without any liability on the part of the Construction Manager or 1 WTC. Inasmuch as the damages to the Construction Manager 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:

A. The excess, if any, of the Lump Sum in the Proposal finally accepted over that in the Proposal of the Contractor; and

B. The expense of such new solicitation of the Contract and related costs, e.g. costs of printing, if any, as may be deemed necessary by the Construction Manager; and

C. The sum of Five Thousand Dollars (\$5000) for each day after the receipt by the Contractor of the acceptance of his Proposal that the performance of the Contract is not commenced by reason of the failure of the Contractor to furnish the required bond.

If the Contractor furnishes a bond in accordance with the requirements of the Construction Manager under this numbered clause, the Construction Manager 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 Construction Manager receipts from the surety or sureties evidencing such payment and the amount thereof. Within fifteen days after receipt of such evidence satisfactory to the Construction Manager, the Construction Manager shall pay to the Contractor by check the amount provided in this numbered clause.

If at any time the Construction Manager shall be or become dissatisfied with any surety or sureties, then, upon any bond furnished in accordance with the requirements of the Construction Manager, or if for any other reason such bond shall cease to be adequate security, the Contractor shall, within five (5) days after notice from the Construction Manager 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 Construction Manager to constitute adequate security.

CHAPTER II ADJUSTMENTS AND PAYMENTS

21. ADJUSTMENTS OF LUMP SUM

If any Work required by the Contract Drawings in their present form shall be countermanded or reduced, the Construction Manager shall have full authority on behalf of both parties to make such adjustment by way of reduction in the Lump Sum as he may in his sole discretion deem equitable and reasonable, and in making such adjustment, no allowance to the Contractor shall be made for anticipated profits.

The Construction Manager shall have authority to agree in writing with the Contractor for adjustments by way of reduction in the Lump Sum in lieu of those for which provision is heretofore made in this numbered clause.

22. COMPENSATION FOR EXTRA WORK

Contractor shall not perform or receive compensation for Extra Work without prior written authorization to perform such Extra Work from Construction Manager. The Construction Manager shall have authority to agree in writing with the Contractor upon lump sum, in accordance with Rider C (Alternatives and Unit Prices) or such other compensation for Extra Work in lieu of the compensation for which provision is hereinafter made in this numbered clause.

If such agreement on compensation is not made, and Extra Work be performed, the Contractor's compensation shall be increased by the following amounts and such amounts only:

In the case of Extra Work performed by the Contractor personally, or by a Subcontractor of any tier or a Materialman, an amount equal to the actual net cost in money of the labor and materials required for such Extra Work, plus fifteen percent of such net cost in the aggregate for such Extra Work, plus such rental for equipment (other than small tools) required for such Extra Work as the Construction Manager deems reasonable plus the net increase in premiums for Commercial General Liability Insurance and Comprehensive Automobile Liability Insurance charged on the basis of the compensation for labor and materials for such Extra Work.

As used in this numbered clause (and in this clause only):

"Labor" means foremen, surveyors, laborers, mechanics and other employees below the rank of superintendent, exclusive of timekeepers, directly employed at the construction site, whether employed by the Contractor or by the Subcontractors, subject to the Construction Manager's authority to determine what employees of any category are "required for Extra Work" and as to the portion of their time allotted to Extra Work; and "cost of labor" means the wages actually paid to and received by such employees plus a proper proportion of (a) premiums, if any, actually paid by the employer for Workers' Compensation Insurance upon the basis of such wages, (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages, and (c) taxes actually paid by the employer pursuant to law upon the basis of such wages. "Employees" as used above means only the employees of one employer.

"Materials" means temporary and consumable materials as well as permanent materials; and "cost of materials" means the price (including taxes actually paid by the Contractor pursuant to law upon the basis of such materials) for which such materials are sold for cash by the manufacturers or producers thereof, or by regular dealers therein, whether or not such materials are purchased directly from the manufacturer, producer or dealer (or if the Contractor is the manufacturer or producer thereof, the reasonable cost to the Contractor of the manufacture and production), plus the reasonable cost of delivering such materials to

the construction site in the event that the price paid to the manufacturer, producer or dealer does not include delivery and in case of temporary materials, less their salvage value, if any.

"Work day" in reference to an item of equipment means a day other than a Saturday, Sunday or legal holiday except that if the particular item of equipment is actually utilized at the construction site by the Contractor or Subcontractors under this Contract or any other contract with the Construction Manager, 1 WTC or the Authority on a Saturday, Sunday or legal holiday said day shall be deemed a work day. 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 Construction Manager on the basis of the following:

A.

- 1.) 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 95131-2398), (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 Extra Work. No amount for operating cost will be allowed during periods when such equipment is not actually engaged in performing Extra 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.
- 2.) If no listing of rental rate and/or hourly operating cost for the item of equipment is in the Blue Book, the Construction Manager shall determine the reasonable rate of rental and/or hourly operating cost of the particular item of equipment by such other means as he finds appropriate.

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

- 1.) The rate to be applied for an item of equipment used on a particular Extra Work order shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of equipment or substitute item of equipment is at the construction site for use by the Contractor or Subcontractors whether under this Contract or any other contract with the Authority. Included within this period will be (i) work days of idleness of the equipment at the construction site whether such idleness results from acts or omissions of the Contractor, Construction Manager, 1 WTC consultants or third persons, breakdowns in the equipment or any other cause, (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of equipment from the construction site for repairs and the delivery to the construction site of the same or substitute equipment. The number of work days in the period for each rate shall be as indicated below:

| | |
|--|--------------|
| Three work days or less. | Daily Rate |
| More than three work days but not more than fifteen work days. | Weekly Rate |
| More than fifteen work days. | Monthly Rate |

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 daily rental. | 1/8 of daily rental from Blue Book |
| Hourly rate based on weekly rental. | 1/40 of weekly rental from Blue Book |
| Hourly rate based on monthly rental. | 1/176 of monthly rental from Blue Book |

- 2.) The rental rate shall be multiplied by the applicable regional adjustment factor shown for such item of equipment in the Blue Book. The adjustment factor shall not apply to the hourly operating cost.
 - 3.) If the Construction Manager should determine that the nature or size of the equipment used by the Contractor in connection with Extra Work is larger or more elaborate, as the case may be, than the size or nature of the minimum equipment determined by the Construction Manager to be suitable for the Extra Work, the reasonable rental will not be based upon the equipment used by the Contractor but will be based on the smallest or least elaborate equipment determined by the Construction Manager to have been suitable for the performance of the Extra Work.
- C. In the case of equipment utilized only for Extra Work: (a) in addition to amounts determined as provided in subparagraphs A and B above, there will be added to the rental as computed above the reasonable cost of transporting such equipment to and from the construction site, and (b) notwithstanding the number of hours during which such equipment is utilized, the minimum rental therefor will be for a period of eight hours.

In computing the Contractor's compensation insofar as it is based upon Extra Work, and notwithstanding any provision to the contrary appearing in the Blue Book, no consideration shall be given to any items of cost or expense not expressly set forth above, it being expressly agreed that the costs and percentage additions hereinbefore provided cover items of cost and expense to the Contractor of any type whatsoever, including administration, overhead, taxes (other than those enumerated above), clean-up, consumables including gas and oil, drafting (including printing or other reproduction), coordination, field measurements, maintenance, repairs, insurance, profit to the Contractor and small tools.

Whenever any Extra Work is performed (whether by the Contractor directly or through a Subcontractor), the Contractor shall, at the end of each day, submit to the Construction Manager (a) daily time slips showing the name and number of each workman employed on such Work, the number of hours which he is employed thereon, the character of his duties, and the wages to be paid to him, (b) a memorandum showing the rates and amounts of Workers' Compensation Insurance premiums, if any, and state and federal taxes based on such wages, and vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligation upon the basis of such wages (c) a memorandum showing the amount and character of the materials furnished for such Work, from whom they were purchased and the amount to be paid therefor, and (d) a memorandum of equipment used in the performance of such Work, together with the rental claimed therefor. Such memoranda and time slips are

for the purpose of enabling the Construction Manager to determine the amounts to be paid by the Construction Manager under this numbered clause; and accordingly, they shall constitute a condition precedent to such payment and the failure of the Contractor to furnish them with respect to any Work shall constitute a conclusive and binding determination on his part that such Work is not Extra Work and shall constitute a waiver by the Contractor of claims for payment for such Work. In the event that the Construction Manager and the Contractor shall agree in writing upon a lump sum or other compensation for Extra Work in lieu of compensation as provided in the second paragraph of this clause, the daily time slips and memoranda required by this paragraph shall not be required subsequent to the date on which such agreement has been reached.

23. COMPENSATION FOR EMERGENCY DELAYS

If the Contractor is specifically directed by the Construction Manager to suspend his operations as stipulated in the Specifications entitled "Conditions and Precautions" or if the Contractor is specifically directed not to start his operations at a time when operations are permitted to start as stipulated in such Section, and if solely because of such suspension or direction not to start any of the Contractor's or Subcontractor's employees or equipment then engaged in or about to start such Work are necessarily kept idle at the construction site, during the hours when they would otherwise be engaged in the performance of the Work, then the Contractor's compensation shall be increased by an amount equal to the salaries and wages in amounts approved by the Construction Manager which the employer is required to pay and actually pays to such employees for the period or periods of such idleness, plus a proper proportion of (a) taxes actually paid by the employer pursuant to law upon the basis of such salaries and wages, and (b) vacation allowances and union dues and assessments which the employer actually pays pursuant to contractual obligations upon the basis of such salaries and wages, and in addition thereto such rental as the Construction Manager deems reasonable for such equipment during the period or periods of such idleness. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Idle Salaried Men and Equipment".

In the event that the Contractor deems that any payment should be made pursuant to this numbered clause, he shall give prompt written notice to the Construction Manager stating the reasons why he believes such payments should be made and shall moreover, furnish to the Construction Manager at the end of each day, a memorandum showing the name, payroll title, salary rate and employer of each of the workingmen, and description, owner and claimed rental rate for each item of equipment claimed to have been kept idle. Said notice and memorandum are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time. Accordingly, notwithstanding any other provisions hereof, the failure of the Contractor to furnish such notice and memorandum shall constitute a conclusive binding determination on his part that he is not entitled to compensation as provided herein and shall constitute a waiver by the Contractor of all claims for such payment, such notice and memorandum being conditions precedent to payment under this numbered clause.

24. PROGRESS PAYMENTS

Payment Applications shall be on the form and provide all information and documentation as required in **Rider L (Payment Procedures)**, including without limitation all necessary certifications required herein for Prevailing Rate of Wage paid by Contractor and its Subcontractors.

Using the Schedule of Values as a line-item accounting format, Payment Applications shall identify in detail the percent of Work completed less retention withheld.

The percentage completion shall be the percentage of that portion of the Work that has actually been completed, as approved by Construction Manager and 1 WTC.

Construction Manager shall retain ten percent (10%) retention from all Payment Applications, except zero percent (0%) shall be retained for payment of the actual value of mill materials, and for fabricated materials delivered to the site, and five percent (5%) shall be retained for the actual values of fabricated materials stored offsite. Payment for the offsite storage of mill and fabricated materials are contingent upon satisfying the conditions indicated in Rider "A". For all remaining work of this Lump Sum Contract, the Contractor may, upon its Work being fifty percent (50%) complete, seek Construction Manager's and 1 WTC's approval to reduce such retention. 1 WTC shall have sole discretion to approve or reject such request, regardless of Construction Manager's recommendation.

Each Payment Application period shall be one (1) calendar month ending on the last day of the month. On the 20th of each month, Contractor shall submit to Construction Manager and 1 WTC a pencil draft of the Payment Application for the current month. Contractor, Construction Manager, Design Team representatives and 1 WTC shall meet on or before the 25th to discuss the draft. By the 1st (3rd for February Payment Application) of the following month, Contractor shall submit the official Payment Application in accordance with the approved pencil draft, along with all required information and documentation as set forth in Rider L (Payment Procedures). Construction Manager shall have ten (10) days thereafter to review and approve all or a portion of the Payment Application that shall be based upon the information in the approved pencil draft and associated required documentation, inform Contractor of missing required documentation or information, and issue the Certificate for Payment for the approved portion of the Payment Application. Construction Manager shall provide an integrated monthly progress payment request to 1 WTC for all contractors on the Project simultaneously. The approved portion of the Payment Application, subject to Construction Manager supplying all required documentation, shall be paid by 1 WTC to Construction Manager. Construction Manager shall pay Contractor no later than three (3) business days, or later if directed by 1 WTC, after receipt of such payment.

Notwithstanding the above, 1 WTC and Construction Manager reserve the right, in their sole discretion, to directly pay Subcontractors and Materialmen.

25. 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 Construction Manager shall certify in writing to 1 WTC and to the Contractor the total compensation earned by the Contractor.

If so required, the Contractor shall thereupon (i) certify to the Construction Manager in writing, in such form as may be required pursuant to the clause hereunder entitled "Prevailing Rate of Wage", that Contractor has paid and caused its Subcontractors of any tier to pay at least the prevailing rate of wage and supplements required by such clause and (ii) furnish to the Construction Manager a detailed sworn statement of all claims, just and unjust, of Subcontractors, Materialmen and other third persons then outstanding and which Contractor has reason to believe may thereafter be made on account of the Work. (iii) furnish to the Construction Manager evidence of payment of all union fringe and employee benefit obligations; and (iv) furnish to the Construction Manager Final Waivers of Lien and Release from all Subcontractors and Materialmen of any tier.

Within fifteen (15) 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 Construction Manager shall submit all required payment documents to 1 WTC. 1 WTC shall pay to Construction Manager and Construction Manager shall pay to Contractor within three (3) business days, or later if directed by 1 WTC, after the receipt from 1 WTC, 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 1 WTC Indemnitee Group 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 Construction Manager or 1 WTC 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 Construction Manager 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 six percent (6%) per annum for the period, if any, in which such interest is due.

26. WITHHOLDING OF PAYMENTS

(1) If the Contractor fails to perform any of its obligations under this Contract or under any other agreement between the Contractor and 1 WTC (including Contractor's obligation to pay in accordance with the terms of any such contract or agreement any claim lawfully made against Contractor by any Materialman, Subcontractor of any tier, worker, or other person or entity, which claim arises out of or in connection with the performance of this Contract or any other agreement as so described, or (2) if any claim (just or unjust) which arises out of or in connection with this Contract, or any other agreement between the Contractor and 1 WTC, is made against the Authority, or 1 WTC or (3) if any Subcontractor with respect to this Contract, or with respect to any other agreement between the Contractor and 1 WTC, fails to pay any claim lawfully made against such Subcontractor by any Materialman, Subcontractor, worker, or other third person that arises out of or in connection with this Contract or any other agreement so described, or if in the opinion of the Chief Engineer, any of the aforesaid contingencies is likely to arise, then the Construction Manager 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 Construction Manager 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 Construction Manager does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Construction Manager to withhold and apply moneys nor any exercise or attempted exercise of, or omission to exercise, such rights by the Construction Manager 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 Construction Manager or 1 WTC 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, then the Construction Manager, 1 WTC or 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 1 WTC or Authority, so much as may be necessary to pay to union fringe benefit funds, 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 1 WTC or Authority an amount equal to the Construction Manager's, 1 WTC's or Authority's cost of any investigation conducted by or on behalf of the 1 WTC or 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 Construction Manager, 1 WTC or Authority, the Construction Manager may deduct from any amount payable to the Contractor by the Construction Manager, under the Contract or under any other open contract between the Contractor and 1 WTC or 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 1 WTC or the Construction Manager, then the Construction Manager 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

27. TIME FOR COMPLETION AND DAMAGES FOR DELAY

The Contractor shall complete the performance of all Work under this Contract by the date or number of calendar days after acceptance of Proposal, as listed in **Rider T** (Milestone Dates and Liquidated Damages).

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

- A. If a Performance and Payment Bond is required, the date of receipt by it of notice from 1 WTC that the Performance and Payment Bond furnished by it is satisfactory;
- B. If Chapter V of the "Form of Contract" contains a clause entitled "Insurance Procured by Contractor", the date of receipt by it of notice from 1 WTC that the insurance procured by it pursuant to said clause is satisfactory, as evidenced by the certificate to be 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 1 WTC shall give notice to the Contractor within ten days after receipt of the Performance and Payment Bond or certificate of insurance as to whether or not such bond or insurance is satisfactory.

The Contractor's obligations for the performance and completion of the Work within the time or times provided for in this Contract are of the essence of this Contract. The Contractor guarantees that it can and will complete the performance of 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 1 WTC which will result from delay in completing 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 parties agree that the damages to 1 WTC for each calendar day by which the Contractor does not complete 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 as set forth in **Rider T** (Milestone Dates and Liquidated Damages) for every calendar day of delay.

EXTENSIONS OF TIME

TIME IS OF THE ESSENCE IN REGARDS TO CONTRACTOR'S OBLIGATIONS PURSUANT TO THIS CONTRACT, including without limitation Contractor's obligation to complete its Work in by the date or number of calendar days after acceptance of Proposal, as listed in **Rider T** (Milestone Dates and Liquidated Damages).

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 Construction Manager, the Contractor is necessarily delayed in completing such part by such time solely and directly by a cause which meets the conditions set forth in A and B below:

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

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

All variations in weather including, but not limited to, temperature, precipitation and wind shall be conclusively deemed to have been anticipated before opening of such Proposals on this Contract

In any event, even though a cause of delay meets the above conditions, in the opinion of the Construction Manager, an extension shall be granted only to the extent that (i) the performance of the Work is actually and necessarily delayed and (ii) the effect of such cause cannot be anticipated and avoided or mitigated by the exercise of all reasonable precautions, efforts and measures (including planning, scheduling and rescheduling), whether before or after the occurrence of the cause of delay, and an extension shall not be granted for a cause of delay which would not have affected the performance of the Contract were it not for the fault of the Contractor or for other delay for which the Contractor is not entitled to an extension of time.

Any reference herein to the Contractor shall be deemed to include Subcontractors and Materialmen, whether or not in privity of contract with the Contractor, and employees and others performing any part of the Contract and all the foregoing shall be considered as agents of the Contractor.

The period of any extension of time shall be that necessary to make up the time actually lost, subject to the provisions of this numbered clause, and shall be only for the portion of the Contract actually delayed.

As a condition precedent to an extension of time, the Contractor shall give written notice to the Construction Manager within forty-eight (48) hours after the time when he knows or should have known of any cause which might under any circumstances result in delay for which he claims or may claim an extension of time (including those causes which the Construction Manager is responsible for or has knowledge of), specifically stating that an extension is or may be claimed, identifying such cause and describing, as fully as practicable at the time, the nature and expected duration of the delay and its effect on the various portions of the Contract. Since the possible necessity for an extension of time may materially alter the scheduling, plans and other actions of the Construction Manager, and since, with sufficient opportunity, the Construction Manager might if it so elects attempt to mitigate the effect of a *delay for which an extension of time might be claimed, and since merely oral notice may cause disputes as to the existence or substance thereof, the giving of written notice as above required shall be of the essence of the Contractor's obligations and failure of the Contractor to give written notice as above required shall be a conclusive waiver of an extension of time.*

It shall in all cases be presumed that no extension, or further extension, of time is due unless the Contractor shall affirmatively demonstrate to the satisfaction of the Construction Manager that it is. To this end the Contractor shall maintain adequate records supporting any claim for an extension of time, and in the absence of such records, the foregoing presumption shall be deemed conclusive

28. IDLE SALARIED WORKERS AND EQUIPMENT

If any salaried workers or equipment of the Contractor or any Subcontractor are necessarily kept continuously idle and wholly unoccupied at the construction site for a full day on each of two or more full days on which they would be engaged in the performance of the Work but for causes due solely to acts or omissions of Construction Manager and 1 WTC occurring after the opening of Proposals on this Contract, and if such idleness is not due to any cause within the control of the Contractor or of any of his Subcontractors or Materialmen or its or their employees, then the Construction Manager shall pay to the Contractor and the Contractor shall accept (in addition to any sums otherwise payable under this Contract, and in full satisfaction of and in liquidation of all claims for damages because of such act or omission of the Construction Manager or 1 WTC) an amount equal to that which the employer actually pays such salaried employees during such full days of idleness, plus a proper proportion of vacation allowances and union dues and assessments actually paid by the employer pursuant to contractual obligations on the basis of such salaries, and a proper proportion of the taxes actually paid by the employer pursuant to law upon the basis of such salaries and plus such rental for such idle equipment as the Construction Manager deems reasonable. The rental for idle equipment shall be computed by the Construction Manager in accordance with the provisions of the clause of the Form of Contract entitled "Compensation for Extra Work"; provided, however, that the provisions of subparagraph C of said clause shall not be applicable to such idle equipment.

The Contractor shall give written notice to the Construction Manager before the end of the second of the above mentioned two (2) or more full days (whether or not the Construction Manager is aware of the existence of any circumstances which might constitute a basis for payment under this numbered clause), specifically stating that salaried men or equipment have been kept idle under circumstances which might result in payment under this numbered clause; and he shall furnish with such notice, for all the days that have occurred, and shall in addition furnish at the end of each additional day of the above mentioned two (2) or more full days, (a) a memorandum showing the name, payroll title, salary rate and employer of each of the salaried men claimed to have been kept idle at the construction site, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations based on their salaries, and (b) a memorandum of the equipment claimed to be kept idle, together with the amount claimed as rental therefor. Said notice and memoranda are for the purpose of enabling the Construction Manager to verify the Contractor's claim at the time, and of enabling him to take such steps as may be necessary to remedy the conditions upon which the claim is based. The furnishing of such notice and memoranda shall be a condition precedent to payment under this numbered clause, so that the day on which notice is given shall be counted as not later than the second of the above mentioned two (2) or more full days and no subsequent day shall be counted for which the above memoranda are not furnished at the end of such day.

29. DELAYS TO CONTRACTOR

As between the Contractor and the Construction Manager, the Contractor assumes the risk of all suspensions of or delays in performance of the Contract, regardless of the length thereof, arising from all causes whatsoever, whether or not relating to this Contract, including wrongful acts or omissions of any member of the 1 WTC Indemnitee Group, except only to the extent, if any, that compensation or an extension of time may be due as expressly provided for elsewhere in this Contract for such suspension or delays and except to the extent, if any, that compensation may be agreed to by the Construction Manager in writing pursuant to the clause hereof entitled "Compensation for Extra Work" for impact costs incurred by the Contractor in connection with the performance of Extra Work. Subject only to such exceptions, the Contractor shall bear the burden of all costs, expenses and liabilities which he may incur in connection with such suspensions or delays, and all such suspensions, delays, costs, expenses and liabilities of any nature whatsoever, whether or not provided for in this Contract, shall conclusively be deemed to have been within the contemplation of the parties.

Notwithstanding any provisions of this Contract, whether relating to time of performance or otherwise, the Construction Manager make no representation or guaranty as to when the construction site or any part thereof will be available for the performance of the Contract or as to whether conditions at the construction site will be such as to permit the Contract to be performed thereon without interruption or by any particular sequence or method or as to whether the performance of the Contract can be completed by the time required under this Contract or by any other time.

Wherever in connection with this Contract it is required, expressly or otherwise, that the Construction Manager shall perform any act relating to the Contract, including making available or furnishing any real property, materials, or other things, no guaranty is made by the Construction Manager as to the time of such performance and the delay of the Construction Manager in fulfilling such requirement shall not result in liability of any kind on the part of the 1 WTC Indemnitee Group except only to the extent, if any, that an extension of time or compensation may be due as expressly provided for elsewhere in this Contract.

30. CANCELLATION FOR DELAY

If the performance of the Contract or any portion of it shall, in the opinion of the Construction Manager, 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 Construction Manager's own ability to perform it, either directly or through others, the Construction Manager 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 any member of the 1 WTC Indemnitee Group. In the event of such cancellation, no allowance shall be made for anticipated profits.

CHAPTER IV CONDUCT OF CONTRACT

31. SUSPENSION, TERMINATION AND ALTERNATIVE DISPUTE RESOLUTION OF ALL DISPUTES

If at any time it shall be, from the viewpoint of 1 WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof, whether or not for reasons beyond the control of 1 WTC or Construction Manager, Construction Manager shall have authority to suspend performance of any part or all of the Contract until such time as Construction Manager may deem it practicable or desirable to proceed. Moreover, if at any time it shall be, from the viewpoint of 1 WTC or Construction Manager, determined to be impracticable or undesirable to proceed with or continue the performance of the Contract or any part thereof whether or not for reasons beyond the control of 1 WTC or Construction Manager, Construction Manager 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. Contractor shall be entitled to compensation only for the portion for Work performed less any damages incurred by the 1 WTC Indemnitee Group or reasonably foreseeable to be incurred or resulting from any breach of Contract by Contractor.

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 Proposal and claims of a type which are barred by the provisions of this Contract) or the Project 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 by the Chief Engineer, or by any termination or cancellation of this Contract.

All such questions shall be submitted in writing by either party 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 Construction Manager or 1 WTC 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.

32. AUTHORITY AND DUTIES OF CONSTRUCTION MANAGER

Inasmuch as the public interest requires that the Project to which this Contract relates shall be performed in the manner which 1 WTC and Construction Manager deems best, the Construction Manager, subject to 1 WTC's opinion, 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 shall be deemed merely his present determination on this point. In the exercise of this authority, Construction Manager shall have power to alter the Contract Drawings; 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.

In the performance of the Contract, the Contractor shall conform to all orders, directions and requirements of the Construction Manager and shall perform the Contract to the satisfaction of the Construction Manager 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 Construction Manager shall determine the amount, quality, acceptability and fitness of all parts of the Work and shall interpret the Contract Drawings and any orders for Extra Work. The Contractor shall employ no equipment, materials, methods or men to which the Construction Manager objects, and shall remove no materials, equipment or other facilities from the construction site without permission. Upon request, the Construction Manager shall confirm in writing any oral order, direction, requirements or determination.

The Contractor is requested to orally advise the Construction Manager 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 Construction Manager and others.

The enumeration herein or in the Specifications of particular instances in which the opinion, judgment, discretion or determination of the Construction Manager 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.

33. NOTICE REQUIREMENTS

No claim against the Construction Manager and 1 WTC 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 Proposal 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:

- A. In the case of any claims for Extra Work, extension of time for completion, idle salaried men and equipment, or any other matter for which requirements are set forth elsewhere in this Contract as to notice and information, such requirements shall apply.

- B. In the case of all other types of claim, notice shall have been given to the Construction Manager and 1 WTC, personally, as soon as practicable, and in any case, within forty-eight (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 Construction Manager and 1 WTC, personally.

The above requirements for notices and information are for the purpose of enabling the Construction Manager 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 Construction Manager and 1 WTC.

The above referred to notices and information are required whether or not the Construction Manager or 1 WTC are aware of the existence of any circumstances which might constitute a basis for a claim and whether or not the Construction Manager or 1 WTC have 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 Construction Manager or 1 WTC 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 officer, employee or agent of the Construction Manager or 1 WTC 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 Construction Manager to receive it may not be sufficient to come to the attention of the representative of the Construction Manager 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.

All notice requirements for Construction Manager or 1 WTC shall be deemed to be made if sent to the following: (i) Milo Rivero or his successor in duty, Project Executive of 1 WTC, 115 Broadway 10th floor, New York, NY 10006; and (ii) Mike Mennella or his successor in duty, Executive Vice President, Tishman Construction Corporation, 666 Fifth Avenue, New York, NY 10103

34. EQUAL EMPLOYMENT OPPORTUNITY

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

- A. 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.

- B. The Contractor shall send to each labor union or representative of workers with which Contractor 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 clauses A through H (hereinafter called "non-discrimination clauses"). 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 clauses 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 clauses. 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.
- C. 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 clauses A and B and such provisions of the State's laws against discrimination as the State Commission for Human Rights shall determine.
- D. 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.
- E. 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 clauses 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 clauses and such sections of the Executive Law and Civil Rights Law.
- F. This Contract may be forthwith canceled, terminated or suspended, in whole or in part, by the Construction Manager upon the basis of a finding made by the State Commission for Human Rights that the Contractor has not complied with these non-discrimination clauses, and the Contractor may be declared ineligible for future contracts made by or on behalf of the State, 1 WTC, 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 clauses. 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 clauses 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.

- G. The Contractor shall include the provisions of clauses A through F 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 Construction Manager 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 Construction Manager, the Contractor shall promptly so notify the Construction Manager, requesting him to intervene and protect the interests of the Construction Manager.
- H. 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.

35. 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.

Each bidder, Contractor or Subcontractor (hereinafter called the Contractor) must fully comply with the clause entitled "Equal Employment Opportunity" and these bid conditions. The Contractor commits itself to the goals for minority and female utilization set forth below and all other requirements, terms and conditions of these bid conditions 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 these bid conditions.

- A. 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 Section shall be based on its 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.

B.

- 1.) The Contractor shall provide written notification to the General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Port Authority of New York and New Jersey, within ten (10) working days of award of any construction subcontract in excess of Ten Thousand Dollars (\$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 starting and completion dates of the subcontract; and the geographical area in which the subcontract is to be performed.
- 2.) The Contractor shall submit a Workforce Projection Schedule, which shall be correlated to the progress schedule, within thirty (30) days after acceptance of the proposal, for the approval of the Construction Manager. The Contractor shall maintain and periodically update it at intervals as required by the Construction Manager. 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.

C.

- 1.) As used in these specifications:
 - a. Omitted
 - b. "Manager" means General Manager, Business and Job Opportunity, Office of Regional and Economic Development of the Authority;
 - c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U. S. Treasury Department Form 941;
 - d. "Minority" includes:
 - (i) Black (all persons having origins in any of the black African racial groups not of Hispanic origin);
 - (ii) Hispanic (all persons of Puerto Rican, Mexican, Dominican, Cuban, Central or South American culture or origin, regardless of race);
 - (iii) 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
 - (iv) Native American 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).
- 2.) Whenever the Contractor, or any Subcontractor at any tier, subcontracts a portion of the Work involving any construction trade, it shall physically include in each subcontract in excess of Ten Thousand Dollars (\$10,000) such provisions as are necessary for the Contractor to achieve the aggregate goals set forth above.

- 3.) Omitted.
- 4.) **The Contractor shall implement the specific affirmative action standards provided in paragraphs 7a 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 its 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.**
- 5.) 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.
- 6.) 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.*
- 7.) 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 its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
 - a. 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 its unions have employment opportunities available, and maintain a record of the organizations' responses.
 - b. 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 7a above.
 - c. 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.

- d. Provide immediate written notification to the Manager 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 its obligations.
- e. 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.
- f. 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 its 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.
- g. 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.
- h. 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.
- i. Direct its 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.
- j. 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.
- k. Tests and other selection requirements shall comply with 41 CFR Part 60-3.

- l. 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.
 - m. 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.
 - n. 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.
 - o. 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.
 - p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8.) Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a 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 its obligations under 7a 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 its 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.
- 9.) 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 its goals for women generally, the Contractor may be in violation hereof if a specific minority group of women is under-utilized).
- 10.) 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.
- 11.) The Contractor shall not enter into any subcontract with any person or firm debarred from government contracts pursuant to Executive Order 11246.

- 12.) 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 Construction Manager. Any Contractor who fails to carry out such sanctions and penalties shall be in violation hereof.
- 13.) The Contractor, in fulfilling its obligations hereunder shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 hereof so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of these provisions, the Construction Manager shall proceed accordingly.
- 14.) 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.
- 15.) 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).

36. 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 Construction Manager and notwithstanding that such rate may be higher than the rate in effect on the date of opening of Proposals.

For purposes of this Contract, the Construction Manager 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 Construction Manager; 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. Neither the Construction Manager nor 1 WTC shall 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.

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 "Construction Manager Access to Records" for all employees employed in the Work. Such records shall contain the name, address and social security number of each such employee, 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 Construction Manager (on forms furnished by the Construction Manager) of all his payroll records and those of each of his Subcontractors as the Construction Manager 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 Construction Manager (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 Construction Manager may at any time request the Contractor to prepare a daily report on the Construction Manager form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained from the Construction Manager, The *Contractor Daily Sign-In Sheet* shall be completed as follows:

- 1.) At the beginning of each workday the Contractor shall:
 - a. fill in the top of the *Contractor Daily Sign-In Sheet*, including the location, date, contractor/Subcontractor name and contract number;
 - b. 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;

- 2.) At the end of each workday, the Contractor shall:
- a. ensure that each employee, including those of Subcontractors, has signed out and indicated his or her ending time;
 - b. 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
 - c. submit the original completed form to the Construction Manager.

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 Construction Manager 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.

37. EXTRA WORK ORDERS

No Extra Work of any amount shall be performed except pursuant to written orders of the Construction Manager expressly and unmistakably indicating his intention to treat the Work described therein as Extra Work.

In the absence of such an order signed by the Construction Manager, if the Construction Manager shall direct, order or require any Work, whether orally or in writing, which the Contractor deems to be Extra Work, the Contractor shall nevertheless comply therewith, but shall within twenty-four (24) hours give written notice thereof to the Construction Manager, stating why he deems it to be Extra Work, and shall moreover furnish to the Construction Manager time slips and memoranda as required by the clause hereof entitled "Compensation for Extra Work". Said notice, time slips and memoranda are for the purpose of affording to the Construction Manager an opportunity to verify the Contractor's claim at the time and (if he desires so to do) to cancel promptly such order, direction or requirement of the Construction Manager, of affording to the Construction Manager an opportunity of keeping an accurate record of the materials, labor and other items involved, and generally of affording to the Construction Manager an opportunity to take such action as it may deem desirable in light of the Contractor's claims. Accordingly, the failure of the Contractor to serve such notice or to furnish such time slips and memoranda shall be deemed to be a conclusive and binding determination on his part that the direction, order or requirement of the Construction Manager does not involve the performance of Extra Work, and shall be deemed to be a waiver by the Contractor of all claims for additional compensation or damages by reason thereof, such written notice, time slips and memoranda being a condition precedent to such claims.

38. PERFORMANCE OF EXTRA WORK

The provisions of this Form of Contract relating generally to Work and its performance shall apply without exception to any Extra Work required and to the performance thereof. Moreover, the provisions of the Specifications relating generally to the Work and its performance shall also apply to any Extra Work required and to the performance thereof, except to the extent that a written order in connection with any particular item of Extra Work may expressly provide otherwise. Extra Work performed other than in accordance with Article 37 ("Extra Work Orders") shall be deemed performed at Contractor's own risk and expense and without any compensation.

39. TITLE TO MATERIALS

All materials to become part of the permanent construction and those other materials purchased under the clause of the Contract entitled, "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction", shall be and become the property of *the Authority* (a) 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 in the case of materials to become part of the permanent construction and (b) in the case of those other materials purchased under the clause of the Contract entitled, "Agency For Rental of Construction Equipment and Purchase of Materials Not Incorporated in Permanent Construction" at the time of purchase, 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 Construction Manager such bills of sale and other instruments as may be required by it properly executed, acknowledged and delivered, assuring to the Authority title to such materials, free of encumbrances and shall mark or otherwise identify all such materials as the property of *the Authority*.

40. 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 moneys due or to become due hereunder and any delegation of any of his duties hereunder without the express consent in writing of the Construction Manager shall be void and of no effect as to the Construction Manager, provided, however, that the Contractor may subcontract portions of the Work to such persons as the Construction Manager 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 Construction Manager 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 "Instructions for Bidders and Bid Proposal Form" 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 Dollars. For each agreement in an amount greater than \$100,000 entered into by Contractor with a Subcontractor or Materialman, or for each agreement greater than \$100,000 with a Subcontractor or Materialman of any tier, the Contractor shall obtain the certifications and all necessary disclosure forms from each such Subcontractor or Materialman of any tier, all as set forth in **Rider K** (Project Corruption Prevention Program) to this Contract. All further subcontracting by any Subcontractor shall also be subject to such approval of the Construction Manager. Approval of a Subcontractor may be conditioned on (among other things) the furnishing, without expense to the Construction Manager, 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. 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 Construction Manager shall create any rights in favor of such Subcontractor and against the Construction Manager; and as between the Construction Manager 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 Construction Manager, the Construction Manager 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.

In the event 1 WTC terminates Construction Manager or enters into agreement with a third party or third parties, for such party or parties to assume management and operation of some or all of the World Trade Center, 1 WTC shall have the right to assign this Contract in whole or in part to such third party or parties following advance written notice to the Contractor, or, to substitute such third party as Construction Manager in this Contract.

41. 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.

42. 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 Construction Manager 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 Construction Manager for other purposes, the Construction Manager may render to the Construction Manager 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 Construction Manager 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 Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

43. 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 Construction Manager 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, including Extra Work, has been completed in accordance with the Contract Drawings 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 Construction Manager shall not operate to release the Contractor or his sureties from any obligations under or upon this Contract or the Performance and Payment Bond.

44. 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 Construction Manager, any 1 WTC or Authority employee, agent, job shopper, consultant, construction manager or other person or firm representing such entities, 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, consultant, or other person or firm representing such entities of duties involving transactions with the Contractor on behalf of such entities, 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 Construction Manager 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 1 WTC, 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

45. CONTRACTOR'S WARRANTIES

The Contractor represents and warrants:

- A. 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 Proposal are true, and, if the Contractor be a corporation, that it is authorized to perform this Contract;
- B. 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;
- C. 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;
- D. That no Commissioner, Director, officer, agent or employee of the Construction Manager, the Authority or 1 WTC is personally interested directly or indirectly in this Contract or the compensation to be paid hereunder; and
- E. 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 Construction Manager, 1 WTC or the Authority, its Commissioners, Directors, 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, anything in this Contract to the contrary notwithstanding.

Nothing in the Contract Drawings or any other part of the Contract is intended as or shall constitute a representation by the Construction Manager or 1 WTC as to the feasibility of performance of this Contract or any part thereof. Moreover, the Construction Manager or 1 WTC does not warrant or represent either by issuance of the Contract Drawings 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 Construction Manager to review thoroughly all documents forming this Contract prior to opening of Proposals 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 1 WTC's consent to enter into this Contract and that without such provisions, the Construction Manager would not have entered into this Contract as agent for 1 WTC.

46. 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 Construction Manager, 1 WTC, 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 Construction Manager and 1 WTC subsequent to the opening of Proposals on this Contract with actual and willful intent to cause the loss, damage and injuries describe in subparagraphs A through D below:

- A. *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 Construction Manager or 1 WTC;*
- B. *The risk of loss, damage to or alterations of the structures to be demolished occurring prior to completion of demolition by the Contractor (such structures being still included, however, in the term "Work"). In the event of such loss, damage or alterations, the Contractor shall nevertheless complete the performance of the Work, including the demolition, without additional cost to the Construction Manager or 1 WTC and without compensation for lost salvage value;*

- C. 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 Construction Manager or 1 WTC 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 1 WTC premises, including claims against the Contractor or the Construction Manager or 1 WTC 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;
- D. The risk of loss or damage to any property of the Contractor, and of claims made against the Contractor or the Construction Manager or 1 WTC 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 1 WTC premises or the vicinity thereof.

The Contractor shall, indemnify the 1 WTC Indemnitee Group against all claims described in subparagraphs C and D 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 C and D 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 or 1 WTC 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.

47. NO THIRD PARTY RIGHTS

Except with respect to the Authority as set forth below, nothing contained in this Contract is intended for the benefit of other third persons, except to the extent that the Contract specifically provides otherwise by use of the words "benefit" or "direct right of action," or except to the extent indemnitee or insurance obligations provide for third party rights in this Contract.

For the avoidance of doubt, the relationship of the Authority to this Contract and the Project is set forth below in this Section.

- A. The Authority is hereby deemed an intended third-party beneficiary of this Contract. Contractor acknowledges and agrees that the performance of the Work is for the benefit of the Authority, and that the Authority shall have the right to enforce the obligations of Contractor under this Contract against Contractor directly and enjoy the benefits and rights in the entire Contract including, without limitation, Sections 26, 28, 29, and 46.
- B. The Authority, from time to time and on behalf of 1 WTC, either (i) may perform certain obligations of 1 WTC, or (ii) may supply or loan to 1 WTC employees of the Authority for the performance of the obligations of 1 WTC.
- C. Contractor shall have no direct claim, right, or cause of action against Authority (i) by virtue of Authority's rights under this Section 47 (ii) for any acts, errors or omissions of its employees when engaged or acting on behalf of 1 WTC, or (iii) otherwise in connection with this Contract.
- D. Contractor shall look solely to 1 WTC for payment of any amount due and owing Contractor under this Contract or for any claim, cause of action or damages in connection with the Project. Notwithstanding anything to the contrary, Contractor shall have no recourse in connection with this Contract or the Project against (i) the Authority, or (ii) any present or future Commissioner, officer, director, trustee, employee, agent or volunteer of the Authority. Such exculpation of liability is absolute and without any exception, and shall survive any termination, expiration or assignment of this Contract.
- E. From time to time, direct references to the Authority are made in this Contract. Such references are for emphasis only, and no negative inference should be drawn from any omission or absence of a reference to the Authority in a specific provision.

48. INSURANCE PROCURED BY CONTRACTOR

Contractor is obligated to provide coverage as in the attached Insurance Specifications, **Rider D** (Insurance Rider).

The liability policies shall name the entities listed in **Rider D** (Insurance Rider) as Additional Insureds.

In the event, however, that 1 WTC, in its sole discretion, elects at any time to provide an owner-controlled insurance program, such program shall be described more specifically in **Rider DX** ("Owner Controlled Insurance Program" or "OCIP").

If 1 WTC implements an OCIP, Contractor shall take all steps necessary: (i) to conform its insurance program to the OCIP, (ii) to exclude from calculation of the Lump Sum or the cost of any Extra Work, including the compensation of any Subcontractor of any tier, or any other person or entity performing any portion of the Work or Extra Work, any insurance premiums or other charges for any insurance to the extent such coverage is provided under the OCIP, (iii) to comply with the requirements of Rider DX and the OCIP and, in turn, cause all Subcontractors of any tier to conform their insurance programs to the OCIP, (iv) to avoid any duplication of coverage provided by, under or through the OCIP, and any other savings of any other costs associated with such insurance, and (v) to assist in the orderly transition of insurance programs.

If requested by 1 WTC, Contractor shall furnish reasonable evidence confirming the amount of any exclusion or reduction in premiums and the total credit received by Contractor, Subcontractors of any tier, or any other person or entity performing any portion of the Work or Extra Work, and any other costs associated with such insurance.

CHAPTER VI RIGHTS AND REMEDIES

49. RIGHTS AND REMEDIES OF 1 WTC

1 WTC shall have the following rights in the event the Construction Manager shall deem the Contractor guilty of a breach of any term whatsoever of this Contract:

- A. 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.
- B. The right to cancel this Contract as to any or all of the Work yet to be performed.
- C. The right to specific performance, an injunction or any other appropriate equitable remedy.
- D. 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 Construction Manager within the time limit specified in the Clause hereof entitled "Insurance Procured By The 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 Construction Manager 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 Instructions for Bidders and Bid Proposal Form 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 Instructions for Bidders and Bid Proposal Form, 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 Construction Manager shall not be deemed to limit any other rights or remedies which the Construction Manager would have in the absence of such enumeration; and no exercise by the Construction Manager 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.

50. 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 Construction Manager, the Contractor expressly agrees that no default, act or omission of any member of the 1 WTC Indemnitee Group shall constitute a material breach of this Contract, entitling him to cancel or rescind it or (unless the Construction Manager shall so direct) to suspend or abandon performance. Contractor agrees that under no circumstances shall it have any recourse against the Authority, its Commissioners, directors, employees, agents, successors and assigns for any claim, right or demand arising out of or related to the Contract or performance herein.

51. 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 1 WTC", the Construction Manager 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 Construction Manager.

In the certificate of total compensation earned, for which provision is made in the clause hereof entitled "Final Payment", the Construction Manager will separately state the amount of Work performed by the Construction Manager as agent for the Contractor, credit to the Construction Manager 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 Construction Manager, or vice versa as the case may be. If such difference is in its favor, the Construction Manager 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 Construction Manager 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.

52. NO ESTOPPEL OR WAIVER

1 WTC or the Construction Manager 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 either of them, or any Director, officer, agent or employee of either of them, 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 1 WTC or the Construction Manager 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, approval or certificate issued under this Contract or otherwise issued by the Construction Manager, 1 WTC or any Director, officer, agent or employee of either of them, nor any permission or direction to continue with the performance of Work, nor any inspection or approval of any portion of the Work, nor any performance by the Construction Manager or 1 WTC of any of the Contractor's duties or obligations, nor any aid lent to the Contractor by the Construction Manager in his performance of such duties or obligations, nor any other thing done or omitted to be done by the Construction Manager or 1 WTC or their Directors, 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 Construction Manager or 1 WTC may be entitled because of any breach thereof. 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 Construction Manager or 1 WTC may be entitled because of such breach. Moreover, no waiver by the Construction Manager or 1 WTC of any breach of this Contract shall be deemed to be a waiver of any other or any subsequent breach.

CHAPTER VII MISCELLANEOUS

53. 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 Proposal 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 Construction Manager, 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.

54. 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.

55. 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.

56. NON-LIABILITY OF THE CONSTRUCTION MANAGER OR 1 WTC REPRESENTATIVES

Neither the Construction Manager, 1 WTC, nor any Director, 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.

57. 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 Construction Manager the Contractor's office will be that stated in his Proposal. 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.

58. 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 Extra Work or to alter the Contract Drawings 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 Construction Manager shall have the power so to do.

59. 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 any member of the Construction Manager, 1 WTC or the Authority or the services performed in connection with this Contract, without first obtaining the written approval of the Construction Manager. Such approval may be withheld if for any reason the Construction Manager 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

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned⁵ Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

Contractor

Surety

⁵ 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 _____".

are hereby held and firmly bound unto Tishman Construction Corporation, a Delaware corporation, and 1 WTC, LLC ("Obligees") in the penal sum of

_____ Dollars

and _____ Cents (\$ _____), 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 Obligees, a copy of which is hereby made a part of this bond as though herein set forth in full and which is designated Contract WTC-XXX.XXX - "World Trade Center - Lump Sum Sample Contract", and

WHEREAS, the Construction Manager and 1 WTC have 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;

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 the Obligees 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 Obligees) 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 1 WTC Indemnitee Group.

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 Construction Manager the following notices:

- A. Written notice of an intent to pay any claim of a Subcontractor, Materialman or workman hereunder;
- B. Written notice within five (5) 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 (30) days after receipt by said Construction Manager 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)

Principal
By ⁶ _____

Surety
By ⁷ _____

APPROVED AS TO ACCEPTABILITY OF SURETIES:

Credit Manager
_____ 20

⁶ If bond is signed by an officer or agent, give title; if signed by a corporation, affix corporate seal.

⁷ 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

**SPECIFICATIONS
DIVISION 1
GENERAL PROVISIONS**

60. CONSTRUCTION REQUIRED BY THE SPECIFICATIONS

These Specifications relate generally to performing the construction at the World Trade Center site.

These Specifications require the doing of all things necessary or proper for or incidental to the matter referred to in the immediately preceding paragraph, as shown on the Contract Drawings in their present form. In addition, all things shown on the Contract Drawings even though not expressly mentioned in these Specifications, all things mentioned in these Specifications even though not shown on the Contract Drawings, and all things not specified either on the Contract Drawings, or in the Specifications but involved in carrying out their intent and in the complete and proper execution of the matter referred to in the immediately preceding paragraph are required by these Specifications; and the Contractor shall perform the same as though they were specifically delineated, described and mentioned.

In case of a conflict between a requirement of the Contract Drawings and a requirement in Division 1 of the Specifications, the requirement of Division 1 shall control. In case of a conflict between a requirement contained in other Divisions of the Specifications and a requirement of the Contract Drawings, the more stringent requirement shall apply.

Some Sections of the Specifications make cross references to construction specified in other Sections of the Specifications, including cross references intended to avoid duplication by the bidders in quoting prices and to point out some of the necessity for coordination. Such cross references are not intended to be complete or all inclusive, and the Contractor shall ascertain for himself both the nature and the extent of all construction which may be related to that under each Section of the Specifications whether or not expressly referred to.

Some Sections of the Specifications contain a general description of the construction under such Sections. Such description is merely a very general one and is not intended to outline the construction required by the Specifications and Contract Drawings. Accordingly, such description shall be construed as in aid of and supplemental to, but in no case limiting, impairing or decreasing, the requirements elsewhere set forth with respect to the construction to be performed.

The Contractor's compensation for all construction whatsoever referred to in the Specifications and Contract Drawings in their present form, even though the need for certain items of such construction may be contingent upon future occurrences or determinations or upon other circumstances, shall be deemed to be included in the price(s) quoted by the Contractor in the Form of Contract unless the Specifications or Contract Drawings expressly state that compensation in addition to such price shall be payable for such items of construction. The express statement in some cases to the effect that certain construction shall be without additional cost to the Construction Manager shall not impair the application of this paragraph in other cases.

The distribution of various parts of the construction among the Divisions and Sections of the Specifications or among the Contract Drawings is not intended as a representation of the most effective or logical method of organizing, scheduling, or subcontracting the construction, and the Contractor shall ascertain for himself how to do so unless otherwise expressly prescribed in this Contract.

In all cases the provisions of the second paragraph of this numbered Section shall control.

61. 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, together with an area shown cross-hatched on Contract Drawing No. G003 and designated "Area Available For Contractor's Use".

Any additional property which the Contractor desires for his operations shall be obtained by him at his own expense.

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 Construction Manager 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 Construction Manager, 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.

62. 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 the work of other Authority contracts 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 1 WTC, the Authority and the public and as may be directed by the Construction Manager.

63. 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 Construction Manager, 1 WTC, Authority or PATH contracts, or the operation of any 1 WTC, Authority or PATH facility, or any operations at the World Trade Center site occurs at the World Trade Center site or at any other 1 WTC, 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.

64. CONTRACTOR'S MEETINGS

The Contractor shall conduct job progress and coordination meetings with Subcontractors in his field office every week, or as frequently as job conditions require or the Construction Manager may request. The Construction Manager shall be notified and, at his option, may attend these meetings. The Contractor shall prepare and distribute minutes to the Construction Manager 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 Construction Manager every week, or at times otherwise requested by the Construction Manager.

65. CONTRACT DRAWINGS

The Contract Drawings, referenced in Rider B (List of Drawings and Specifications), do 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 Construction Manager or by the Contractor subject to the approval of the Construction Manager, to the extent necessary to further illustrate the Work.

An indication on the Contract Drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials does 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.

After the Contract has been executed, the Contractor will be furnished two (2) copies of the Specifications and Contract Drawings without charge.

66. INTENTIONALLY DELETED

67. SHOP DRAWINGS, CATALOG CUTS AND SAMPLES

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 Design Team or Construction Manager may issue in supplementing the Contract Drawings.

The specific requirements elsewhere set forth in the Specifications for furnishing Shop Drawings, Catalog Cuts and samples for any particular portion of the Contract shall not limit the obligation of the Contractor to furnish Shop Drawings, Catalog Cuts and samples for any other portion when so required by the Construction Manager.

The Contractor shall submit a general "Submittal Schedule" for the Construction Manager's review, and for approval by the appropriate member of the Design Team, listing the planned transmittal date and estimated number in each specification section category of Shop Drawings, Catalog Cuts, pages of calculations and samples within thirty (30) days after receipt by the Contractor of the acceptance of the Proposal. A more detailed schedule shall be submitted no less than thirty (30) calendar days prior to the actual date of any submittal.

After checking and verifying all field measurements and after complying with applicable procedures specified hereunder, the Contractor shall submit to the Construction Manager for review, and for approval by the appropriate member of the Design Team, in accordance with the approved schedule of Shop Drawing submissions, or for other action if so indicated by the Construction Manager, four (4) copies and two (2) reproduces, unless otherwise requested, of all Shop Drawings which will bear a specific written indication that the Contractor has reviewed the submission for conformance to the requirements of the Contract Drawings.

All submissions shall be identified as the Construction Manager may require. 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 Construction Manager to review the submittal as required.

The Contractor shall also submit nine (9) copies to the Construction Manager for review, and for approval by the appropriate member of the Design Team, pursuant to the approved Submittal Schedule, of all Catalog Cuts and samples for conformance to the requirements of the Contract Drawings. 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 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 Construction Manager 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 Construction Manager, for review by Construction Manager and approval by the appropriate member of the Design Team of each such variation.

The Construction Manager's review and the Design Team's 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 Construction Manager's attention to each such variation at the time of submission as required hereunder and the Design Team 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 shall not be deemed to waive or change such requirements or to relieve the Contractor of its obligations to perform such requirements unless the Construction Manager shall expressly and specifically state that it 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 Construction Manager's review and Design Team's approval of the submission.

In preparing the Shop Drawings, the Contractor may adopt a sheet of any reasonable size which best suits its needs, but having adopted such size, all sheets thereafter of a similar nature shall be of the same size as that adopted. Each drawing shall have a margin on the top, bottom and right-hand side of one-half inch and on the left hand side a margin of one and one-half inches. Upon receipt of the submittal, the Construction Manager 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. Review by the Construction Manager and approval by the Design Team 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, its Subcontractors, their detailers, or their professional engineers is the complete responsibility of the Contractor.

Within the number of working days hereinafter specified after receipt of the Shop Drawing prints, the appropriate member of the Design Team shall approve or not approve the same or require corrections or additions to be made thereon. When a Shop Drawing is not approved or if additions or corrections are required, the Construction Manager shall return within this period one (1) of the four (4) copies submitted and the Contractor shall make the revisions, corrections or additions shown thereon to be made. Contractor shall resubmit four (4) prints and one (1) brownline (reproducible) showing the drawing corrected as required. The Contractor shall direct specific attention in writing to revisions other than the corrections called for by the Design Team on the previous submittal. Each drawing shall be corrected as required until the approval of the Design Team is obtained. After each resubmission, the Construction Manager shall have the number of working days hereinafter specified in which to approve revisions or corrections. If the Design Team rejects any Shop Drawing, Catalog Cut, or sample three (3) times, then Contractor shall be backcharged for all costs incurred by 1 WTC and/or Construction Manager as a result of such rejections.

The number of working days within which the Construction Manager shall advise the Contractor as to whether the Shop Drawings are approved, not approved, or require corrections or additions to be made thereto shall be as follows, except that twenty (20) working days shall be required for the Construction Manager to review Shop Drawings submitted with design calculations.

| No. of Drawings Submitted Within 5 Consecutive Working Days for Each Discipline(*) | No. of Working Days for Construction Manager and Appropriate Member of Design Team to Review Shop Drawings |
|---|--|
| Up to 50 | 12 |
| 51 to 75 | 17 |
| More than 75 | 22 |
| * Disciplines shall be defined as follows: Structural, Architectural, Civil, Geotechnical, Mechanical, Electrical, Traffic and Environmental. | |

Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of working days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this section relieve the Contractor from its duty to meet all contractual Milestone Dates.

As soon as approval has been given to any Shop Drawing or Catalog Cut, the Contractor shall within five (5) days send to the Construction Manager six (6) prints, except that when the Construction Manager specifically so directs, nine (9) prints shall be sent. After approval thereof, no change will be permitted thereon unless approved in writing by the Construction Manager. Before Final Payment for the Work is made, the Contractor shall furnish to the Construction Manager one (1) set of Shop Drawings, which have previously been prepared by the Contractor in accordance with requirements elsewhere specified in these Specifications, all clearly revised, completed and brought up to date showing the permanent construction as actually made. These drawings shall be in the form of mylar reproducibles, from which clear prints can be made.

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 and 1 WTC shall become the property of 1 WTC. 1 WTC 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.

68. SUBSTITUTION

Where a proprietary item or make is specified or mentioned herein or called for or mentioned on the Contract Drawings and the phrases "similar and equal to" or "approved equal" are used in connection therewith, the utilization of any other item or make will be deemed a substitution. Substitution for the proprietary item or make specifically named may be made only in accordance with the Section hereof entitled "Workmanship and Materials" and in accordance with the following.

Whenever materials or equipment are specified or described in the Contract Drawings or Specifications by using the name of a proprietary item or the name of a particular supplier, the naming of the item is intended to establish the type, function and quality required. Unless the name is followed by words indicating that no substitution is permitted, materials or equipment of another supplier or manufacturer may be accepted by the Construction Manager if sufficient information and proof is submitted by the Contractor to permit the Construction Manager to determine that the material or equipment proposed is equivalent or equal to that named and the Construction Manager approves the substitution. The procedure for review by the Construction Manager will include the following. Requests for review of substitute items of material and equipment will not be accepted by the Construction Manager from anyone other than the Contractor. If the Contractor wishes to furnish or use a substitute item of material or equipment, the Contractor shall make a timely written application to the Construction Manager for approval thereof, certifying that the proposed substitution will perform at least the identical functions and achieve at least the identical results called for by the specified product and otherwise be equal to the specified product with regard to, but not limited to, durability, maintenance, strength, energy costs and record of proven performance. The application shall state that the evaluation and approval of the proposed substitution shall not delay the Contractor's completion of the Work as required by the Contract, whether or not approval of the substitution will require a change in the construction and, in no event will the Contractor be granted an extension of time for completion of any portion of the Work for reasons related directly or indirectly to the evaluation of the proposed substitution or to the proposed substitution itself. Any variations of the proposed substitution from that specified shall be identified in the application, and maintenance, repair and replacement services for the substitution shall be indicated. The Construction Manager may require the Contractor to furnish at the Contractor's expense additional laboratory test data concerning the proposed substitution.

Such submission to the Construction Manager shall be made only by including the requested substitution in the list of materials required to be submitted to the Construction Manager in accordance with the Section hereof entitled "Inspections and Rejections" within forty-five (45) calendar days after the receipt of the acceptance of the Contractor's Proposal. After the approval of said list, no substitutions will be permitted, except that a brand or make named in the Specifications may be submitted for approval in lieu of a brand or make on said list. Any such submission shall not imply, or impose on the Construction Manager, any obligation whatsoever to discuss, disclose or justify the reasons for his opinion, approval, acceptance or rejection.

The Construction Manager shall be the sole judge of as to whether a proposed substitution will be approved, and no substitution shall be ordered or utilized without the Construction Manager's prior written approval. The Construction Manager may require Contractor to furnish at Contractor's expense a special performance guarantee or other assurance with respect to any approved substitution. Furthermore, the approval of any substitute proprietary item or make shall not in any way entitle the Contractor to additional compensation therefor.

Notwithstanding such approval, however, the Contractor assumes the risk that such approved substitute item or make is not equal to that shown or specified and if at any time the substitution shall appear not to be so equal he shall replace the substitution with that originally shown on the Contract Drawings or called for in the Specifications at his own cost and reimburse the Construction Manager for any loss occurring on account of the substitution failing to be equal, notwithstanding that it had been previously approved for use by the Construction Manager.

The construction called for by the Contract Drawings may be adapted for a particular proprietary item or make of material or equipment. Therefore, if any construction not required by the Contract Drawings or Specifications in their present form is necessary or desirable because of the use of substitute item or make of material or equipment (even though such other item or make is approved by the Construction Manager), such construction shall be furnished or performed by the Contractor at his expense and subject to the approval of the Construction Manager.

69. 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 Construction Manager 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".

All items provided in this Contract that use dates in the recording, storing or processing of information shall use such dates correctly at all times including using such dates correctly in the recording, storing or processing of information after January 1, 2000 (Year 2000 Compliant).

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 Construction Manager 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 Proposals upon the present Contract unless specifically stated otherwise.

If required by the Construction Manager, 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 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.

In various paragraphs of these Specifications, references may be made 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.

All inventions, ideas, designs and methods contained in the Specifications and Contract Drawings in which 1 WTC has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority and/or 1 WTC. 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 1 WTC and must not be produced or copied in whole or in part or used for furnishing information to others without the written consent of 1 WTC, 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, 1 WTC and/or 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 1 WTC and/or the Authority. Promptly upon request by the Construction Manager or 1 WTC, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to 1 WTC, but as between the Contractor and 1 WTC the license herein provided for shall nevertheless arise for the benefit of 1 WTC 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 1 WTC to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by 1 WTC, 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 defend, indemnify the 1 WTC Indemnitee Group against and save them harmless from all loss and expense, including, without limitation, attorneys' fees and costs, 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 1 WTC or 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 Construction Manager or 1 WTC 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 1 WTC or the Authority. If 1 WTC or 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 1 WTC Indemnitee Group against patent, copyright or other intellectual property right claims, 1 WTC 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 1 WTC or to take such steps as may be necessary to ensure compliance by 1 WTC with such injunction, all to the satisfaction of 1 WTC and all without cost or expense to any member of the 1 WTC Indemnitee Group.

70. 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 Construction Manager and/or Design Team, 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 Construction Manager and/or Design Team 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 Construction Manager and/or Design Team 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 the approval of the Construction Manager and Design Team, the Work, construction, processes of manufacture and methods of construction shall be forthwith reconstructed, made good, replaced or corrected, as the case may be, by the Contractor at its own expense. Rejected material shall be removed immediately from the site. The fact that the Construction Manager and/or Design Team have approved the materials and workmanship shall not relieve the Contractor from its obligation to supply other material and workmanship when so ordered by the Construction Manager.

The Contractor, at its own expense, shall furnish such facilities and give such assistance for inspection as the Construction Manager and/or Design Team may direct. 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 Construction Manager may designate, the Contractor shall secure for the Construction Manager and/or Engineer, and their Inspectors, free access to all parts of such factories or plants and shall furnish to the Construction Manager and/or Design Team three (3) copies of purchase orders, two (2) copies of mill shipping statements and four (4) copies of shipping statements. Moreover, in the case of such materials to be factory or plant inspected, the Contractor shall give at least ten (10) days' notice to the Construction Manager 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 Construction Manager and/or Design Team 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.

In the case of materials to be inspected at the construction site, the Contractor shall submit a list of all such materials in triplicate to the Construction Manager for transmittal to the Design Team for its approval prior to ordering same. The list shall be submitted within forty-five (45) calendar days after receipt of the notice of acceptance and shall contain the following information:

- A. Classification of submittal in accordance with the following:
 - Class I - A submittal for record of an expressly specified item.
 - Class II - A submittal of an item which conforms to an express generic specification or a submittal which is deemed by the Contractor to be identical to an expressly specified item.
 - Class III - A submittal which is deemed by the Contractor to be functionally equivalent but not identical to a specified item.
- B. In the case of Class II and Class III, the Contractor shall supply adequate information to the Construction Manager to enable the Construction Manager to compare the specified item and the proposed substitution. Information shall include, but need not be limited to, technical specifications, Catalog Cuts, drawings, references to existing installations and test data, or any other data required by the Construction Manager.
- C. In the case of fabricated materials for which Shop Drawings are to be prepared, a brief description of the material and the statement "see Shop Drawings".
- D. In the case of materials or equipment listed in manufacturer's catalogs, the list shall contain the vendor's name, the manufacturer's name, brand name, style designation, catalog number and, where the Specifications require Catalog Cuts, the statement "see Catalog Cut".
- E. In the case of materials or equipment for which Shop Drawings are not to be prepared, and which are not listed in any catalog, the list shall contain a complete description of the material or equipment, which shall be in sufficient detail to describe completely the materials or equipment and quality therefor.

The Construction Manager shall advise the Contractor whether said list is approved or requires corrections or additions within the number of working days indicated in the chart below:

| Type of Submittal | No. of Working Days for Construction Manager to Approve/Disapprove Items |
|--|--|
| Class I Material submittals | 10 |
| Portland Cement mix designs that require confirmation of the 28-day properties | 35 |
| Changes in asphalt mix designs that need to be confirmed with a batch mix at the plant | 35 |
| Class II Material submittals | 20 |
| Class III Material submittals | 30 |

Failure of the Contractor to provide thirty (30) calendar days' advance notice to the Construction Manager of any submittal shall result in a five (5) working day extension of the number of days stated in the chart above. In no event shall an extension of the Construction Manager's review time provided for in this Section relieve the Contractor from its duty to meet all contractual Milestone Dates.

Within ten (10) working days after receipt of said list, the Construction Manager shall notify the Contractor of which items are approved and which disapproved. Within two (2) working days thereafter, the Contractor shall resubmit a new list covering those items which were disapproved. After each such re-submission the Construction Manager shall have a similar period of ten (10) days in which to approve or disapprove.

Should materials or equipment be delivered to the construction site without having been placed on the aforementioned list and approved, it shall be immediately removed from the construction site by the Contractor at his own expense.

Contractor may appeal to 1 WTC Construction Manager's rejection of any portion of the Work within five (5) days of such rejection. 1 WTC's decision of such appeal shall be final.

1 WTC reserves the right to reject Work regardless of Construction Manager's approval.

71. 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 Construction Manager 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 Construction Manager prior to installation of the materials to which it refers. Such certifications shall not be binding or conclusive on the Construction Manager and may be rejected at any time by the Construction Manager if incorrect, improper or otherwise unsatisfactory in his opinion.

72. 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 Construction Manager, not the Contractor. Any approval of such things shall be construed merely to mean that at that time the Construction Manager 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 or from any duty, obligation or liability imposed upon him by the Contract or from responsibility for injuries to persons or damage to property.

73. 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 Construction Manager in the construction undertaken and executed by him, he shall immediately notify the Construction Manager and the Construction Manager 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.

74. ACCIDENTS AND FIRST AID PROVISIONS

The Contractor shall promptly report in writing to the Construction Manager 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 the Construction Manager.

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 Construction Manager, giving full details of the claim.

75. SAFETY PROVISIONS

In the performance of the Contract, the Contractor shall exercise every precaution to prevent injury to workers and the public or damage to property, follow the health and safety requirements set forth herein. Contractor shall comply with The Port Authority of New York and New Jersey "World Trade Center Site Rules and Regulations" (Rider N) and Construction Manager's "Safety Guidelines" (Rider M) and complete all forms set forth therein.

He shall, at his own expense, provide temporary structures, place such watchmen, design and erect such barricades, fences and railings, give such warnings, display such lights, signals and signs, exercise such precaution against fire, adopt and enforce such rules and regulations, and take such other precautions as may be necessary, desirable or proper, or as may be directed.

The Contractor shall employ for Work of the Contract a competent person conforming to the requirements of the Code of Federal Regulations 29 CFR 1926.32(f) who shall be designated by the Contractor as authorized to perform the duties required by 29 CFR 1926 et seq. as applicable for Work of this Contract.

Obtain and submit to the Construction Manager one copy of material safety data sheet (MSDS) conforming to the requirements of 29 CFR 1910.1200(g) for each hazardous chemical utilized for permanent and consumable materials employed for Work of this Contract.

The Contractor shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the Work. The Contractor shall take all necessary precautions for the safety of, and shall provide the necessary protection to prevent damage, injury or loss, including but not limited to:

- A. All employees on the Work, the public, and other persons and entities who may be affected thereby;
- B. All the Work, materials and equipment to be incorporated therein, whether in storage on or off the site; and
- C. Other property at the site or adjacent thereto, including trees, shrubs, lawns, walks, pavements, roadways, structures, utilities and underground facilities not designated for removal, relocation or replacement in the course of construction.

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, material and equipment from the construction site, or the issuance of the Certificate of Final Completion, whichever shall occur last.

Until fire protection needs are supplied by permanent facilities under this Contract, install and maintain temporary fire protection facilities. Comply with requirements of National Fire Protection Association NFPA 10 "Standard for Portable Fire Extinguishers" and NFPA 241 "Standard for Safeguarding Construction, Alteration and Demolition Operations".

The Contractor shall employ only such men as are physically fit and are free from contagious or communicable diseases.

He shall use only machinery and equipment adapted to operate with the least possible noise, and shall so conduct his operations that annoyance to occupants of nearby property and the general public will be reduced to a minimum.

The bringing of intoxicating substances onto the construction site and the use or consumption of intoxicating substances at the construction site are prohibited. It shall be the responsibility of the Contractor to insure that all employees of the Contractor and of all Subcontractors, Materialmen and any other persons under contract to or under the control of the Contractor shall comply with the provisions of this paragraph.

The Contractor shall daily clean up all refuse, rubbish, scrap materials and debris caused by his operations, to the end that at all times the construction site shall present a neat, orderly and workmanlike appearance. Before the Certificate of Final Completion of Work will be issued, the Contractor shall remove all surplus materials, falsework, temporary fences and other temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from his operations and shall put the construction site in a neat, orderly condition.

In the event 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 Construction Manager. 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 Construction Manager.

Within fifteen (15) days of the acceptance of his Proposal, the Contractor shall submit to the Construction Manager, for Construction Manager's 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.

76. DAILY PROGRESS, EQUIPMENT AND LABOR REPORTS

The Contractor shall furnish to the Construction Manager 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 Extra Work.

77. LAWS AND ORDINANCES

Contractor shall apply for and obtain all required permits to perform its Work. In order to effectuate the policy of the Authority, which the Construction Manager and 1 WTC adopt as set forth herein, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, permit requirements, 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 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 Construction Manager and 1 WTC, but shall do so in Contractor's own name, unless otherwise prohibited by law. Contractor shall not apply for any variance without first obtaining the approval of the Construction Manager and 1 WTC.

78. IDENTIFICATION

No person will be permitted on or about the construction site without a pass, permit or identification badge approved by the Construction Manager. The Contractor shall provide such passes, permits or identification badges for his employees, Subcontractors and Materialmen whenever necessary. Identification badges shall be worn in a conspicuous and clearly visible position by all employees of the Contractor whenever they are working at the construction site.

79. 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 Construction Manager. In any event, the advertisement shall not exceed six feet by eight feet (6' x 8') in overall dimensions.

80. CONTRACTOR'S FIELD OFFICE AND REPRESENTATIVE

At a readily accessible point on or near the construction site, the Contractor shall maintain a field office provided with a telephone.

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 Construction Manager. The Contractor's representative shall be provided, at all times, with a conformed copy of this Contract and a set of the Contract Drawings.

Orders and directions may be given orally by the Construction Manager 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 Construction Manager when so requested by the Contractor.

81. SURVEYS

The Construction Manager will establish a bench mark and a base line based on information provided by Engineer 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 Construction Manager.

The Contractor shall, in addition, furnish to the Construction Manager, 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 Construction Manager, at the Construction Manager's option. Computations of quantities for payment shall be made by the Contractor and shall be subject to the approval of the Construction Manager.

82. 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 are to be prepared by the Contractor, and when requested by the Construction Manager they shall be submitted for Construction Manager's review before being used. Neither such approval, however, nor any requirements of the Engineer, Construction Manager or 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.

83. PERMIT AND REQUIREMENTS FOR WELDING

Prior to the commencement of any cutting or welding operations at the construction site, the Contractor shall notify the Construction Manager and obtain a 1 WTC cutting and welding permit. 1 WTC will issue this permit without payment of a fee, and application forms may be obtained from Construction Manager. Unless otherwise approved by 1 WTC, 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 Construction Manager at least forty-eight (48) hours prior to commencing welding or cutting operations at the construction site.

84. FINAL INSPECTION

When, in the opinion of the Contractor, the construction is completed and ready for final inspection, he shall so notify the Construction Manager in writing, who 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.

85. WARRANTIES

The Specifications may provide for certain warranties of portions of the permanent construction. These warranties are intended for the greater assurance of 1 WTC and not as a substitute for rights which 1 WTC 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 1 WTC by any manufacturer shall be deemed to be a limitation upon any rights which 1 WTC would have, either expressed or implied, in the absence of such guarantees or warranties.

86. UTILITY RECORD DRAWINGS

Prepare, on mylar sheets 22" x 34" or other size approved by the Engineer, drawings showing the exact locations and elevations of underground utility construction including manholes, catch basins, inlets, pipe lines and structures for carrying gases (including air) and fluids including water, storm drainage, sewage, oil, chemicals, electrical duct runs, cables and conduits, for new construction or extension of existing utilities installed underground under this Contract.

Submit to the Construction Manager for transmittal to the Engineer, for verification and approval, tabulation of the data to be used in the preparation of the utility record drawings. Do not build-in, backfill or fill over or around or in any way cover underground structures, piping, conduit, cable or duct banks until such submitted data has been verified and approved by the Engineer.

Indicate the exact locations, including changes of direction and curves, by the use of offset distances from nearby permanent structures and, in addition, by the use of coordinates which shall be based on the system of coordinates used at the construction site, the origin of which is shown on the Contract Drawings. Base elevations on the datum used at the construction site as is shown on the Contract Drawings.

Submit prints of these drawings to the Construction Manager for transmittal to the Engineer for verification, check of the accuracy, and for approval. Make indicated corrections and additions to the drawings, until the approval of the Engineer has been obtained. After these drawings have been approved by the Engineer, the original corrected mylar sheets shall be turned over to the Engineer before issuance of the Certificate of Final Completion, and such original drawings shall become the property of 1 WTC.

87. **TEMPORARY UTILITY SERVICES [SEE ATTACHED RIDERS]**
88. **TEMPORARY SANITARY FACILITIES [SEE ATTACHED RIDERS]**
89. **PROGRESS SCHEDULE [SEE ATTACHED RIDERS]**
90. **ANALYSIS OF BID**

Within fifteen (15) calendar days after acceptance of the Proposal, the Contractor shall prepare a detailed analysis of bid on forms furnished by the Construction Manager with all of the spaces filled in without exception, and containing such information as the Construction Manager may require for each of the items enumerated in such form.

91. **CONDITIONS AND PRECAUTIONS [SEE ATTACHED RIDERS]**
92. **HOURS OF WORK AND CONSTRUCTION STAGING [SEE ATTACHED RIDERS]**
93. **MAINTENANCE OF TRAFFIC AND WORK AREA PROTECTION [SEE ATTACHED RIDERS]**



PHOENIX CONSTRUCTORS, JV

**GC
Subcontract**



| | |
|-----------------------|-------------|
| Contractor Job Number | WTC-284.458 |
| Subcontract Number | |
| Date | |

CONTRACTOR: Phoenix Constructors, Joint Venture
115 Broadway, 18th Floor
New York, New York 10006
Attention: ("Contractor")

SUBCONTRACTOR:
(Subcontractor name)
(Subcontractor address)
Attention: ("Subcontractor")

WORK:

PROJECT: (general caption only)
Construction of the World Trade Center Transportation Hub Project (the "Project" or "WTC/Hub")
New York City, NY ("Project")

OWNER: Port Authority of New York and New Jersey; "Authority"
(Owner address) ("Owner")

ARCHITECT-ENGINEER: ("Architect")

PRIME CONTRACT: WTC-284.458 (GC) Dated: 01/11/2006 ("Contract")

SUBCONTRACT PRICE: Dollars ("Price")

MONTHLY BILLING DATE: ("Monthly Billing Date")

RETAINED PERCENTAGE: 10 % ("Retained Percentage")

CHANGE ORDER OVERHEAD AND PROFIT : 15 % (of The PANYNJ's ("Profit Percentage")
Engineer's Estimate of Associated Work)

PAYMENT AND PERFORMANCE BONDS: Required Not Required

(The above terms are incorporated by reference and are more fully explained below.)

Contractor, and Subcontractor, with offices at the addresses shown above, agree for themselves, their successors and assigns as follows:

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ARTICLE 1, Work

The term "Work" means: (i) the furnishing and performance of all labor and materials by Subcontractor, at or for the benefit of the Project which is within the general scope of this Subcontract and the Contract Documents [as specified in Schedule 1, and addenda and other documents and which include but are not limited to the plans, specifications (including, but not limited to, general, special and supplemental conditions), addenda and other documents and duly issued modifications thereto], or which can be reasonably inferred from the general scope of this Subcontract or the Contract Documents; (ii) unless specifically expressly excepted, the furnishing by Subcontractor of all labor, material, equipment, supplies, plant, tools, scaffolding, hoisting, temporary facilities, transportation, superintendence, inspections and temporary construction of every nature; (iii) that which is to be produced and supplied pursuant to this Subcontract; and (iv) the obligation of Subcontractor to visit the Project site, and to fully acquaint and familiarize itself with the site, surrounding and subsurface conditions and the character of the operations to be carried on at the site, and make such investigations as Subcontractor may deem fit or as may be prudent for Subcontractor to fully understand the facilities, physical conditions and restrictions attending the Work. All Work shall be completed strictly in accordance with the requirements of this Subcontract and the Contract Documents.

The Contract Documents are available for examination by Subcontractor at all reasonable times at the office of Contractor. Subcontractor represents and agrees that it has carefully examined and understands the Contract Documents relevant to the Work; has adequately investigated the nature and conditions of the Project site and locality; has familiarized itself with conditions affecting the difficulty of the Work; and has entered into this Subcontract based on its own examination, investigation and evaluation and not in reliance upon any opinions or representations of Contractor.

The Contract Documents are to be treated by Subcontractor as "scope" documents which indicate the general scope of the Work in terms of the architectural design concept, the

overall dimensions, the type of structural, mechanical, electrical, utility, and other systems, and an outline of major architectural elements. As "scope" documents, the Contract Documents do not necessarily indicate or describe all items required for the full performance and proper completion of the Work. It is the intent of this Subcontract that Subcontractor is to furnish for the Price all items required for proper completion of the Work. Subsequently issued documents may more completely detail certain requirements of the Work, at the option of the Architect/Engineer, for the purpose of further defining the Work, but there is no obligation to issue such additional documents.

As a part of its obligation to provide and perform the Work, Subcontractor recognizes its responsibility to furnish a competent and adequate staff and use its best skill and attention for the proper administration, coordination, supervision and superintendence of the Work; (i) organize the procurement of all materials and equipment so that they will be available at the time they are needed for the Work; (ii) keep an adequate force of skilled workers on the job to complete the Work in strict accordance with all requirements of the Contract Documents; (iii) maintain throughout the duration of the Work a competent superintendent and any necessary assistants, all of whom shall be acceptable to Contractor and shall not be changed without the consent of Contractor; (iv) enforce discipline and order among Subcontractor's employees and not to employ at the Project any unfit person or anyone not skilled in the task assigned; (v) provide supervision by experts in all aspects of the application of the materials, equipment or system being fabricated and installed; and (vi) submit to Contractor the names, responsibilities and titles of the principal members of Subcontractor's staff.

Subcontractor shall be bound to Contractor by the terms and conditions of the Contract Documents, as the same shall be applicable to the Work and this Subcontract, and hereby assumes toward Contractor all of the duties, obligations and responsibilities that Contractor has by the Contract Documents assumed toward the Owner. In that regard, Subcontractor's attention is specifically directed to the fol-

lowing clauses of Contract WTC-284.458(GC) (the Prime Contract) which are expressly incorporated in full in the Subcontract as set forth at length and attached hereto as Exhibit 1B, Applicable Prime Contract Requirements:

Exhibit 30A, Subcontractor Qualification Package – Representations and Certifications; Proposer Certifications and Notices, Article 2, Notification of Security Requirements & Article 2A, Protection and Security. Contract, Article 35, Authority and Duties of the Chief Engineer. Contract, Article 37, Equal Employment Opportunity

Subcontractor hereby irrevocably grants Contractor a license to use all shop drawings, designs, and deliverables provided by Subcontractor on the Project for Contractor's purposes on the Project. Such license extends, without limitation to all shop drawings, CAD drawings, submittals to governmental or quasi-governmental authorities, product approvals, fabrication processes and the like, which are in any way necessary or desirable for the performance of the Work ("Granted Licenses"). This Subcontract shall constitute conclusive evidence of the granting to Contractor of the Granted Licenses by Subcontractor.

Mylars of the contract drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Subcontractor hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. This Agreement shall not be construed, however,

to require the Subcontractor to obtain for the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent be owned by the Subcontractor or one of his employees, or his subconsultant or the subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not the Subcontractor's Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by Subcontractor or on its behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

Without the express written approval of the Authority's Director, which approval may be requested through the Contractor, the Subcontractor shall keep confidential, and shall require its subconsultants and employees to keep confidential

- a) all information disclosed by the Authority or PATH or its consultants or contractors to the Subcontractor; or
- b) developed by the Subcontractor or its subconsultants in the performance of services hereunder.

The Subcontractor may be required to execute, and have its employees; subconsultants and their employees execute non-disclosure agreements as Contractor is directed by the Authority concerning intellectual property and proprietary information of the Authority, PATH and third persons. Disclosure of any such information shall constitute a material breach of the Agreement. The obligation of confidentiality shall not however pertain to information

- a) which is in the public domain;
- b) information lawfully received from a third party; or

- c) information, which must be disclosed under law, provided the Subcontractor give the Contractor reasonable notice to allow the Contractor to give the Authority's General Counsel reasonable notice of the legal obligation or legal process.

The Subcontractor 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 Agreement, unless Contractor first obtains, on the Subcontractor behalf, the written approval of the Authority's Director. Such approval may be withheld if for any reason the Authority's Director believes that the publication of such information would be harmful to the public interest or is in any way undesirable.

Under no circumstances shall the Subcontractor or its subconsultants communicate in any way with any contractors, department, board, agency commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder unless required by Law, except upon Contractor obtaining, on the Subcontractor's behalf, prior written approval and instructions of the Authority's Director, provided, however, that data from manufacturers and suppliers of materials shall be obtained by the Subcontractor when the Subcontractor find such data necessary unless otherwise instructed by Contractor at the direction of the Authority's Director.

ARTICLE 2, Price

Contractor shall pay to Subcontractor for the satisfactory performance and completion of the Work and performance of all the duties, obligations and responsibilities of Subcontractor under this Subcontract, the sum set forth above as the Price, subject only to additions and deductions as expressly provided in this Subcontract. To the extent that the Work is to be performed on a unit price basis, the Price shall be computed in accordance with the unit prices set forth in Exhibit 2A, Contractor's Pricing and Invoicing instructions, based on actual quantities determined in accordance with the Contract Documents and this Subcontract. The

Price and all unit prices shown in Exhibit 2A shall be deemed to include all costs of Subcontractor's performance of the Work as set forth in the Contract Documents, including, but not limited to, the costs of labor, supervision, services, materials, equipment, tools, scaffolds, hoisting, transportation, storage, insurance, taxes, and all overhead and profit.

ARTICLE 3, Progress Payments

Within ten (10) days after the date of transmission of this Subcontract to Subcontractor, Subcontractor shall submit to Contractor for Contractor's approval a detailed schedule showing a proper cost breakdown (with a proper share of associated overhead and profit) of the Price according to the various line items, or parts of the Work, for use only as a basis for verifying Subcontractor's applications for payment or supporting Contractor's applications for payments under the Contract Documents. See also Exhibit 2A, Contractor's Pricing and Invoicing Instructions.

On or before each Monthly Billing Date, Subcontractor shall submit to Contractor, in such form and supported by such data (including bills of sale, applicable insurance and the Partial Release and Waiver attached hereto as Exhibit 3, Progress Payments) as Contractor may require, a progress payment application showing the value of the Work installed ("Completed Work"), plus the value of the material and equipment for incorporation in the Work suitably stored and insured (to the satisfaction of Contractor and Architect/Engineer) at the Project site or other approved location ("Stored Work"), as of such date if, and only if, the Contract Documents provide for payments to Contractor on that basis. Subcontractor shall also furnish to Contractor, with Subcontractor's first Application for Payment, a list of all companies, entities, and individuals supplying labor or materials for the performance of the Work ("Furnisher Information Schedule"). Such Furnisher Information Schedule shall be updated with every Application for Payment. Within seven (7) days after receiving a progress payment from Owner under the Contract Documents, Contractor shall make a progress payment to Subcontractor equal to the value of the Completed Work and Stored Work

as of the corresponding Monthly Billing Date, to the extent approved by Contractor and allowed and paid by Owner on account of the Work, and so long as all other conditions of payment are met under Article 5, below, and after deducting (a) all previous payments, (b) current retainage (meaning a reserve equal to the Retained Percentage times the allowed value of Completed Work and Stored Work, plus any additional reserve provided for herein) and (c) all charges or backcharges for services, materials, equipment, or other items furnished or otherwise chargeable to Subcontractor. To the fullest extent permitted by law, Contractor shall have no liability or responsibility for any amounts due or claimed to be due Subcontractor for any reason whatsoever except to the extent that Contractor has actually received funds from owner specifically designated for disbursement to Subcontractor. Receipt of these funds by Contractor shall be an absolute condition precedent to Subcontractor's right to receive payment. In the event of any conflict between the Contract Documents and this provision, this provision shall govern. With regard to the foregoing, Subcontractor: (i) agrees that the Price shall be a non-recourse obligation; and (ii) waives Subcontractor's right to assert any claim, demand, right, or cause of action against Contractor for any portion of the Price (unless, and to the extent that Contractor actually receives funds from the Owner attributable to the Work).

Contractor shall review each Application for Payment together with such supporting documents as required under Article 5 of this Subcontract and as otherwise requested by Owner or Contractor. Contractor shall then approve, modify or reject, in whole or in part, such Application for Payment. Contractor reserves the right to advance the date of any payment (including final payment) due or to become due under this Subcontract if, in its sole judgment, it becomes desirable to do so.

Subcontractor shall not be entitled to any payment until this Subcontract has been properly executed and all documents and information to be furnished by Subcontractor have been supplied to Contractor.

ARTICLE 4, FINAL PAYMENT

A final payment, consisting of the unpaid balance of the Price, shall be made within thirty (30) days after the last of the following to occur: (a) satisfactory completion of the Work by Subcontractor, (b) unqualified acceptance thereof by the Architect/Engineer and Owner, (c) full final payment by Owner to Contractor under the Contract Documents on account of the Work, (d) furnishing of evidence satisfactory to Contractor that there are no claims, obligations, or liens outstanding or unsatisfied for labor, services, materials, equipment, taxes, or other items performed, furnished or incurred in connection with the Work, (e) delivery of all guarantees, warranties, bonds, instruction manuals, performance charts, diagrams, as-built drawings and similar items required of Subcontractor or its suppliers or subcontractors and (f) delivery of a general release, in a form satisfactory to Contractor, executed by Subcontractor running to and in favor of Contractor and Owner and such other parties as Contractor may require.

Acceptance by Subcontractor of Final Payment shall constitute a release of Owner and Contractor of and from all liability for all things done or not done or furnished or not furnished in connection with the Work, and for every act, omission, or neglect, if any, relating to or arising out of the Project. As a condition of final payment, Subcontractor shall also execute and deliver the Final Release and Waiver attached hereto as Exhibit 4, Full and Final Release and Waiver.

ARTICLE 5, PAYMENT CONDITIONS

Subcontractor will receive the payments made by Contractor and Subcontractor will hold such payments as a trust fund to be applied first to the payment of laborers, suppliers, subcontractors and others responsible for the Work for which such payments are made, including sufficient funds so that all taxes and insurance applicable thereto are also paid. Subcontractor shall first apply all progress payments as trustee to satisfy all obligations Subcontractor has incurred due to the Work.

Subcontractor shall, as often as requested by Contractor, furnish such information, evidence and substantiation as Contractor may require with respect to the extent and value

of current progress and the nature and extent of all obligations incurred by Subcontractor in connection with the Work and all payments made by Subcontractor on account thereof. Subcontractor shall also furnish, as required by Contractor in its sole discretion, such partial or final lien waivers or releases as Contractor deems necessary to ensure that Subcontractor has paid all persons furnishing any labor, material, or services in furtherance of any Work furnished hereunder. If required by Contractor, the furnishing of such lien waivers and releases shall be a condition precedent to any payment hereunder. Moreover, no prior failure of Contractor to require such releases and waivers shall limit Contractor's right to require them subsequently.

Contractor reserves the right to withhold, as an additional reserve and without limiting its other rights and remedies, an amount sufficient: (a) to defend, satisfy and discharge any asserted claim that Subcontractor (or anyone providing any of the Work hereunder) has failed to make payment for labor, services, materials, equipment, taxes, or other items or obligations furnished or incurred in connection with the Work or has caused damage to the Work or to any other work on the Project; (b) to complete the Work if it appears that funds remaining in the Subcontract, including retainage and exclusive of backcharges, are insufficient to complete the Work; (c) to reimburse Contractor for any backcharges incurred as a result of any act or omission by Subcontractor hereunder; (d) to protect Contractor from the possible consequences of any other breach or default by Subcontractor hereunder; or (e) to secure Contractor with respect to any breach or default by Subcontractor or its affiliates, parent company and subsidiaries under any other agreement.

Payment hereunder shall not be evidence of the proper performance or progress of the Work and no payment shall be construed to be acceptance of defective, faulty or improper work or materials. To the extent that payment is requested for any Work which requires the preparation of construction documents which are maintained on electronic media, no payment shall be due until delivery of the data for such construction documents in a format which is acceptable to Contractor.

Subcontractor shall at all times cooperate, in the course of its performance of the Work and of the Contract Documents, with any lending entity or entities providing financing for the Project and shall agree in writing to all changes and modifications to the Contract Documents which are requested by such entity or entities that do not impose any substantial additional burdens on Subcontractor or materially reduce or limit Subcontractor's rights. Subcontractor shall supply such information and certifications as reasonably may be required from time to time by the aforesaid lending entity or entities in order that Owner can satisfy conditions to lender's obligations to make advances upon Owner's construction loan.

As an additional condition precedent to any payment (including, but not limited to final payment) under this Subcontract, Subcontractor shall provide to Contractor on electronic media copies of all drawings, shop drawings, CAD documentation and discs, and other documents prepared by Subcontractor, or prepared at Subcontractor's direction, in connection with the performance of the Work, whether or not submitted to Contractor or Owner in connection with the Work.

ARTICLE 6, TIME

Time is of the essence in the Subcontractor's commencement, prosecution and construction of the Work. Therefore, Subcontractor shall be liable for all direct and consequential damages arising out of Subcontractor's breach of this Subcontract. Subcontractor shall: (a) submit to Contractor within ten (10) days of the date of transmission of this Subcontract to Subcontractor a detailed, proposed schedule for the Work for Contractor's use in preparing an overall progress schedule for the entire Work and its several parts under the Contract Documents to be incorporated as Exhibit 6, Contractor's Schedule; (b) begin the Work promptly upon Contractor's order to do so; (c) coordinate and perform the Work, and its several parts, diligently and promptly and in such order and sequence as Contractor may from time to time direct and as will assure its efficient and timely prosecution and will not delay completion of the entire Work and its several parts under the Contract Documents; and (d) furnish at all times sufficient, qualified and competent

forces and supervision, and adequate, conforming and usable materials, equipment, plants, tools and other necessary things, to achieve progress according to Contractor's current progress schedule, including any specific schedule for Subcontractor's Work attached hereto as Exhibit 6, Contractor's Schedule, and any revisions thereof by Contractor

Without limiting the generality of the foregoing and in recognition of the completion dates contained herein and in the Contract Documents, Subcontractor shall: (a) submit, with its proposed schedule, a submittal register (Article 20, and Exhibit 20) showing the time required to prepare and approve shop drawings, to fabricate and deliver materials and equipment, and to install the Work, (b) order (for manufacture or purchase and delivery) all materials required for performance of the Work as soon as possible in order to avoid delays caused by strikes, transportation or unavailability; (c) furnish Contractor within thirty (30) days a list of major materials and equipment required for the Work, showing the name(s), address(es) and telephone number(s) of the supplier(s) and the date(s) on which such material and equipment is expected to be delivered to the Project site; (d) furnish Contractor, upon issuance, a copy of each major purchase order and subcontract (with price information deleted); (e) cause a qualified home office supervisory representative (while Subcontractor has forces at the Project site and for two weeks prior thereto) to attend weekly progress meetings; and (f) notify Contractor immediately by telephone and confirm in writing within seventy-two (72) hours if Subcontractor finds that any item cannot be delivered as required to maintain Contractor's progress schedule. Subcontractor also agrees to be bound by such modifications to the Project schedule as are discussed at the weekly job progress meetings and are contained in the minutes of those meetings unless written objection is delivered in writing by Subcontractor within forty-eight (48) hours of the occurrence of such meeting.

The Work shall be performed during regular working hours except that, in the event of emergency or when necessary to perform the Work in accordance with the requirements of Article 6 of this Subcontract, Work

shall be performed at Subcontractor's cost and expense (including Contractor's standby and other general conditions costs) on night shifts, overtime, Saturdays, Sundays, holidays and at other times, if permission to do so has been obtained in writing from Contractor. Without limiting the requirements of the preceding sentence, if the progress of the Work or of the Project has been delayed by any fault, neglect, act, or failure to act of Subcontractor or any of its subcontractors or suppliers, Subcontractor shall work such overtime, at Subcontractor's cost and expense as aforesaid, as Contractor shall deem necessary or desirable to make up for all time lost and to avoid delay in the completion of the Work or the Project. The failure by Contractor to direct Subcontractor to engage in such overtime work shall not relieve Subcontractor of the consequences of its delay.

Contractor may direct acceleration of the Work in order that it may be performed in advance of the schedules, time requirements and Project requirements described in Article 6 hereof. If so directed, Subcontractor shall increase its staff or work overtime, or both. Subcontractor will not be entitled to additional compensation for work performed outside of regular working hours, except as authorized and accepted in writing by Contractor. Provided that Subcontractor is not in default under the Subcontract, and Contractor has issued the aforesaid authorization, there shall be added to the Price an actual out-of-pocket amount equal to: (i) additional wages actually paid, at rates which have been approved in advance in writing by Contractor; (ii) taxes imposed by law on such additional wages; and (iii) premiums for worker's compensation and liability insurance if required to be paid on such additional wages.

Written authorization for overtime which exceeds \$500.00 in any one week shall be invalid unless confirmed in advance in writing by Contractor's Project Manager, it being understood that Contractor's Superintendent shall not have authority to authorize such overtime which exceeds \$500.00 in any one week.

ARTICLE 7, EXTENSIONS OF TIME

If Subcontractor claims an extension in the completion time requirements by reason of a change in the Work, Subcontractor shall

give Contractor written notice thereof within twenty-four (24) hours after Subcontractor's first knowledge of the occurrence of the conditions giving rise to such event. This written notice shall be given by Subcontractor before proceeding with the Work. No such request for an extension of time shall be valid unless written notice is given as required above. After delivering written notice of a perceived cause of delay, Subcontractor shall proceed to execute the Work, even though the time extension has not been agreed upon.

Should Subcontractor be obstructed or delayed in the commencement, prosecution or completion of the Work without fault on its part, and by reason of causes which would entitle the Contractor to an extension of time under the Contract, then Subcontractor shall be entitled to an extension of time only to perform the Work which shall be equal to the extension of time to which the Contractor is entitled and granted by the Owner but no claim for extension of time on account of delay shall be allowed unless a claim in writing therefore is presented to Contractor with reasonable diligence but in any event not later than twenty-four (24) hours after the commencement of such claimed delay. The entitlement to an extension is absolutely conditioned upon Subcontractor's timely submission of the aforesaid written notice. Subcontractor expressly agrees not to make, and hereby waives, any claim for damages, including those resulting from increased labor or material costs, on account of any delay, obstruction or hindrance for any cause whatsoever, whether or not foreseeable and whether or not anticipated including, but not limited to, causes that would entitle the contractor to an extension of time under the Contract except to the extent that Contractor is entitled to, and actually shall receive corresponding cost reimbursement, compensation or damages from Owner for the benefit of Subcontractor for any such delay, obstruction or hindrance. Subcontractor shall be responsible for the preparation and submission to the Owner of any such claim, and Contractor's sole obligation and liability with respect to any such claim shall be, at its sole discretion, to present it to Owner, and if and to the extent Owner recognizes such claim, and Contractor actually receives from Owner on

account of such delay, obstruction or hindrance any cost reimbursement, compensation or damages, Contractor shall pay such amount, if any, to Subcontractor. Except as specifically provided above, Subcontractor agrees that the sole right and remedy therefore shall be an extension of time in accordance with the foregoing paragraph.

Moreover, Subcontractor shall not be allowed an extension of time unless Subcontractor has established to Contractor's satisfaction that the delay claimed by Subcontractor is to a portion of the Work on the critical path of the Work schedule and that Subcontractor could not have reasonably anticipated the delay.

ARTICLE 8, CHANGE ORDERS

Owner has reserved the right under the Contract Documents to require Contractor to make changes in the Work, including additions thereto and deletions therefrom.

In the absence of a signed Change Order, if the Engineer directs, orders or requires any Work and the Contractor in turn, whether orally or in writing, directs, orders or requires the Subcontractor to perform that directed, ordered or required Work or a portion thereof which the Subcontractor deems to be Extra Work, the Subcontractor shall nevertheless comply therewith, but shall within three (3) working days give written notice thereof to the Contractor, stating why the Subcontractor deems it to be Extra Work, and shall moreover furnish to the Contractor time slips and memoranda as required by the Prime Contract (GC), Article 22, entitled, "Compensation for Extra Work". Said notice, time slips and memoranda are for the purpose of allowing the Contractor to comply with its obligation to provide such notice, time slips and memoranda to the Authority's Director within five (5) working days after the Contractor's receipt of the Engineer's order or requirement for such Extra Work. Failure of the Subcontractor to provide such notice, time slips and memoranda will be deemed to be a conclusive and binding determination on the Subcontractor's part that the direction, order or requirement of the Contractor does not involve the performance of Extra Work, and will be deemed to be a waiver by the Subcontractor of all claims for additional compensation or damages by reason thereof, such written notice,

time slips and memoranda being a condition precedent for the Contractor to assert such claims with the Authority on behalf of the Subcontractor.

Additionally, Contractor reserves the right under this paragraph to require Subcontractor to make changes in the Work, including additions thereto and deletions therefrom. Without notice to any surety and without invalidating this Subcontract, Contractor may from time to time, by written order ("Change Order") to Subcontractor, make changes in the Work to the same extent and in the same manner as may be required of Contractor by Owner under the Contract Documents. Subcontractor shall thereupon perform the changed Work in accordance with the terms of this Subcontract and the Change Order. In the event that Subcontractor is obligated hereunder to provide a payment or a performance bond, or both, under this Subcontract, the penal sum of such bonds shall automatically be deemed to be increased by any increase in the Subcontract Price.

Upon request of Contractor, and in time and manner sufficient to permit Contractor to comply with its obligations under the Contract Documents, Subcontractor shall submit a written proposal for any applicable Price and time adjustment attributable to the changed Work, detailed as Contractor or Owner may require, supported by and conforming to the requirements of the Contract Documents.

Where a Change Order is issued pursuant to a change required by the Owner, the Price shall be adjusted by the net amount of any direct savings and direct cost plus a Profit Percentage up to fifteen percent (15%) applied to The Port Authority of New York and New Jersey's Engineer's Estimate of the work associated with the Change Order, and the time for performance of the Work may be adjusted according to the Contract Documents, subject, however, in each case to the following limitations: (a) the Price and time adjustments hereunder shall be limited to the amount and extent of adjustments actually allowed Contractor under the Contract Documents (less, in the case of Price, any overhead, profit or similar markup allowed by Owner for Contractor's account); (b) where the Work affected by Change

Order is the subject of unit prices under Exhibit 2A, the Price adjustment shall be limited to the amounts obtained by applying such unit prices to the actual increase or decrease in the quantity of units due to the change; and (c) the amount allowable for all overhead and profit shall be limited to the product obtained by multiplying a Profit Percentage, up to fifteen percent (15%), by The Port Authority of New York and New Jersey's Engineer's Estimate of the work associated with the Change Order.

As used in this Subcontract, Subcontractor's direct savings and direct cost shall mean and be limited to the actual amount of the following: cost of materials, including sales tax and cost of delivery; cost of labor, including social security, old age and unemployment insurance, and fringe benefits required by agreement or custom; worker's compensation insurance; bond premiums; and to the extent actually increased; and actual rent not greater than the rent charged in the local or reasonable value of Subcontractor-owned equipment and machinery.

If the parties are able to agree upon the amount of the Price adjustment and the extent of any time adjustment, such adjustments shall be set forth in the Change Order, which shall be accepted by Subcontractor. If the parties are unable to agree upon such adjustments, Contractor may elect to issue the Change Order to Subcontractor directing such work to be performed by Subcontractor and any adjustments to Price or time shall be subject to ultimate determination in accordance with this Subcontract; and Subcontractor shall, nonetheless, proceed immediately with the changed Work. Subcontractor shall keep a detailed account of the direct savings and direct cost due to the changed Work separately from its other accounting records and shall make such records available to the Contractor at Contractor's request. Failure to keep adequate and separate cost records of the changed Work, and to furnish same to Contractor upon its request, shall constitute an acceptance on Subcontractor's part of the Contractor's determination of the direct savings and direct cost of such changed Work. In no event shall Subcontractor proceed with changed Work without a Change Order issued pursuant to this Article 8 and Contractor shall not be liable for any additional costs

incurred or delays encountered in the performance of such changed Work without such a written Change Order. Ref. Exhibit 8, Change Order Request Form, and Exhibit 8A, Contract Modification.

ARTICLE 9, NOTICES

All written notices provided for in this Subcontract or in the Contract Documents shall be deemed given if delivered personally to the party, sent by regular mail to the party at its address and to the attention of the representative specified herein. If sent by mail, the written Notice will be deemed to have been received three (3) days after the depositing of the Notice Letter with the U.S. Postal Service. Either party may from time to time, by notice to the other as herein provided, designate a different address and/or representative to which notices to it should be sent.

ARTICLE 10, BONDS

If so indicated on page 1 hereof, Subcontractor, within ten (10) days of date of transmission of this Subcontract to Subcontractor, shall furnish performance, and labor and material payment bonds each for one hundred percent (100%) of the Price, said bonds to be on Contractor's standard bond forms (attached hereto as Exhibit 10, Bonds) and with sureties satisfactory to Contractor. The premiums on such bonds shall be paid by Subcontractor and are included in the Price. The Contractor shall reimburse the Subcontractor for any bonding premiums actually paid by the Subcontractor. As a condition precedent to the associated reimbursement, the Subcontractor must provide sufficient evidence, in a manner that is satisfactory to the Contractor, that such premiums have been paid. Subcontractor agrees to notify its surety or sureties of increases in the Price and to take such action as is required to have the penal amount of the bonds furnished pursuant to this paragraph increased correspondingly.

ARTICLE 11, INSURANCE

Before commencing the Work and until completion and final acceptance thereof by Owner, Subcontractor shall obtain and maintain, at its expense, at least the insurance coverage specified in: Exhibit 11, Insurance Rider - Requirements and Example attached hereto; Ex-

hibit 11, Owner's Contractors Insurance Program as required by the Prime Contract, Article 52, all from companies and in form and substance acceptable to Contractor.

As a condition to any payment for the Work, Subcontractor shall furnish a certificate, satisfactory to Contractor, from each insurance company showing the required insurance to be in force and stating that the insurance will not be canceled or changed except upon at least thirty (30) days' written notice thereof to Contractor or as otherwise required by the Contract Documents. The certificate shall name Contractor, Owner and any other parties required by the Contract Documents as additional insureds under the policies required in Exhibit 11. The terms and conditions of insurance to be provided by Subcontractor are described in Exhibit 11. Neither Owner nor Contractor nor any other additional insureds, nor their agents, employees or assigns, shall be liable to Subcontractor or its agents, employees or assigns for any loss or damage covered by the insurance policies described in Exhibit 11. The failure of Subcontractor to obtain the insurance required therein prior to the commencement of the Work shall not be deemed a waiver of such requirements or of any rights or remedies that Owner or Contractor may have.

Subcontractor hereby acknowledges its obligation for any loss to its Work, including stored materials, paid for or not.

Subcontractor waives all rights against the Owner, Contractor, Architect/Engineer and any separate contractors for damages caused by fire or other perils to the extent covered by property insurance applicable to the Work or Subcontractor's equipment, except such rights as Subcontractor may have to the proceeds of such insurance. Subcontractor shall require similar waivers from its subcontractors, suppliers, sub-subcontractors, agents and employees of any of them, by appropriate agreements, each in favor of the other parties enumerated herein.

ARTICLE 12, INDEMNITY

To the full extent permitted by law, and except where indemnity would be precluded by New York State General Obligations Law, Section 5-322-1, or by other applicable

law, Subcontractor agrees to defend, indemnify and save harmless Contractor and Owner, as well as any other parties which Contractor is required under the Contract Documents to defend, indemnify and hold harmless, and their agents, servants and employees, from and against any claim, cost, expense, loss, damage or liability (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity), of any nature, including but not limited to claims attributable to bodily injury, sickness, disease, or death, or to damage to or destruction of property (including loss of use thereof), caused by, arising out of, resulting from, or occurring in connection with breach of this Agreement or with the performance of the Work by Subcontractor, its subcontractors and suppliers, or their agents, servants, or employees, whether or not caused in part by the active or passive negligence or other fault of a party indemnified hereunder; provided, however, Subcontractor's duty hereunder shall not arise if such injury, sickness, disease, death, damage, or destruction is caused by the sole negligence of a party indemnified hereunder. Subcontractor's defense and indemnity obligations hereunder shall include the duty to reimburse any attorneys' fees and expenses incurred by any indemnified party for legal action to enforce this indemnity. Subcontractor's obligation hereunder shall not be limited by the provisions of any worker's compensation or similar act.

Should Owner or any other person or entity assert a claim or institute a suit, action, or proceeding against Contractor involving the manner or sufficiency of the performance of the Work (including attorneys' fees), Subcontractor shall upon request of Contractor promptly assume the defense of such claim, suit, action or proceeding, at Subcontractor's expense. To the fullest extent permitted by law, Subcontractor shall indemnify and save harmless Contractor as well as anyone to be defended, indemnified and held harmless by Contractor and its or their agents, servants and employees, from and against any liability, loss, damage, or expense (including attorneys' fees, and including costs and attorneys' fees incurred in enforcing this indemnity) arising out of or related to such claim, suit, action or proceeding. Nothing in Article 12 shall be construed to require any indemnification

which would make Article 12 void or unenforceable or to eliminate or reduce any indemnification or rights which the Contractor or any other party indemnified hereunder have by law.

ARTICLE 13, ASSIGNMENT

Subcontractor shall not assign this Subcontract, or any monies due or to become due hereunder, or subcontract any substantial part of the Work, without the prior written consent of Contractor. Approval shall be documented on Exhibit 13, Subcontractor Request Form. No assignment by Subcontractor of any right hereunder shall be effective and any such attempt shall be null and void. No third party shall have any right to enforce any right of Subcontractor under this Subcontract. If Contractor gives written consent to an assignment of this Subcontract, in whole or in part, Subcontractor shall not be relieved of its duties and obligations hereunder and shall be and remain fully responsible and liable for the acts and omissions of its assignees. Nothing herein shall prevent Subcontractor from engaging subcontractors to perform a portion of the Work hereunder. However, Subcontractor shall be and remain as fully responsible for all persons directly or indirectly employed by such subcontractors as Subcontractor is for its own acts and omissions and those of its agents, servants and employees. Additionally, nothing herein shall prevent any guarantor or surety of Subcontractor from enforcing any right hereunder after acknowledgment of its obligation as guarantor or surety. Any attempted enforcement of such rights in the absence of an express acknowledgment shall constitute an admission by any guarantor or surety of its obligations under its agreement of guarantee or suretyship.

Before any subcontractor or supplier is employed by Subcontractor, the name of such subcontractor or supplier shall be submitted in writing to Contractor, and no subcontractor or supplier shall be employed unless acceptable to Contractor. Each subcontractor and supplier shall be bound by all Contract Documents to the same extent and with the same effect as if the subcontractor or supplier were the Subcontractor. Subcontractor shall cause its subcontractors and suppliers to comply with the Contract Documents. Subcontractor shall be responsible for all of the acts, work, material and equipment of its

subcontractors and suppliers and all persons either directly or indirectly employed by any of them.

Subcontractor (and its successors and assigns) hereby assigns to Contractor all its interest in any subcontracts and purchase orders now existing or hereinafter entered into by Subcontractor for performance of any part of the Work which assignment will be effective upon acceptance by Contractor in writing and only as to those subcontracts and purchase orders which Contractor designates in writing. It is agreed and understood that Contractor may accept said assignment at any time during the course of construction prior to final completion. It is further agreed that all subcontracts and purchase orders shall provide that they are freely assignable by Subcontractor to Contractor and Contractor's assigns. Contractor may assign this Subcontract at any time without the consent of Subcontractor, or Subcontractor's payment and performance sureties or guarantors, if any.

ARTICLE 14, COMPLIANCE

Subcontractor shall, at its own expense, obtain all necessary licenses and permits pertaining to the Work and comply with all statutes, ordinances, rules, regulations and orders of any governmental or quasi-governmental authority having jurisdiction over the Work or the performance thereof, including, but not limited to, those relating to safety, wages, discrimination and equal employment opportunity and pay (any fines or penalties imposed for any violations thereof ("Legal Requirements"). Subcontractor shall promptly correct any violations of such statutes, ordinances, rules, regulations and orders committed by Subcontractor, its agents, servants and employees. Subcontractor shall receive and respond to, and shall defend, indemnify and save harmless Contractor and Owner, as well as anyone to whom Contractor is obligated, and their agents, servants and employees from and against any loss, liability, or expense arising from any such violations and any citations, assessments, fines, or penalties resulting therefrom. Without limiting the foregoing, Subcontractor will appear at hearings, proceedings and/or in court and consent to its substitution as a party defendant in respect of all summonses and claimed violations arising out of or relating to the Work.

By executing this Subcontract, Subcontractor represents and warrants to Contractor that the Work, when completed, will comply fully with all applicable building and safety codes, regulations and construction requirements imposed or enforced by any governmental agencies and in existence on the date of execution of this Subcontract, without regard to any errors, omissions or deficiencies in the drawings and specifications; and Subcontractor shall furnish samples of all materials and component parts to be used as test specimens. Subcontractor shall furnish labor and facilities at the Project site as necessary in connection with testing and inspection services.

Except as otherwise expressly specified in the Contract Documents or elsewhere in this Subcontract, Subcontractor shall pay for all laboratory services, tests, testing laboratories, agencies, professional engineers, engineering inspections and reports required by the Contract Documents, the Architect/Engineer, or Contractor. Testing laboratories and professional engineers shall be subject to Contractor's prior written approval. Without limiting the provisions herein, the cost of testing laboratories, agencies, and/or engineers for the convenience of Subcontractor in its scheduling and performance of the Work, or related to remedial operations or possible deficiencies, shall be borne by Subcontractor.

The observations of or participation by Owner, Architect/Engineer, or Contractor in inspections or tests by persons other than Subcontractor shall not relieve Subcontractor from its obligations to perform the Work in accordance with the Contract Documents. Owner, Architect/Engineer and Contractor, upon request, promptly shall have access to the Work, whether at the Project, in storage or in manufacture or preparation. Subcontractor shall provide proper and safe facilities for such access and for inspection at the Project site, at the place of storage or elsewhere. Subcontractor has given a license to exercise self-help. If the specifications or any legal requirements require any portion of the Work to be tested or reviewed, Subcontractor shall give Contractor timely written notice of such test or review.

Subcontractor shall comply with and cooperate with other subcontractors, Contractor, Architect/Engineer, and Owner in complying with legal requirements, including but not limited to OSHA requirements. Among other things, Subcontractor shall be responsible for performing corrective work within abatement periods, appealing from decisions or orders, requesting extensions on abatement periods, and furnishing such information or evidentiary material as may be necessary or as may be requested by Contractor to fully protect the rights and interests of Owner, Architect/Engineer, and Contractor with respect to possible, threatened or pending proceedings or orders.

ARTICLE 15, SAFETY

Subcontractor agrees that the prevention of accidents to workers engaged upon or in the vicinity of the Work is its responsibility, even if Contractor establishes a safety program for the entire Project. Subcontractor shall establish and implement safety measures, policies and standards conforming to those required or recommended by governmental or quasi-governmental authorities having jurisdiction and by Contractor and Owner, including, but not limited to, any requirements imposed by the Contract Documents. Subcontractor shall comply with the reasonable recommendations of insurance companies having an interest in the Project and shall stop any part of the Work that Contractor deems unsafe until corrective measures satisfactory to Contractor have been taken. Contractor's failure to stop Subcontractor's unsafe practices shall not relieve Subcontractor of its responsibility therefore.

Subcontractor shall continuously protect the Work, other work, and the property of Contractor, Owner, and others from damage, injury or loss arising in connection with the Subcontractor's performance of the Work. Neither Owner nor Contractor shall be responsible for any loss or damage to the Work or the property of Subcontractor, however caused, until after final acceptance thereof by Owner and final payment therefore. Likewise, neither Owner nor Contractor shall be responsible for loss of or damage (however caused) to materials, tools, equipment, appliances and other personal property of Subcontractor used in the performance of

the Work. Subcontractor shall remove all snow and ice as may be required or requested for the proper protection and prosecution of the Work. Subcontractor shall provide and maintain adequate protection against weather so as to protect the Work from injury or damage.

Subcontractor shall enforce Contractor's instructions regarding signs, advertisements, fires, smoking, alcoholic beverages, and the possession of firearms by any person at the Project site. Subcontractor, as necessary for the Work, shall provide flagmen, erect proper barricades and other safeguards, and post danger signs and other warnings as warranted by hazardous and existing conditions, and as specifically required by Exhibit 98 and 99, Specifications Sections 2-15; and Drawings.

Subcontractor shall promptly report in writing to Contractor and Subcontractor's insurance carrier all accidents arising out of, or in connection with the performance of the Work, whether on or off the Project site, which caused death, bodily injury or property damage, giving full details and statements of witnesses. In addition, if death or serious injuries or serious damages occur, the incident shall be reported to Contractor immediately by telephone or in person.

Subcontractor shall provide to Contractor a signed certification that it will work to the Contractor's Exhibit 15A, Interim Safety and Health Plan, and where applicable: Exhibit 15B: Conditions and Precautions for Work Within New York City Transit Right-of-Way. In addition, when required by Exhibit 6, Submittal Register and Transmittal Form, the Contractor shall provide an Exhibit 15E, Contractor's Job Safety Analysis and Supplemental Project Specific Safety Plan describing the hazards and controls anticipated on its specific job scope. The Exhibit 15E, Contractor's Job Safety Analysis and Supplemental Project Specific Safety Plan shall address tasks to be performed on the Project with attendant risk analysis and have appropriate controls and safeguards to prevent injury and illness. Contractor will review the Exhibit 15 Series safety requirements documents and those detailed in the Exhibit 1, Statement of Work, Exhibit 99, Drawings, and Exhibits 97 and 98 Specifications, prior to the start of the work. Any questions, comments or inquiries by Contractor

as to the adequacy of this program must be completely addressed by Subcontractor before Work is started.

Subcontractor must complete the required Safety Orientation Program for all of its new Project workers. Documentation of this orientation is required for the Project in the format provided by Exhibit 15D, Safety Rider. Weekly safety meeting with the workers of Subcontractor and its subcontractors of any tier are also required with evidence of the meeting results being supplied to Contractor.

Hard hats are required on the Project. Subcontractor must have a Safety Disciplinary Program and Contractor will use a safety disciplinary system with the Subcontractor.

Guardrails are to be provided by Subcontractor at all working places and other locations where persons or materials could fall more than six (6) feet. Where this cannot be physically achieved, suitable and sufficient fall protection devices that do not rely on individuals must be provided and used by Subcontractor to establish a safe place of work. Harnesses and personal protective equipment must be used by Subcontractor as a last resort. The decisions made and options implemented must be clearly detailed by Subcontractor in its written site specific Exhibit 15E, Contractor's Job Safety Analysis, and Supplemental Project Specific Safety Plan, and approved by the Contractor.

Pre-standing scaffold towers used externally by Subcontractor must not be higher to the top platform level than three (3) times the minimum base dimension unless secured to a permanent structure. For internal use only, the height to platform may rise to 3.5 times the minimum base dimension. Wheels must be locked when towers are in use. No person is permitted to remain on a tower platform while a tower is being moved.

Powered cranes, hoists, aerial platforms and scissor lifts provided by Subcontractor must have a competent driver that is certified by a qualified third party. Additionally, the above items must be certified by a qualified third party as safe to use.

Subcontractor must comply in full with all applicable environment, health and safety ("EH&S") local and national legislation,

including all OSHA regulations. In circumstances where there is a conflict between local or national legislation and this Article 15, the higher (more protective) requirement shall prevail.

All persons working for or under Subcontractor on suspended scaffolds/cradles/gondolas must wear and use appropriate fall prevention equipment so as to protect them effectively, at all times when they are at risk from any failure of any part of the scaffold/cradle/gondola, including its suspension system.

Holes, shafts and edges from or through which persons could fall a distance of more than 6 feet must be clearly marked by Subcontractor with signage or other means and must be adequately protected by covers or barriers provided by Subcontractor so as to prevent falls of persons and materials.

All temporary electrical circuits provided and used by Subcontractor must include a Residual Current Device, Earth Leakage Circuit Breaker or Ground Fault Circuit Interrupter at source.

Adequate lighting must be provided by Subcontractor to enable safe access to and egress from every place on a site where persons are liable to work. This is in addition to task lighting.

ARTICLE 16, CLEAN UP

Subcontractor shall, at its own expense: (a) keep the premises at all times free from waste materials, packaging and other debris accumulated in connection with the Work by collecting and removing such debris from the job site on a daily or other basis requested by Contractor; (b) at the completion of the Work in each area, sweep and otherwise make the Work and its immediate vicinity "broom-clean;" (c) remove all of its tools, equipment, scaffolds, temporary structures and surplus materials as directed by Contractor at the completion of the Work; and (d) at final inspection clean and prepare the Work for acceptance by Owner. Subcontractor agrees to provide all cleaning and cleanup required under the Contract Documents pertaining to the Work to the extent such requirements are in excess of those contained in this paragraph.

ARTICLE 17, TEMPORARY FACILITIES

In accordance with Exhibit 17, All Temporary Project Site Facilities, including but not limited to, storage, sheds, shanties, material storage rooms, field offices, power, hoists, scaffolding, cold weather protection, etc, and any necessary or utilized offsite field office rental or purchase, (all being referred to as "Temporary Facilities") required in performing the Work shall be furnished by, and at the sole expense of the Subcontractor.

Subcontractor agrees to furnish, at Subcontractor's expense, sufficient Temporary Facilities for the efficient performance of the Work. If on site, Subcontractor agrees to place its Temporary Facilities in locations designated by Contractor. When it becomes necessary, in the opinion of the Contractor, for Subcontractor to provide Temporary Facilities, Subcontractor will do so in an expeditious manner and at no additional cost. On site Temporary Facilities shall be equipped with fire extinguishers and shall be of fireproof material only, such as concrete, gypsum block, rated drywall, or sheet metal. All necessary offsite office space rental, lease, or purchase, or other agreement relating to the utilization of Real Property, and any and all costs relating to such, shall be at the sole cost and expense of the Subcontractor and included in their Proposal if necessary.

ARTICLE 18, QUALITY

Subcontractor shall at all times provide first-quality, new materials (unless otherwise specified in Exhibit 98, Specifications or Exhibit 99, Drawings and the Contract Documents) and workmanship conforming to the Contract Documents requirements and be in accordance with the best standards of the construction industry where the Project is located. Subcontractor shall at all times provide proper facilities and an opportunity for the inspection of the Work by Contractor, Architect/Engineer and Owner and their representatives. Subcontractor shall, within twenty-four (24) hours after receiving written notice from Contractor or Architect/Engineer, proceed to take down and remove all portions of the Work which Contractor or Architect/Engineer shall have condemned as unsound, improper, or in any way failing to conform to the Contract Documents or this Subcon-

tract and shall replace the same with proper and satisfactory Work and make good all work damaged or destroyed thereby. Contractor's failure to discover or notify Subcontractor of defective or nonconforming Work at the time the Work, or any portion thereof, is performed or completed shall not relieve Subcontractor of full responsibility for replacement of the defective or nonconforming Work and all damages resulting therefrom. If the Owner elects to accept defective or nonconforming Work, Contractor may require an appropriate adjustment in the Price to the extent required of Contractor.

Subcontractor shall use all necessary means to discover and to notify Contractor in writing of any defect in any part of the Project upon which the satisfactory performance of the Work may depend and to allow a reasonable amount of time for remedying such defects. If Subcontractor should proceed with the Work, Subcontractor shall be considered to have accepted and be responsible for such condition unless Subcontractor shall have been directed by Contractor to proceed over Subcontractor's written objection to Contractor.

ARTICLE 19, GUARANTEES AND WARRANTIES

Subcontractor warrants and guarantees the Work to the full extent provided for in and required by the Contract Documents. Without limiting the foregoing or any other liability or obligation with respect to the Work, Subcontractor shall, at its expense, make good any faulty, defective, or improper parts of the Work discovered within one (1) year from the date of acceptance of the Project by Architect/Engineer and Owner or within such longer period as may be provided in the Contract Documents or Legal Requirements. Subcontractor warrants that all materials furnished hereunder meet the requirements of the Contract Documents and warrants that they are both merchantable and fit for the purposes for which they are to be used under the Contract Documents. No Guarantee Period shall be construed to limit any warranty given by Subcontractor hereunder.

Performance of the aforementioned guarantee obligations shall be deemed to be a material component of Subcontractor's contractual obligation to perform the Work. This Subcontract shall not be considered completely

performed until all guarantee obligations hereunder are fully satisfied. Performance bonds required of Subcontractor shall include the performance of guarantee obligations and warranty obligations and shall not contain clauses limiting the time to sue upon said bonds for breach of the guarantee or warranty.

ARTICLE 20, SUBMITTALS

As defined by Exhibit 20, Submittal Register and Transmittal Form and Exhibit 98, Specifications, and Exhibit 99, Drawings, the Subcontractor shall immediately prepare for Contractor approval within ten days of Contract Award, a comprehensive Submittal Register (Exhibit 20), obtain and promptly submit, as defined by the Submittal Register, to Contractor shop and erection drawings, samples, product data, catalogue cuts, laboratory and inspection reports and engineering calculations, all as may be required by Exhibit 98, Specifications, and Exhibit 99, Drawings or as may be necessary or appropriate to describe the details of the Work. Approval of drawings or other submittals by Contractor or Architect/Engineer shall not relieve Subcontractor of its obligation to perform the Work in strict accordance with the Contract Documents or of its responsibility for the proper matching of the Work to contiguous work.

Subcontractor shall promptly submit all shop drawings and samples to cause no delay in the Work or the progress of the Project. Subcontractor shall submit all shop drawings and samples through the Contractor to the Owner for the Architect/Engineer's review. By submitting shop drawings and samples, Subcontractor represents and warrants that it has determined and verified all materials, field measurements, and field construction criteria pertaining thereto, has checked and coordinated this information with the Work and the Contract Documents, and that the Subcontractor shall fully guarantee and warrant the Work in accordance with this Subcontract and the Contract Documents. Any submission that, in Contractor's opinion, is incomplete, contains errors or has not been fully and properly checked, may be returned unreviewed by Contractor for revision and resubmission.

In reviewing shop drawings, Architect/Engineer need not verify dimensions and

field conditions. Architect/Engineer will review shop drawings and samples only for conformance with the design concept of the Work and for general detailing. Architect/Engineer and Contractor's review shall not be construed as a complete check nor shall it relieve Subcontractor from its responsibility for any deficiency that may exist or from any departures or deviations from the requirements of the Contract Documents. Architect/Engineer's or Contractor's review shall not relieve Subcontractor from responsibility for errors in shop drawings; responsibility for proper fitting of the Work, the necessity of furnishing any Work required by the Contract Documents which may not be indicated on shop drawings when delayed; or the necessity of providing sufficient quantities of items.

ARTICLE 21, PERFORMANCE

The Work shall be performed and furnished to the satisfaction of Owner, Architect/Engineer and Contractor, but Subcontractor shall not thereby be relieved of its obligation to supervise the Work using its best skill and attention, or its obligation to perform the Work as provided for herein. Subcontractor shall be bound by the interpretations and decisions of Architect/Engineer and Owner to the same extent as Contractor may be bound thereby under the Contract Documents. No certificate issued or payment made to Subcontractor nor any partial or entire use or occupancy of the Project site shall be an acceptance of any Work not in accordance with this Subcontract or the Contract Documents or be deemed evidence of proper performance of the Work, either in whole or in part, or be construed as an acceptance of defective workmanship or improper materials.

Subcontractor shall notify and obtain the approval of Contractor before the arrival of forces or delivery of materials and equipment to the Project site, before any substantial change in its forces, and before leaving the Project site for any reason.

Subcontractor shall promptly and carefully check all Contract Documents and notify Contractor of any discrepancies or conflicts before performing any Work, and Subcontractor shall be responsible for any extra costs resulting from its failure to do so. Subcontractor shall cooperate with Contractor and other subcontractors

in the preparation of coordination drawings where required by Contractor. Subcontractor shall take field measurements and verify field conditions and compare such field measurements and field conditions with the Contract Documents before activities are commenced. Errors, inconsistencies or omissions discovered are to be reported to Contractor at once. Any work done by Subcontractor with respect to any portion of the Work affected by such error, discrepancy, conflict, misunderstanding, or variance will be at Subcontractor's own risk and Subcontractor shall bear all costs and loss arising therefrom.

If during the performance of Work the Subcontractor becomes aware of (a) unanticipated subsurface conditions or has cause to suspect the presence of such condition, (b) unanticipated asbestos or other hazardous material or has cause to suspect the presence of such materials or (c) elements of historical significance or archeological interest or has cause to suspect of such elements, then the Subcontractor shall immediately notify the Contractor verbally of such condition so that the Contractor is able to immediately notify the Authority. Such verbal notice is to be followed-up immediately with written notice specifying the nature, location, and impact on Work of such conditions. The Subcontractor shall immediately stop Work in and secure the area against injury to persons or damage to property pending further instructions from the Contractor.

If any salaried or hourly workers or equipment of the Subcontractor are necessarily kept continuously idle and wholly unoccupied at the construction site for a full day on which they would be otherwise engaged in the performance of Work and if such idleness is not due to any cause within the control of the Subcontractor or its employees or its material suppliers, the Subcontractor shall give written notice to the Contractor immediately specifically stating that salaried workers or equipment have been kept idle under circumstances which might result in payment under the GC Prime Contract, Articles, 31, 103, 104, 105, 107 and/or 108 so that the Contractor is able to provide such notice to the Authority within twenty-four hours of the occurrence of

such idleness pursuant to applicable GC Prime Contract Article.

The Subcontractor shall furnish, in the format provided by Exhibit 21D, Contractor's Standby Time Report, with such notice for all the days that have occurred, and shall in addition furnish with such notice, at the end of each additional day of such idleness, (a) a memorandum showing the name, payroll title, salary rate and employer of each of the salaried workers claimed to have been kept idle, and the rates and amounts of Workers' Compensation Insurance premiums, if any, and taxes based upon their salaries and the holiday and vacation allowances and union dues and assessments which the employer must actually pay pursuant to contractual obligations and (b) a memorandum of the equipment claimed to be kept idle together with the amount claimed as rental therefore. Said notice and memoranda are for the purpose of enabling the Contractor to provide to the Authority's Director verification of the Subcontractor's claim at the time and of enabling the Authority's Director to take such steps as may be necessary to remedy the conditions upon which the claim is based. The furnishing of such notice and memoranda shall be a condition precedent to payment under GC Prime Contract Articles 31, 103, 104, 105, 107 and/or 108.

In the case of all other types of claim other than for Extension of Time and the above Idleness, the Subcontractor shall give notice to the Contractor of such claim within 24 hours after occurrence of the act, omission or other circumstances upon which the claim is or will be based so that the Contractor is able to give such notice to the Engineer as soon as practicable, and in any case within 48 hours. Such notice shall state as fully as practicable at the time all information relating thereto and will be supplemented with any further information as soon as practicable after it becomes or should become known to the Subcontractor, including daily records showing all costs which the Subcontractor may be incurring or all other circumstances which will affect the claim.

Neither Architect/Engineer nor Contractor nor Owner shall be responsible for: construction means, methods, techniques, sequences or procedures of Subcontractor; safety precautions and programs of Subcontractor; the acts or omissions of Subcontractor; or the failure of Subcontractor to carry out the work in accordance with the Contract Documents.

The Subcontractor shall confine operations at the Project site to areas permitted by law, ordinances, and permits and the Contract Documents and shall not unreasonably encumber the Project site with materials and equipment. Subcontractor shall not perform any portion of the Work outside the areas of the Project site owned or controlled by Owner or designated as part of the Project site in the Contract Documents unless Subcontractor gives thirty (30) days advance written notice to Contractor, and Owner is able to obtain permission from the appropriate parties to proceed with the Work or to permit access pursuant to Owner's agreements with the owners and/or tenants of said areas. Any work permitted outside of the Project site owned by Owner shall be scheduled in a manner as to cause or occasion a minimum of inconvenience or disturbance to or interference with the normal operations of the Owner, abutters and the public. Subcontractor shall prosecute such operations expeditiously and restore the affected area and other areas needed for access to their original conditions immediately upon completion of such operations unless otherwise specified.

ARTICLE 22. LIENS

To the extent not expressly prohibited by law, Subcontractor shall not suffer or permit any lien or other encumbrance to be filed or to remain of record as a claim against the building or the Project site or against any monies due or to become due for any Work performed or materials furnished by, to or on behalf of Subcontractor, or any of its subcontractors or suppliers; nor shall Subcontractor suffer or permit any such lien or encumbrance to be so filed because of any claim or demand against, or any action or non-action of, Subcontractor or any of its subcontractors or suppliers. Subcontractor shall defend, indemnify and save harmless Contractor, Contractor's sureties and Owner from any lien or

claim of lien filed or maintained by any laborer, materialman, subcontractor, or other person or entity directly or indirectly acting for, through, or under Subcontractor, against the Project or any part thereof or any interest therein or against any monies due or to become due from Owner to Contractor or from Contractor to Subcontractor. Without limiting the foregoing, Subcontractor shall cause any such lien or claim of lien to be satisfied, removed, or discharged by bond, payment, or otherwise within such time as provided under the Contract Documents or ten (10) days from the date of receipt by Subcontractor of written notice from Contractor to Owner to remove the lien, whichever period is shorter.

ARTICLE 23. PATENTS

Subcontractor shall pay all royalties and license fees applicable to the Work. Subcontractor shall defend, indemnify and hold Owner, Architect/Engineer and Contractor harmless of, from and against any and all suits, demands and claims for infringement of any patent rights except to the extent that Owner may have assumed responsibility therefore under the Contract Documents. The foregoing exception shall be inapplicable if Subcontractor had or should have had reason to believe the design, process, or product infringed upon a patent and failed to give written notification to Contractor of same.

If research or development is furnished in connection with the performance of this Agreement and if in the course of such research or development patentable subject matter is produced by the Subcontractor, his officers, agents, employees, or sub consultants, 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 Subcontractor shall furnish or obtain from the appropriate person a form of license satisfactory to the Authority, but it is expressly understood and agreed that, as between the Authority and the Subcontractor 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 agreement 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 Subcontractor shall promptly and fully inform the Contractor in writing to allow the Contractor to promptly and fully inform the Chief Engineer in writing of any patents or patent disputes, whether existing or potential, of which the Subcontractor have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to the Subcontractor attention in connection with this Agreement.

ARTICLE 24, LABOR

Subcontractor shall employ labor that is compatible with the labor of other subcontractors; shall take all steps necessary to avoid labor disputes; and shall be responsible for any delays and damages to Owner caused by such disputes. Subcontractor agrees that when the Work is stopped, delayed, or interfered with by strikes, slow-downs, or similar interruptions or disturbances (including cases where Subcontractor's employees are engaged in a work stoppage solely as a result of a labor dispute involving Contractor or others and not in any manner involving Subcontractor), Contractor shall have the rights and remedies provided for in Article 26. Subcontractor shall maintain and exercise control over all employees engaged in the performance of the Work, and Subcontractor shall, to the extent permitted by law, remove or cause to be removed from the Project any employee whose presence is detrimental to the orderly prosecution of the Work. Subcontractor shall not permit anyone under the age of 18 to perform the Work or to have access to the Project site. Subcontractor shall comply with all instructions by Contractor relating to the ingress and egress of its employees, materialmen and suppliers to the Project and shall take all necessary steps to restrain and enjoin any illegal picketing, demonstrating, violence, or similar activity against Subcontractor at

the Project. Subcontractor agrees that if any provision of the Contract Documents conflicts with any agreement among members of a trade association, or with a union or labor council which regulates the work to be performed by a particular trade, Subcontractor shall reconcile such conflict without delay or damage to Owner or Contractor. Nothing herein shall be deemed to limit Contractor's rights under Article 26 hereof.

Subcontractor agrees to conform its actions to the requirements of the GC Prime Contract, Article 37, Equal Employment Opportunity which is expressly incorporated in full in the Subcontract as set forth at length and attached hereto as Exhibit 24A, Equal Employment Opportunity certification.

Subcontractor assures that it will undertake an affirmative action program as required in GC Prime Contract Article 38.

Subcontractor shall pay its employees at least the prevailing rate of wage as is required pursuant to GC Prime Contract Article 39, as specified in Exhibit 24B, Schedule of Minimum Wage Rates.

ARTICLE 25, DAMAGE

Contractor shall not be liable or responsible for loss or damage to the equipment, tools, facilities, or other personal property owned, rented, or used by Subcontractor, or anyone employed by or through Subcontractor, in the performance of the Work; and Subcontractor shall maintain such insurance and take such protective action as Subcontractor deems desirable with respect to such property. Contractor shall not be liable or responsible for any loss or damage to the Work, and Subcontractor shall be responsible for the correction or restoration of any such loss or damage to the Work, or to the work of Contractor or any other subcontractor, resulting from the operations of Subcontractor, or its subcontractors, agents, servants, or employees hereunder. Subcontractor shall take all reasonable precautions to protect the Work from loss or damage prior to acceptance by Owner.

ARTICLE 26, DEFAULT

Should Subcontractor at any time:

(a) fail to supply the labor, materials, equipment, supervision and other things required of it in sufficient quantities and of required quality to perform the Work with the skill, conformity, promptness and diligence required hereunder;

(b) cause interference, stoppage, or delay to the Project or any activity necessary to complete the Project;

(c) become insolvent;

(d) fail to properly and promptly make payment for all materials and services provided in the performance of the Work; or

(e) fail in the Contractor's opinion in the performance or observance of any of the covenants, conditions, or other terms of this Subcontract, then in any such event, each of which shall constitute a default hereunder by Subcontractor, Contractor shall, after giving Subcontractor written notice of default and three days within which to cure said default, have the right to exercise any one or more of the following remedies:

(i) require that Subcontractor utilize, at its own expense, overtime labor (including Saturday and Sunday Work) and additional shifts as necessary to overcome the consequences of any delay attributable to Subcontractor's default;

(ii) attempt to remedy the default by whatever means Contractor may deem necessary or appropriate, including but not limited to, correcting, furnishing, performing, or otherwise completing the Work, or any part thereof, by itself or through others (utilizing where appropriate any materials and equipment previously purchased for that purpose by Subcontractor) and deducting the cost thereof (plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) from any monies due or to become due to Subcontractor hereunder;

(iii) thereby waiving or releasing any rights or remedies against Subcontractor or its sureties, and by itself or through others take possession of the Work, and all materials, equipment, facilities, plants, tools, scaffolds and appliances of Subcontractor relating to the Work, for the purposes of completing the Work and securing to Contractor the payment of its costs

(plus an allowance for administrative burden equal to fifteen percent (15%) of such costs) and other damages under the Subcontract and for the breach thereof, it being intended that Contractor shall, for the stated purposes, be the assignee of and have a security interest in the property described above to the extent located on the Project site (and Contractor may at any time file this Subcontract as a financing statement under applicable law); or

(iv) recover from Subcontractor all losses, damages, penalties and fines, whether actual or liquidated, direct or consequential (including without limitation any increase in Contractor's cost of insurance resulting from Subcontractor's failure to maintain insurance coverages required hereunder), and all reasonable attorney's fees suffered or incurred by Contractor by reason of or as a result of Subcontractor's default.

After completion of the Work by the exercise of any one or more of the above remedies and acceptance of the Work by Architect/Engineer and full payment therefore by Owner, Contractor shall promptly pay Subcontractor the undisbursed balance of the Price, if any. If the cost of completion of the Work, plus the allowance for administrative burden, together with any other damages or losses sustained or incurred by Contractor, shall exceed the undisbursed balance of the Price, Subcontractor and its guarantors, surety, or sureties shall pay the difference within fifteen (15) days of written demand from Contractor.

The foregoing remedies shall be considered separate and cumulative and shall be in addition to every other remedy given hereunder or under the Contract Documents, or now or hereafter existing at law or in equity. Subcontractor's guarantors, surety, or sureties agree to be bound to Contractor with respect to such remedies notwithstanding any provision of the bonds provided pursuant to Article 10 hereof.

Except as limited by this Subcontract, Subcontractor shall have the rights and remedies available at law or in equity for a breach of this Subcontract by Contractor. Any default by Contractor shall be deemed waived unless Subcontractor shall have given Contractor written notice thereof within five (5) days after

the occurrence of such default. Subcontractor shall be entitled to stop the Work or terminate this Subcontract **only** (a) on account of Contractor's failure to pay an amount to Subcontractor which is paid by Owner to Contractor under Subcontractor's Application for Payment that is approved in accordance with the Contract Documents and (b) where a good faith reason does not exist as to the withholding of such payments claimed by Subcontractor ("Contractor's Default"). Subcontractor shall not be entitled to stop the Work on account of a Contractor's Default unless such Contractor's Default shall have continued for more than ten (10) days after Contractor's receipt of written notice of such Contractor's Default from Subcontractor, specifying in detail the nature of the default and the steps necessary to cure the claimed default.

Subcontractor shall not be entitled to terminate this Subcontract except for a Contractor's Default which shall have continued for at least an additional thirty (30) days after (a) Subcontractor shall have stopped Work in accordance with this paragraph and (b) Contractor shall have received thirty (30) days written notice of Subcontractor's intention to terminate this Subcontract. Article 26 represents the Subcontractor's sole right to stop the Work or terminate this Subcontract.

Should any termination or default under Article 26 (iii) be determined to be invalid, improper or wrongful, such termination shall be deemed to have been a termination for convenience as provided in Article 28 below.

Subcontractor shall not be entitled to receive any further payment until the Work shall be wholly completed to the satisfaction of Contractor and shall have been accepted by Contractor and Owner. At which time, if the unpaid balance, if any, of the Work at the time of Subcontractor's default shall exceed the costs and expenses incurred in completing the Work and curing Subcontractor's default, such excess shall be paid to Subcontractor; but if such costs and expenses shall exceed such unpaid balance, then Subcontractor shall pay the difference to Contractor. Such costs and expenses shall include not only the cost of completing the Work to the satisfaction of Contractor and Owner and of performing and furnishing all labor, services, mate-

rials, equipment and other items required therefore, but also all losses, damages, costs and expenses, whether direct or consequential, including, without limitation, attorney's and legal fees and disbursements, sustained, incurred or suffered or to be sustained, incurred or suffered by Owner or Contractor by reason of or resulting from any default of Subcontractor.

ARTICLE 27, DISPUTES

In the event of any dispute between Subcontractor and Contractor arising out of or relating to this Subcontract, or the breach thereof, Subcontractor understands and agrees that the dispute shall be decided in accordance with Paragraph 35, Authority and Duties of the Chief Engineer of Prime Contract WTC-284.458 (GC) and Subcontractor, its suppliers, subcontractors and its guarantors, surety, or sureties, shall be bound to Contractor to the same extent that Contractor is bound to Owner by the terms of the Contract Documents and by any decisions or determination made under the Contract Documents pursuant to said contract provisions. Subcontractor understands and agrees that the Chief Engineer of the Port Authority of New York and New Jersey is authorized under Paragraph 35 of Prime Contract Document WTC-284.458(GC) 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 the Prime Contract, and Subcontractor understands and agrees that it will be fully bound by this dispute resolution procedure and by the final determination of the Chief Engineer. By executing this Subcontract Subcontractor understands and agrees that it will be bound by Paragraph 35 of Prime Contract Document WTC-284.458(GC) which is attached hereto as Exhibit 1B and Subcontractor is requested to include the provisions of Exhibit 1B in all subcontracts for work, labor, services, materials or supplies it enters into in connection with the performance of this Subcontract. Subcontractor shall be afforded a reasonable opportunity to present information and testimony involving its rights. Subcontractor shall be solely responsible for the preparation of any information or testimony hereunder unless Contractor notifies Subcontractor in writing of its intention to provide attorneys and provide for the presentation of any case governed by this

paragraph, in which case Subcontractor shall have the duty to cooperate with Contractor.

In the event of any dispute as to whether any item or portion of the Project Work is within the scope of the Work to be performed by Subcontractor or any dispute as to whether Subcontractor is entitled to an extra payment, Subcontractor shall continue to proceed diligently with the performance of the Work, this Subcontract, and any disputed Work, pending any resolution. The existence of a dispute shall not be grounds for any failure to perform by Subcontractor nor limit the right of Contractor to proceed to remedy any default by Subcontractor.

ARTICLE 28, EARLY TERMINATION

If Owner terminates the Contract or stops the Work for a reason other than the sole default of Contractor, Contractor may terminate this Subcontract or stop the Work for the same reason, and Subcontractor's rights and remedies, including the basis for payment of any unpaid portion of the Price, shall be limited to the corresponding rights and remedies available to Contractor under the Contract Documents, and controlled by Article 26 above. Should this Subcontract be terminated for default, Subcontractor shall assign all purchase orders and subcontracts to Contractor if Contractor, in its sole and absolute discretion, requests such assignments. Subcontractor agrees to incorporate such provisions in its agreements with suppliers and subcontractors to effectuate this Article 28. Nothing herein shall create any duty on the part of Contractor to accept the assignment of any purchase order or subcontract hereunder.

Further, in its sole discretion and without notice to any guarantor, surety, or sureties, Contractor may, at any time prior to final payment, terminate this Subcontract for its convenience upon the giving of written notice to Subcontractor. In no event shall Subcontractor be entitled to consequential damages or loss of profits on portions of the Work not yet performed. If terminated for convenience, Subcontractor shall be entitled to be paid all costs of all Work provided hereunder including reasonable and necessary costs of termination, as determined in accordance with the method set forth in Article 8 above, together with the Profit Percentage attrib-

utable to the costs so determined. Payment shall be made in accordance with and subject to the requirements of Article 4.

Without limitation, the following obligations, among others, of Subcontractor shall survive the termination of the Subcontract whether pursuant to this Subcontract: warranties and guarantees of Work performed; indemnity; payment of taxes, damages, losses and expenses; certifications; delivery of manuals, data on electronic media and as-built drawings; correction of Work performed; removal of liens; and cooperation with the construction lender.

ARTICLE 29, SETOFF

If Subcontractor is, or hereafter begins, performing any work for Contractor other than the Work under the Subcontract and the unpaid balance of the Price becomes insufficient to complete such Work or compensate Contractor for any damages or deficiencies by the Subcontractor in the performance of the other work, Subcontractor hereby consents and agrees to allow Contractor in its sole discretion and judgment, to set off any of Contractor's claims against any funds due, or which may become due, Subcontractor under any other agreement with Contractor, or any subcontract on any other project. No refusal or failure of Contractor to exercise its rights hereunder shall constitute the basis of any right or claim against Contractor.

ARTICLE 30, AGENCY FOR RENTAL OF CONSTRUCTION EQUIPMENT AND PURCHASE OF MATERIALS NOT INCORPORATED IN PERMANENT CONSTRUCTION

Subcontractor is referred to Clause "5" of Modification 1 to the Prime Contract, entitled "Agency for Rental of Construction Equipment and Purchase of Materials Not Incorporated In Permanent Construction", and Clause "6" of Modification 1 to the Prime Contract, entitled "Exemption From New York and New York City Sales Taxes", the terms and conditions of which are incorporated by reference and made fully binding upon and applicable to the Subcontractor. Subject to Clauses "5" and "6" and to all other applicable provisions of the Prime Contract, Subcontractor is hereby authorized to act on behalf of the Authority, pursuant to the Agency arrangement for the rental of con-

struction equipment and purchase of material not to be incorporated in the permanent construction, contained in Clause 5, as agent, for the limited and specific purpose only of rental of construction equipment or purchase of such material for the use on this Project in the performance of the Contract Work. Subcontractor's issuance of any forms of agreement for the rental of construction equipment or any purchase orders for such materials, for use on the subject Project shall be fully compliant with, and in accordance with, the aforesaid clauses of the Prime Contract.

ARTICLE 31, MISCELLANEOUS

(a) All matters relating to the validity, performance, or interpretation of this Subcontract shall be governed by the law of the State of New York without regard to its choice of law provisions, and any suit, action or proceeding between the parties arising out of this Subcontract shall be brought in Federal or State Courts in the County of New York, and Subcontractor submits itself to the exclusive jurisdiction of such courts.

In the event that any term, provision, or part of the Subcontract is held to be illegal, invalid or unenforceable, such term, provision, or part shall be deemed severed from the Subcontract and the remaining terms, provisions and parts shall remain unaffected thereby. Where the context requires, neuter terms used herein shall include the masculine and feminine, and singular terms shall include the plural, and vice versa.

(b) This Subcontract, including any executed modifications and the documents incorporated herein by reference, embodies the entire agreement of the parties and supersedes all prior negotiations, agreements and understandings relating to the subject matter hereof. Subcontractor agrees that any claims against Contractor, irrespective of an alleged breach by Contractor of the Contract Documents, shall be based, nonetheless, upon this Subcontract and the Price, and shall in no event be based upon an asserted fair and reasonable value of the Work performed.

(c) This Subcontract may not be changed in any way except as herein provided or by a writing signed by a duly authorized officer or agent of each party. No requirement of this

Subcontract may be waived except in writing signed by a duly authorized officer of the waiving party. This provision may not be waived orally by Contractor.

(d) The provisions of this Subcontract and the Contract Documents are intended to supplement and complement each other. If, however, any provision of this Subcontract irreconcilably conflicts with a provision of the Contract Documents, the provision imposing the greater duty on the Subcontractor shall govern.

(e) As to any claim which arises out of Subcontractor's performance which is also caused by the acts or omissions of any third party, Subcontractor's liability hereunder shall be joint and several.

(f) The failure of Owner or Contractor to insist upon performance or strict performance of any of the terms, covenants or conditions of this Subcontract or the Contract Documents shall not be deemed a waiver of any rights or remedies that Owner or Contractor may have; shall not be deemed to constitute an amendment of this Subcontract; and shall not be deemed a waiver of any subsequent breach or default by Contractor of any of the terms, covenants, or conditions of this Subcontract.

(g) Offsite Delivery Storage of Materials (If Applicable): If approved by The Port Authority of New York and New Jersey Engineer (PANYNJ) and the Contractor, monthly advances to the Subcontractor may include an amount not to exceed 85% of the material value of material stored off-site, as determined by The Port Authority of New York and New Jersey's Engineer, pending incorporation in the permanent construction provided that the following conditions are met:

Materials: To be eligible for partial payment, materials must meet have a minimum material cost of two hundred fifty thousand dollars (\$250,000.00), be materials that will be incorporated into permanent work, be in a condition that is ready for on-site installation without further fabrication or processing, and must be materials that will be stored for a minimum of 60 days.

Storage: Such materials must be delivered to and be stored in a bonded warehouse located in the continental United States unless

otherwise approved by the Engineer. The storage facility must provide any and all special storage conditions, regardless of the uniqueness, required by the material that is being stored. All items must be stored in a manner consistent with the manufacturers' recommendations in order to ensure that equipment and material are in no way damaged or impaired during the storage period and that all manufacturers' warranties remain unimpaired. All materials stored at an approved off-site location shall be individually marked and identified in a conspicuous manner "Property of the Port Authority of New York and New Jersey - Contract WTC-284.458GC."

Subcontractor shall arrange for the Contractor and the PANYNJ Engineer to have access to the site for inspection of material stored as requested.

The Subcontractor shall submit to the PANYNJ Engineer and the Contractor a warehouse receipt for the items stored. Such receipt shall be in the name of The Port Authority of New York and New Jersey and shall be in form approved by The Port Authority of New York and New Jersey.

The Subcontractor shall have risk of loss for any materials stored off-site until the acceptance by the Authority at the Project Site.

As a prerequisite to making any payments under this clause, the Subcontractor shall furnish whatever documents evidencing transfer of title to materials to the Authority that the PANYNJ Engineer and Contractor requires, including bills of sale and affidavits of title in forms acceptable to the Engineer.

In light of the period of storage, there will be no retention made from the 85% of the material cost paid in advance of incorporation of the materials into the permanent construction.

The making of partial payments shall not be deemed to be final acceptance of materials, nor shall it relieve Subcontractor of responsibility for such materials.

Material Delivery and Storage Plan: A Material Delivery and Storage Plan must be submitted by the Subcontractor for acceptance and approval by the PANYNJ Engineer and the Contractor. All material must be delivered and stored off-site in a manner consistent with the approved plan. Such a plan shall include: (1)

The name and location of the bonded warehouse, (2) A detailed description of the conditions of storage, (3) a detailed description of the material stored and duration of such storage, (4) any plans for inspection, and testing, and (5) a description of all fees associated with storage, inspections, maintenance, testing, moving, and any other kinds of expenses associated with off-site storage.

In approving such plan, the PANYNJ Engineer will advise Contractor, who will in turn advise the Subcontractor of any requirements for the Engineer's presence during the movement of items to or from storage.

In any subcontract where off-site storage is necessary, Contractor shall provide for such storage in accordance with the approved plan through the scheduled on-site delivery date. Contractor also shall provide that such off-site storage shall continue past such date as may be needed and will obtain unit pricing for such storage in six-month units to allow for such extension.

Warranty associated with Storage of Materials: Notwithstanding any provision hereof to the contrary, the warranty, if any, for any items stored shall not commence until the Authority's acceptance of the item. Any use for testing, start-up or beneficial use prior to the acceptance date shall not constitute warranty start-up. Subcontractor shall maintain any item used in connection with beneficial use prior to the warranty start date as if the time were under warranty during that period."

IN WITNESS WHEREOF, the parties have duly executed this Subcontract as of the date first above written.

(Subcontractor name)
Subcontractor

PHOENIX CONSTRUCTORS, JV

By: _____
(Signature)

By: _____
(Signature)

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Attest: _____

Attest: _____

Subcontractor Check ONE: Corporation Partnership/Joint Venture Individual

If your company qualifies as one or more of the business enterprise types listed below, please check the appropriate box(s) and list certifying agency(s) below:

- DBE (Disadvantaged Business Enterprise)
- SDVE (Small Disabled Veteran Enterprise)
- MBE (Minority Business Enterprise)
- WBE (Women Business Enterprise)
- SBE (Small Business Enterprise)
- N/A (Does not apply to your firm)

Certifying Agency(s):

If your company is a Minority Business Enterprise (MBE), please check the appropriate box:

- African American
- Hispanic
- Aleutian Indian
- Native American
- Asian

LICENSING: By executing this Subcontract, Subcontractor affirms that it holds the following contractor license(s) applicable to the Work as required by the state of New York.

State of _____ License No(s). _____ (If none required, enter "N/A")

License Classification(s): _____

Expiration Date: _____

Payments will not be processed without complete licensing information.

*Subcontractor's Federal Employer Identification No.:

(If no E.I. Number, enter business owner's Social Security No.) *Per IRS 3402(s), 31% of each payment is required to be withheld and remitted to the IRS if E.I. Number or Social Security Number is not provided. This withholding amount will be in addition to Subcontract retainage.

For _____ Use:

License Verified Not Required By: _____ Date: _____

Sample

SCHEDULE 1 — SUBCONTRACT DOCUMENTS

The Contract Documents referred to in Article 1 and elsewhere in this Subcontract consists of the Subcontract and the following:

The Contract Documents, sometimes referred to collectively as the "Subcontract," are listed below and shall constitute the Subcontract.

NOTE: Exhibits are not sequential. Only the exhibits listed are applicable to this Subcontract.

- Prime Contract WTC-248.458GC and all associated Modifications to such, including but not limited to Modification 1 to the Prime Contract executed by Phoenix Constructors JV and The Port Authority of New York and New Jersey - All requirements in the Prime Contract between Phoenix Constructors JV and The Port Authority of New York and New Jersey and associated Modifications are flowed down in their totality, as applicable to the Scope of Work.
- Exhibit 1, Statement of Work (required)
- Exhibit 1B, Applicable Prime Contract Clauses
- Exhibit 2A, Contractor's Pricing (as approved) (required)
- Exhibit 2B, Tax Exempt Supplement (if applicable)
- Exhibit 2C, Contractor's Signature Authorization
- Exhibit 2D, Schedule of Values
- Exhibit 3, Partial Release and Waiver (if applicable)
- Exhibit 4, Full and Final Release (required)
- Exhibit 6, Contractor's Schedule (as approved)
- Exhibit 8, Change Order Request Form (as approved)
- Exhibit 8A, Subcontract Modification (as approved)
- Exhibit 8B, Subcontractor Site Instruction (as approved)
- Exhibit 8C, Contract Backcharge Agreement
- Exhibit 8D, Request for Information
- Exhibit 9, Contractor Overtime Request Form
- Exhibit 8F, Contractor's Document Transmittal Form
- Exhibit 10, Bonds, Payment and Performance (GC)
- Exhibit 11, Insurance Rider – Requirements and Example (required)
- Exhibit 11A, OCIP – Guide For Contractors
- Exhibit 13, Subcontractor Request Form (if applicable)
- Exhibit 15A, Preliminary Safety and Health Plan, Part I Plan, Part II Forms
- Exhibit 15B, Conditions and Precautions for Work Within New York City Transit Right-of-Way (if applicable)
- Exhibit 15C, New York City Transit Maintenance of Way Track Division Safety Rulebook
- Exhibit 15D, Safety Rider (required)

- Exhibit 15E, Security Requirements, Part I and Part II
- Exhibit 15F, Contractor's Weekly Safety Meeting Form (if applicable)
- Exhibit 15F, Part 1; Port Authority of New York and New Jersey Handbook for Protecting Security Information.
- Exhibit 15F, Part 2, Draft Security Information Practices and Procedures
- Exhibit 15G, Environmental Performance Commitments (EPCS)
- Exhibit 15H, WTC Site Rules and Regulations (if applicable)
- Exhibit 16, Hazardous and Toxic Substances Requirements
- Exhibit 17, Temporary Facilities
- Exhibit 18, Interim QC Plan (if applicable)
- Exhibit 20, Submittal Register and Transmittal Form (if applicable)
- Exhibit 21A, Contractor's Daily Time Sheet
- Exhibit 21B, Notice of Acceptance
- Exhibit 21C, Notice of Rejection
- Exhibit 21D, Standby Time Report
- Exhibit 21E, Contractor's Weekly Report
- Exhibit 21F, Contractor's Monthly Report
- Exhibit 21G, Part 1, Subcontractor Requirements, Minority and Women's Business Enterprises Program
- Exhibit 21G, Schedule C, MBE/WBE Participation Plan
- Exhibit 21G, Schedule D, Statement of Subcontractor Payments
- Exhibit 22A, Notice of Completion
- Exhibit 24A, Equal Employment Opportunity Certification (required)
- Exhibit 24B, Schedule of Minimum Wage Rates
- Exhibit 30A, Representations and Certifications
- Exhibit 30B, Subcontractor Qualification Package
- Exhibit 32, Vehicle Access Requirements
- Exhibit 40, Administrative Procedure
- Exhibit 41, WTC Path ID Guidelines For Subcontractors
- Exhibit 42, Subcontractor Onsite Material Storage Log
- Exhibit 96, Attachments
- Exhibit 97, Division 1 Specifications, consisting of ___ pages, dated (if applicable)
- Exhibit 98, Division 2-18 Specifications, consisting of ___ pages, dated (if applicable)
- Exhibit 99, Drawings, consisting of the drawings listed on the index page of the drawings and the Statement of Work (Exhibit 1) (if applicable)



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INSTRUCTIONS TO OFFERORS

1.0 INTRODUCTION

Phoenix Constructors JV ("PC"), acting under its contract with the Port Authority of New York and New Jersey ("PANYNJ"), requests that you submit a proposal for a Lump Sum, Fixed Price type of contract, **Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work** as indicated in the contract drawings and specifications for the Station Construction and Transit Hall Structure to Grade (Work Package 20) (Contract WTC-284.458) for the Port Authority of New York and New Jersey WTC Transportation HUB Project located in New York City, USA.

Work Package #20 has been organized into three distinct Work Areas (WA) for Subcontractor's consideration and pricing.

1. **Work Area 1 – Path Station**
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
3. **Work Area 3 – Transit Hall**

Under this Work Package Subcontractors will have the option to submit separate proposals, inclusive of all costs and obligations for the following scopes of work:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 – PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**



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The RFP is comprised of two Steps:

- 1) **1st Step of the RFP:** Bidders will acknowledge receipt of the RFP documents, including any addenda, provide a statement of their intent to submit proposal, and submit the *required pre-qualification information/documents*, described in detail in Section 2.0 (below). There will be a **MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, 1:00PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.** Based on review of the pre-qualification documents, Phoenix Constructors JV and The Port Authority will short-list the bidders who will be allowed to continue to the 2nd Step of the RFP.

- 2) **2nd Step of the RFP:** The short-listed bidders will be invited to a second **MANDATORY Pre-Bid Meeting and Site Walk-Through**, which will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day.** The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. During the 2nd Step of the RFP, the bidders will submit their Technical Proposal, Commercial Proposal, and Method Statement, described in Sections 4.0, 5.0, and 6.0 (below).



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PERTINENT DATES:

Request for Proposals Issued: 11/21/2008

1st Step RFP Mandatory Pre-bid Meeting: 12/03/2008, 1:00PM EST

1st Step RFP Bidder's Questions/RFC – "Last Request Date":12/04/2008

1st Step RFP Response to Questions/RFC – "Last Response Date":12/05/2008

1st Step RFP Pre-Qualification Package Due Date: 12/09/2008

Short-List Bidders (by PCJV & PANYNJ):12/10/2008 thru 12/12/2008

Inform Short-List Bidders Approved for 2nd Step Bidding Process: 12/12/08

2nd Step RFP Mandatory Pre-bid Meeting / Site Walk-Through
(by Invitation only): 12/16/2008 thru 12/17/2008

2nd Step RFP Issued to Short-List Bidders: 12/16/2008 thru 12/17/2009

2nd Step RFP Bidder's Questions/RFC – "Last Request Date":1/30/2009

2nd Step RFP Response to Questions/RFC – "Last Response Date":2/5/2009

2nd Step RFP Proposals Due Date: 2/9/2009

Open Bids: 2/10/2009

Bid Review: 2/10/2009 thru 2/18/2009

Final Meetings with Selected Bidders & Request for Bid Clarifications/BAFO:
2/20/2009 thru 2/23/2009

Bid Clarifications / BAFO from Selected Bidders: 2/24/2009 thru 3/4/2009

Oral Presentations by Selected Bidders: Date To Be Determined

Finalize Bid Review and Recommend for Award: 3/05/2009 thru 3/09/2009

Anticipated Contract Award Date: 3/17/2009



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TIME FOR COMPLETION:

The below dates and Milestone dates referenced in Attachment "C" dated 10/17/2008 are tentative dates to be used for planning purposes only.

(A) Work Area 1 – PATH Hall Steel: 3RD Quarter 2010

(B) Work Area 2 – 1 Line Subway Box Steel: 3RD Quarter 2010

(C) Work Area 3 – Transit Hall Steel: 4TH Quarter 2011

2.0 1ST STEP OF THE RFP: SUBMISSION OF PRE-QUALIFICATIONS

The 1st Step of the RFP process is the submission of Pre-Qualification Package, described below, by the interested parties. If two or more companies plan on forming a team or joint venture for this project, EACH of the companies must submit a Pre-Qualification Package.

During the 1st Step of the RFP, there will be a **MANDATORY Pre-Bid Meeting**, held on **Wednesday, 12/3/2008, 1:00PM EST.** at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.

As part of the Pre-Qualification package, the Subcontractor is to identify its intention to submit proposal(s) for:

Option A:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Area 1 – PATH Station.**

Option B:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 2 + 3 – 1 Line Subway Box + Transit Hall.**

Alternate Option C:

Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to **Work Areas 1 + 2 + 3 – PATH Station + 1 Line Subway Box + Transit Hall.**

Please direct your **sealed** pre-qualification packages to the mailing address identified below on or before the closing date and time. **PC reserves the right to reject any Pre-Qualification Packages received after the deadline.**

Identify the package or envelope on the outside as "Pre-Qualification Package in Response to: RFP: W0TC-GC1-2-KN0186-020." Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work. Option A or Option B, and Alternate Option C (if applicable).



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Address package to:
Mr. Javed Qureshi
Contract Administrator
Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, New York 10006

Tel: 646.467.7219; Fax: 212.566.2302
E-mail: javed.qureshi@Phoenixconstructors.com

The Offeror can contact the Contract Administrator to verify delivery of their bid proposal prior to official closing of the RFP.

Pre-Qualification Packages are to include:

- 2.1 **NOTIFICATION OF INTENT TO PROPOSE/BID:** In order to ensure that all prospective Offerors have received the solicitation and any amendments thereto, PC requests that a prospective Offeror notify PC in writing indicating that the Offeror intends to submit a proposal in response to this solicitation indentifying RFP WTC-GC1-2-KN0186 Furnish, Fabricate & Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work. The Offeror may transmit the notification to the Contract Administrator (Javed Qureshi) via e-mail or fax.

- 2.2 **TEAM MEMBERS / JOINT VENTURE PARTNERS:** Include a statement identifying your team members / joint venture (JV) partners (if any), and their respective roles in the team / joint venture organization, as well as any other trade subcontractors / venders who will be performing work as a 2nd tier subcontractor under your management. The following roles must be identified:
 - a. Identification of Prime Subcontractor
 - b. Identification of Joint Venture Partners
 - c. Identification of Steel Fabricators for " Special Shape Exposed Steel"
 - d. Identification of Steel Fabricators for "Standard Profile and Built Up Sections"
 - e. Identification of Steel Fabricators for 1-Line Steel
 - f. Identification of Steel Erectors for "Special Shape Exposed Steel"
 - g. Steel Erectors for "Standard Profile and Built Up Sections"



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- h. Steel Erectors for 1-Line Steel
 - i. Identification of Intumescent Fire Resistant Coating Manufacture/ Supplier
 - j. Identification of Intumescent Fire Resistant Coating Applicator
 - k. Identification of Precast Concrete Fabricator
 - l. Identification of Precast Concrete Erector
 - m. Identification of Engineering Support Firm
- 2.3 PREQUALIFICATION FORMS: Exhibit 30A Representations and Certifications and Exhibit 30B Subcontractor Pre-Qualification Questionnaire must be filled out in their entirety by all members of your team/JV.
- 2.4 FINANCIAL STATEMENTS: Provide Financial Reports, Balance Sheets, and Profit and Loss Statements for the previous three (3) years for all members of your team/JV.
- 2.5 BONDING CAPACITY: Payment and Performance Bonds are required for all subcontract work over \$300,000.00. Provide the name and contact information for your Bonding Company as well as your Bonding limit.
- 2.6 TECHNICAL QUALIFICATIONS AND CERTIFICATIONS: List all team members' or joint venture partners' qualifications and certifications. Prime Offeror should be a Certified Fabricator or a Certified Erector by the American Institute of Steel Construction or equivalent as approved and accepted by the Port Authority. Other fabricators selected for the team / joint venture should be AISC certified, or equivalent for non-USA firms, as applicable for the type of work to be performed. All erectors should be certified as AISC category Advanced Certified Steel Erectors or equivalent. The following certifications must be identified:
- a. AISC Certification - Steel Fabrication Shop(s), or equivalent for non-USA firms
 - b. AISC Certification - Steel Erector(s)
- 2.7 SIMILAR TYPE OF WORK COMPLETED AND REFERENCES: List representative projects that demonstrate the extent to which the Offeror and their team members / joint venture partners have relevant experience in large-scale complex transportation structures of similar scope and complexity under the same demanding schedule, on other CM/GC Contracts; similar experience working within a major metropolitan area and with its public agencies; similar work in an urban environment and adjacent to operating railroad corridors, including measures used to minimize operational impacts to railroad operations;



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similar projects with complex utility relocations, projects with high security requirements, and projects with complex inter-agency coordination. Provide references for previous (dating back 5 years) and current projects with an initial contract value of \$10,000,000 or greater. References shall include Client Name and Address, Client Technical Point of Contact and phone number, Contract Number, Brief Description of Work Scope, Contract Type, Period of Performance, Contract value.

- 2.8 **MANAGEMENT TEAM:** The organization of the project, including the identification of key personnel and their responsibilities and inter-relationships, and changes to the organization anticipated as the project evolves. Include organization charts that illustrate the reporting structure of the project team, identifying specific staff to be assigned to this project. In addition, the management plan shall include other key technical, subcontractor and/or consulting staff. Provide a full description of the reporting structure, including the role of each legal entity of the Subcontractor and the roles of any team members / joint venture partners / second tier subcontractor(s). You shall also describe other personnel who, while not directly assigned to the implementation, may support it in some way. For each key staff member of the project team indicate estimated percentage of time to be dedicated to the project (i.e. 100%, 50%, etc.). Be sure to show points of interaction with Phoenix Constructors' staff. Include resumes of all management and key technical personnel to be assigned. The resumes shall clearly emphasize the experience that is relevant to the project.
- 2.9 **SHOP STAFF, AVERAGE SHIFTS, BACKLOG:** Provide the following information pertaining to the fabrication shop(s): Number of shop production employees, average number of shifts, annual production in man hours and tons, descriptions of normal fabrication types, names, positions and experience of key personnel, current backlog listing indicating present and anticipated workload for the next twelve months, expressed in percent of normal annual volume.
- 2.10 **QUALITY ASSURANCE, QUALITY CONTROL, QUALITY MANAGEMENT:** The Offeror shall describe its Quality Assurance/Quality Control (QA/QC) organization; how the QA/QC plan extends to its subcontractors and others in the supply chain; resources and procedures the Offeror will use for evaluating construction activities and products and related activities, which shall conform to the client's WTC Quality Assurance Project Program as per Article 14 of Exhibit 1 Statement of Work and Exhibit 18.
- 2.11 **SAFETY MANAGEMENT AND RECORDS:** The Offeror shall describe the organization (including safety personnel), resources and procedures to be used for creating a safe environment for contractors, subcontractors, the Port Authority, PATH, NYCT personnel and the public during the life of the project, which shall conform to the client's WTC Site Safety Program as per Exhibit 15A. Provide a



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statement with regard to the Offeror and its team members' past record of worker and workplace safety, including any Recordable Accidents, Lost Time Accidents, and Experience Modification Rating (EMR) for the past three years. Provide copies of safety awards received from comparable projects, if any. This information must be submitted in order for PC to consider your pre-qualification package.

3.0 2nd STEP OF THE RFP: MANDATORY PRE-BID MEETING

Once the Pre-Qualification Packages are received, Phoenix Constructors JV and The Port Authority will review the information and will short-list the bidders who will allowed to continue to the 2nd Step of the RFP. The selected bidders will be invited for the second **Mandatory Pre-Bid Meeting and Site Walk-Through, which will be held on 12/16/2008 and 12/17/2008, starting at 8:00AM EST each day.** The purpose of this meeting is for the short-listed bidders to review the Scope of Work with Phoenix Constructors JV and PANYNJ. The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor. Each subcontractor team / joint venture will be limited to a total of six (6) participants and are reminded to have safety vests, safety glasses, boots, and hard hats for the use of each of their participants. Subcontractors will not be allowed to participate in the site walk-through without proper safety gear.

4.0 2nd STEP OF THE RFP: SUBMISSION OF TECHNICAL AND COMMERCIAL PROPOSALS

You must submit your proposal based on these "Instructions to Offerors", the enclosed Invitation Letter and draft Sample Subcontract. All proposals must be submitted in writing. **Telephone, email or facsimile proposals will not be accepted.**

Please direct your sealed proposal to the mailing address identified below on or before the closing date and time. **PC reserves the right to reject any proposal received after the deadline.**

Identify the package or envelope on the outside as "Pre-Qualification Package in Response to: **RFP: W0TC-GC1-2-KN0186-020.**" Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work. **Option A or Option B, and Alternate Option C (If applicable).**

Address package to:
Mr. Javed Qureshi
Contract Administrator
Phoenix Constructors, JV
115 Broadway, 18th Floor
New York, New York 10006

Tel: 646.467.7219; Fax: 212.566.2302



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E-mail: javed.qureshi@Phoenixconstructors.com

The Offeror can contact the Contract Administrator to verify delivery of their bid proposal prior to official closing of the RFP.

- 4.1 **BID BOND/GUARANTEE:** Phoenix Constructors JV requires that each bidder provide a bid bond/guarantee equivalent to a minimum of **two and one half percent (2 1/2%)** of the bid price with their bid proposal. The "bid guarantee" shall consist of a firm commitment such as a bond, certified check, or other negotiable instrument accompanying a bid, as assurance that the bidder will, upon acceptance of his bid, execute such contractual document as may be required within the time specified.
- 4.2 **QUESTIONS OR COMMENTS REGARDING SOLICITATION:** The Offeror shall submit any comments, questions, or **REQUESTS FOR CLARIFICATION (RFC)** regarding the Solicitation to the Procurement Manager in writing early enough to allow sufficient time for a response prior to the proposal due date and consistent with the dates listed on Page 3 of this Instructions to Offerors. Offeror shall not communicate with any other Offeror, employee or consultant employed by PC or the PANYNJ with respect to the subject matter of this Solicitation. The Offeror may transmit questions and comments via fax or e-mail. PC will answer all questions in writing and provide a copy of all questions and answers to all Offerors. If the RFP requires an addendum to resolve issues regarding the RFP, PC will issue an amendment to those Offerors who have not declined to participate in time for them to consider the addenda before finalizing and submitting their offers.
- 4.3 **AMENDMENTS TO SOLICITATION:** If this RFP is changed, it will be done so via written addendum. Unless otherwise stated, all terms and conditions that are not modified will remain unchanged. The Offeror shall acknowledge receipt of all Addendum(s) by stating in the offer that the Offeror has received the Addendum(s) and has considered it/them in formulating their proposal.
- 4.4 **PACKAGE CONTENTS:** Inside the **sealed** delivered package, there must be **two separate, sealed envelopes** labeled "Technical Proposal" and "Commercial Proposal" and they must contain the items listed below in Sections 5.0 and 6.0. Both the Technical Proposal and the Commercial Proposal must be **sealed** and contain an original, plus three (3) copies. The original of your offer must be clearly marked "Original." The copies must be identical to the original and may be *photocopied from the original after signature.*

Each package containing material you wish to be considered as part of your offer must be sealed with a self-adhesive label contained in the RFP Package, (to be furnished by Phoenix Constructors JV), marked "Sealed Offer." Your failure to use these labels may result in the inadvertent opening of the package and may



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cause your offer to be rejected.

- 4.5 **ORAL PRESENTATIONS:** After a review of all proposal submissions, an oral presentation to the selection committee and others, as appropriate, may be requested. It should be noted that firms selected to make presentations may be given *brief advance notice*. Presentations will be limited to 60 minutes, and include the material contained in your proposal. The presentation will be followed by an approximately 30-minute question and answer session. Proposer's staff providing the presentation shall be led by the proposed Project Manager, who may be supported by no more than five (5) other senior staff members who are proposed to work on this project.

5.0 TECHNICAL PROPOSAL

The Offeror shall provide one original and three copies of the Technical Proposal that includes:

- 5.1 **MANAGEMENT PLAN:** This Section specifies the minimum content of the *Management Plan* that shall be submitted as part of the Proposal. The Plan shall describe how the Offeror intends to manage and perform the Work of the Project.

5.1.1 The organization of the project, including the identification of key personnel and their responsibilities and inter-relationships, and changes to the organization anticipated as the Project evolves. Include organization charts that illustrate the reporting structure of the Project team, identifying specific staff to be assigned to this Project. In addition, the Plan shall include other key technical, subcontractor and or consulting staff. Provide a full description of the reporting structure, including the role of each legal entity of the contractor and the roles of any subcontractor(s). You shall also describe other personnel who, while not directly assigned to the implementation, may support it in some way. For each key staff member of the Project team indicate estimated percentage of time to be dedicated to the Project (i.e. 100%, 50%, etc.). Be sure to show points of interaction with Phoenix Constructors' staff. Include resumes of all management and key technical personnel to be assigned. The resumes shall clearly emphasize the experience that is relevant to the Project.

5.1.2 The Offeror shall identify its approach toward the management of this Project including scope and complexity.

5.1.3 The Offeror shall describe the capability of the organization to perform required tasks and include the Offerors' annual volume in dollars of construction for the past five years, anticipated volume for the current year and plan for the next five years.



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- 5.1.3 Occasionally, subcontractors and material suppliers go bankrupt during the course of a Project. The Offeror shall describe what actions it would take to protect "Phoenix Constructors JV / Port Authority" from being adversely affected by such an occurrence.
- 5.1.4 Since the achievement of milestones and management of the construction schedule is of the essence for this Project, the Offeror shall describe the organization that will have the primary responsibility for control and reporting of the Progress Schedule, and its techniques for effective and timely controls and reporting.
- 5.2 **SCHEDULE:** Offeror shall provide a detailed construction sequence / schedule to demonstrate how the work will be completed within the required schedule. Provide enough detail so that PC will be able to evaluate the proposal and approach being taken to the scope of work.
- 5.3 **COST AND SCHEDULE CONTROLS:** "PC" believes that it can better manage the Project if it is continually aware of its cost and schedule status. The Offeror shall describe controls and procedures to be used for management and monthly reporting of progress, problems, changes, and forecasts to complete, schedules and costs (including estimating and trending), including the names and positions of responsible parties. Such controls and procedures shall, at a minimum, be in conformance with the requirements specified in the Contract documents
- Accordingly, the Offeror shall describe its approach for schedule preparation, updating and reporting in accordance with the Contract documents.
- 5.4 **QUALITY ASSURANCE, QUALITY CONTROL, QUALITY MANAGEMENT:** The Offeror shall describe its Quality Assurance/Quality Control (QA/QC) organization; how the Plan extends to subcontractors and others in the supply chain; resources and procedures the Offeror will use for evaluating construction activities and products and related activities, which shall conform to the client's WTC Quality Assurance Project Program as per Article 15 of Exhibit 1 Statement of Work and Exhibit 18.
- 5.5 **SAFETY:** The Offeror shall describe the organization, including personnel, resources and procedures to be used for creating a safe environment for contractors, subcontractors, Phoenix Constructors JV, the Authority, PATH, NYCT personnel and the public during the life of the Project, which shall conform to the client's WTC Site Safety Program as per Exhibit 15A.
- 5.6 **MWBE UTILIZATION:** The Offeror shall describe its plan to meet the combined goal for participation by Minority – owned / Women – owned Business Enterprises (MWBE) as set forth in Exhibit 21G.



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5.7 **EQUIPMENT AND MATERIAL LIST:** Provide a list in Exhibit 2A of equipment and materials which will be made available for this effort.

5.8 **EXCEPTIONS and ALTERNATE PROPOSALS:** Exceptions to technical requirements or contract terms and conditions will not be accepted and may render the proposal "non responsive" and subject to rejection. PC must be able to evaluate and compare all technical proposals based upon the same technical requirements and contract terms and conditions as specified in the solicitation.

However, the Offeror may also submit an alternate proposal "in addition" to the primary proposal stated above. Please note that an alternate proposal submitted by itself is non responsive to the solicitation and will be rejected. The alternate proposal must be in a distinctly separate technical and cost volume that clearly list the exceptions to the solicitation (technical and/or commercial terms), and must set forth the addition/deletion to the solicitation (technical and or commercial terms) and the amount of change (increase/decrease) to the price or cost of the primary proposal.

6.0 COMMERCIAL/PRICE PROPOSAL

The Commercial Proposal shall consist of the Offerors' proposed pricing and other non technical information, as outlined below. The price table in (Exhibit 2A) will constitute all anticipated work included in the fixed price offer for this work based on the currently known scope of work as described by the attached Statement of Work (Contract, Exhibit 1).

6.1 **CONTRACTOR PRICING AS FORMATTED IN EXHIBIT 2A:** Contractor Pricing and Invoicing Instructions including all Commercial Schedules and requested markups. Use of other than the commercial formats provided may be cause for rejection of your proposal.

6.2 **CONTRACTOR'S SIGNATURE AUTHORIZATION:** The Offeror shall provide a list of officers who are authorized to approve Contract Documents, Contract Modifications, and to make commitments on behalf of the subcontractor.

6.3 **EXCEPTIONS:** Written statement confirming that there are no exceptions to the Scope of Work or Contract Terms and Conditions.

This primary Commercial Proposal must include prices for all technical requirements and contract terms and conditions as provided in the solicitation. Any technical or commercial qualifications and/or exceptions listed must be contained in an "alternate proposal" (see Section 3.1.5 under Technical Proposal above).



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- 6.4 **INSURANCE:** Completed Insurance Certificates satisfactory to Phoenix Constructors JV / PANYNJ Requirements (Exhibit 11).
- 6.5 **OCIP:** Owner's Contractors Insurance Program – In accordance with Exhibit 11A provide a statement confirming that the Offeror agrees to be subject to the provisions of the Owner's Contractor Insurance Program. Complete and return the required forms as specified in Exhibit 11A.
- 6.6 **EQUAL EMPLOYMENT OPPORTUNITY CERTIFICATION:** In accordance with EXHIBIT 24A, Equal Employment Opportunity Certification, please sign and return the form as required.
- 6.7 **DAVIS-BACON COMPLIANCE STATEMENT:** Provide a statement of compliance to the Davis-Bacon requirements as described in EXHIBIT 24B, Schedule of Minimum Wage Rates. All labor used by the contractor for the Work is subject to the Davis Bacon Act, Contract Work Hours and Safety Standards Act, Copeland (anti kickback) Act and the Fair Labor Standards Act. These regulations establish Federal minimum wage rates and overtime rates, and labor reporting requirements for the contractor.
- Each subcontractor **MUST** fully complete and sign the certified payroll provided in Exhibit 24B on a weekly basis. As a prerequisite for payment, not limiting any other prerequisites for payment, the Subcontractor must submit all respective certified payrolls to the Contractor at the time of invoicing.
- 6.8 **SUBCONTRACTOR REQUEST FORM:** If the Offeror intends to utilize any Sub-Subcontractors, Submit Exhibit 13, Subcontractor Request Form, for each Sub-Subcontractor.
- 6.9 **BONDING:** Payment and Performance Bonds satisfactory to Phoenix Constructors JV Requirements (Exhibit10).
- 6.10 **UNION AGREEMENTS:** Provide one complete copy of all union / labor agreements and a letter certifying that all agreements are attached as applicable to the scope of work.
- 6.11 **PERMITS AND LICENSES:** Offeror shall submit with its proposal, the certificate of license number which grants them the authority to work as a contractor in the state, county and/or municipality where the work is to be performed.

7.0 DEFINITIONS

For all purposes of this Request for Proposal document, except as otherwise expressly provided herein, the terms defined shall have the meanings assigned to them in this Article.



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"Owner" or "PANYNJ" or "The Authority" means Port Authority of New York and New Jersey

"Company" or "PC" means Phoenix Constructors, JV

"Contractor" or "Subcontractor" means successful Offeror.

"Addendum" means any document(s) issued by Phoenix Constructors JV to all Offerors during the offering period, that contains additional information or corrections made by Phoenix Constructors JV to this Request for Proposal document.

"Offeror" means the person, corporation, partnership, joint venture or other organization which has submitted a proposal to Phoenix Constructors JV for performance of the Work.

"Successful Offeror" means the Offeror whose proposal has been accepted by Phoenix Constructors JV in writing.

"Subcontract" means the contractual document signed by the Successful Offeror and Phoenix Constructors JV in the form as defined in this Request for Proposal document.

"Request For Proposal" or "RFP" means the solicitation to offer and includes all Addenda.

Terms defined in this Article importing the singular also include the plural, and vice versa, where the context requires.

8.0 PREPARATION COSTS

Neither Phoenix Constructors JV and/or Owner will be responsible for any costs or expenses in preparing and/or submitting your proposals or subsequent meetings, interviews or in providing any supplemental information. Offeror is responsible for any and all costs associated with submitting his proposal.

9.0 RIGHT OF ACCEPTANCE

Phoenix Constructors JV and/or Owner reserve the right to accept any proposal other than the lowest cost proposal and to accept or reject any proposal in whole or in part, or to reject all proposals with or without notice or reasons and, if no proposal is accepted, to abandon the Work or to have the Work performed in such other manner as Phoenix Constructors JV / PANYNJ may elect.

Partial or incomplete proposals may be deemed non-responsive. You will be informed whether or not your proposal was successful.

10.0 OFFEROR'S MODIFICATION AND WITHDRAWAL OF PROPOSAL



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You may, without prejudice to yourself, modify or withdraw your proposal by written request, provided that the request is received by PC prior to the offer due date and time that your proposal was to be submitted. Following withdrawal of your proposal, you may submit a new proposal provided that such new proposal will be received on or before the due date and time.

PC or PANYNJ may modify any provision(s) or part(s) of the Request for Proposal documents at any time prior to the award of a contract.

11.0 PHOENIX CONSTRUCTORS JV POLICY

In accordance with PC's policy, all qualified Offerors are entitled to receive equal opportunities. The offering or receiving of gifts, entertainment, payments, loans or other favors for the purpose of being placed on a Offerors' list, obtaining a contract, or favorable treatment under a contract, is prohibited. Furthermore, it is PC's policy that in the event an Offeror or Subcontractor is found to have offered or given a gratuity to obtain a contract or favorable treatment thereunder, the Offeror or Subcontractor involved will be refused further offer considerations by all of PC's entities. PC may also obtain those remedies available under law and the Contract, including, but not limited to, termination for default. Your attention is invited specifically to those articles in Representations and Certifications relating to Termination for Default and Gratuities.

12.0 INFORMATION BROKERING

PC considers completely unacceptable the acquisition or use of sensitive or confidential information for which Offerors or their agents or representatives are not entitled, such as competing for Offerors' proposal data, evaluations of proposals submitted by Offerors, and ranking of proposals. Offerors are required to notify PC immediately of any solicitation or approach offering (a) confidential offer information (including evaluations of offer information), (b) improper influence which would affect the award of any contract associated with this project.

Offerors are further required to notify PC immediately if they come into possession of confidential information (including evaluation of offer information). Failure to comply with the foregoing may result in disqualification of the Offeror.

13.0 MINORITY BUSINESSES

Consideration is to be given to minority businesses for the supply of services and commodities for the World Trade Center HUB Project.

- 13.1. In addition, for awards expected to be in excess of \$100,000, in accordance with Exhibit 21G, all Subcontractors of "PC" working on the WTC Hub who intend to purchase material or services, are required to establish contractor policies and procedures to take affirmative steps to encourage Minority and Women's



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Business Enterprises to seek business opportunities on the Project.

- 13.2 You are requested to obtain quotations for materials and services from minority owned enterprises. Potential minority subcontractors and material suppliers should be identified in proposals as such.

14.0 PRICING CONDITIONS

- 14.1 Pricing, stated in U.S. dollars, must be in accordance with the provisions of Exhibit 2A – Contractor Pricing and Invoicing Instructions. The blanks in Exhibit 2A – Contractor Pricing and Invoicing Instructions must be completed and returned by all Offerors as your commercial proposal.
- 14.2 Proposal validity-period is requested for 90 days after the closing date of this RFP.
- 14.3 **All pricing must be firm for the duration of this Contract.**
- 14.4 The quoted price(s) must include all costs to you for materials, labor, equipment, testing and any and all items of expense, fees, taxes, duties, overhead and profit for your full and complete performance of the Work as set forth herein.
- 14.5 All pricing information and requests for information identified in this RFP must be provided. Failure to comply with this request may result in a rejection of any proposal. **PC reserves the right to request and have you furnish any accounting breakdown of all contract prices including "cost or pricing data" as required.** This request may be made after contract price has been finalized with the Successful Offeror and for any Change Orders to the Contract issued by PC.
- 14.6 If you are the selected Subcontractor, you will be responsible for acquiring any and all licenses (applicable contractor's license(s), business license(s), etc.) and permits required to perform the Work, excluding building permits.
- 14.7 You are advised that quantities reflected on the drawings are for informational purposes only and that each Offeror is responsible for determining quantities required to perform the Work. The only exception shall be where PC has provided bills of quantities in Exhibit 2A for Offerors' insertion of unit prices.
- 14.8 Upon award, PC will issue one reproducible set of drawings for the selected Subcontractor's use in obtaining all construction prints. No additional construction drawings will be issued by PC for the Successful Offerors' use in performance of the Work.
- 14.9 Within 14 days after approval of drawings, you must notify Phoenix Constructors



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JV of any materials that cannot be obtained.

- 14.10 Proposals for this Work are being requested from other Offerors.
- 14.11 In the case of any discrepancy between words and figures, the words shall prevail. In the case of errors in addition or extension, the unit prices quoted shall prevail.
- 14.12 You are advised that the Successful Offerors' personnel, including subcontractors, will be required to attend a safety orientation meeting. (This includes the entire labor force and all new hires). The meeting will last approximately *two* hours. All costs are to be included in your quoted prices.

In addition, the Successful Offeror will be expected to conduct weekly gang box safety meetings which shall be attended by all its craft employees. These meetings will last approximately *one half* hour.

- 14.13 The successful Offeror shall be expected to have all their employees who shall be working within the confines of the "1- Line Subway and PATH Tracks" to undergo track training which shall be conducted by the New York City Transit (NYCT) and PATH. All costs shall be included in your quoted prices, including secondary costs such as lost time or down time for your staff and/or labor forces.
- 14.14 In addition, the successful Offeror shall obtain Security Clearance Passes from the Port Authority for all their personnel entering the site. The successful Offeror's information shall be provided to the Port Authority to obtain the passes.

Subcontractors and their respective employees, subcontractors, and suppliers must comply with all security requirements set forth in this Subcontract including Exhibit 41 "WTC PATH Identification Guidelines For Subcontractors;" and all additional security requirements imposed by The Port Authority of New York and New Jersey, Phoenix Constructors, or any additional party that Phoenix Constructors in their sole determination believes shall have the ability to request such requirements. Other than the actual Secure Worker Access Consortium (SWAC) enrollment cost of \$250.00 per individual, the Subcontractor shall be solely responsible for all costs and/or expenses associated with the security, enrollment and identification procedures and requirements set forth within this Subcontract.

15.0 INSURANCE

- 15.1 The Successful Offeror must, as a minimum requirement, provide the insurance coverage as described in the Article entitled *Insurance of the Sample Subcontract*.



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- 15.2 Exhibit 11 titled "Insurance Rider" provides a statement confirming that the Offeror agrees to obtain the Insurance required.
- 15.3 Owner's Contractors Insurance Program (OCIP) – In accordance with Exhibit 11A, provides a statement confirming that the Offeror agrees to be subject to the provisions of the Owner's Contractor Insurance Program. Complete and return the required forms as specified in Exhibit 11A.
- 15.4 Subcontractor shall name Phoenix Constructors JV, PANYNJ and other expressly specified parties as additional Insureds and furnish a waiver of subrogation in favor of both.
- 15.5 You must complete and submit the insurance data requested in the Proposal Forms, as verification of possession of the above required insurance provisions.

16.0 EXCEPTIONS AND DEVIATIONS

- 16.1 Except as provided for below in section 16.2 no qualifications to any requirement, provision, specification or stipulation of this RFP document shall be made by you. Failure to comply with this condition may result in a rejection of any proposal.
- 16.2 If you feel it would be advantageous to PC and/or PANYNJ to deviate from the requirements, conditions and provisions set forth in the RFP, you may present such departures as an "alternative proposal," marked as such and presented with your primary proposal, explaining in full detail the nature and extent of your proposed departure and the consequent impact on the prices, schedules or any other aspect of your proposal.

Such departures must be clearly identified and listed in a separate section of the proposal devoted explicitly to that purpose. Considerations of any alternate proposal will be at the sole discretion of PC and/or PANYNJ.

- 16.3 The submission of a proposal indicates acceptance by you of all conditions contained herein.
- 16.4 During the proposal review, PC will not be responsible for identifying or resolving any deviations that may be contained in your proposal. If you are awarded the Subcontract, the only deviations recognized will be those mutually agreed upon and incorporated into the Subcontract in writing.

17.0 DISCREPANCIES AND OMISSIONS/ADDENDA

Should you find discrepancies in or omissions from the Solicitation documents, or should their intent or meaning appear unclear or ambiguous, you must notify the contract administrator named in the Proposal Invitation Letter for resolution. Replies to such



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notices will be made in the form of a written Addendum to the Solicitation documents issued simultaneously to all Offerors. You must acknowledge receipt of all Addenda in your proposal cover letter. Phoenix Constructors JV and/or Owner will not be bound by, and you must not rely on, any oral interpretations or clarifications of the Solicitation documents.

Deadline for the submittal of questions and inquiries is provided in Section 1.0 above.

18.0 CONFIDENTIALITY AGREEMENT

You may be required to sign a confidentiality agreement for extra sensitive information provided to you. You will be informed about this in more detail during the job-walk.

19.0 RETURN OF DOCUMENTS

In the event that you decide not to submit a proposal, you are required to return all Solicitation documents to the contract administrator named in the Proposal Invitation Letter.

20.0 TAXES

This is a tax exempt project for all material that shall be permanently incorporated into the project at completion.

21.0 LOCAL LABOR AND SERVICES

Local contractors, including suppliers of materials, services and labor forces are to be utilized in performance of the Work to the maximum extent practical. For all labor, Offeror shall be in compliance with the Davis Bacon requirements as stated herein.

21.1 Contractors/Subcontractor shall mean those companies which are licensed or can be licensed to do business in the state of New York.

21.2 Labor forces shall mean personnel from qualified to perform the work for which they are employed.

22.0 SIGNATURE REQUIREMENTS

Your proposal must be signed by a duly authorized officer of your organization. If your organization is a corporation, the proposal must be signed in its name and on its behalf and under seal by a duly authorized signing officer of the corporation and must be accompanied by a certified copy of a resolution of the corporation authorizing such execution. The office held by the signing officer must be shown.

If you submit a proposal as a partnership or joint venture, you must submit with your proposal a "Power of Attorney" executed by all of the general partners or members of the



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joint venture designating and appointing one of the general partners or members of the joint venture as a "Management Sponsor," and authorizing the Management Sponsor to sign the proposal on your behalf, to act for and bind you in all matters relating to the proposal and, in particular, to agree that each partner or member of the joint venture are jointly and severally liable for any and all of the duties and obligations assumed by you under the proposal and the contract, if awarded. The proposal must be signed on behalf of the partnership or joint venture in its legal name by the Management Sponsor.

If requested by Phoenix Constructors JV, satisfactory evidence of the authority of any signatory to sign on behalf of your organization must be furnished.

Only unified sums, rates, prices, or conditions will be accepted. Sums, rates, prices or any conditions which differ between individual parties of a partnership or joint venture will not be accepted.

23.0 BONDING

23.1 Performance and payment bonds may be required in the penal sum of one hundred percent (100%) of the Contract Price for each bond. Refer to Exhibit 10 regarding format of required bonds. These bonds may be requested in the form of a bank guarantee or letter of credit. Any bond premium costs must be included in your price.

23.3 The surety and / or bank selected by you must be acceptable to Phoenix Constructors JV. The minimum requirements are:

23.3.1 Licensed to conduct business in the State in which the Work will be performed. Named in the current list of "Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and as Acceptable Reinsuring Companies" as published annually (on 1 July) in Circular 570 by the Department of Treasury.

23.3.2 Immediately following offer selection, Phoenix Constructors JV shall determine if complete performance and payment bonds will be required of the selected Subcontractor. The requirement for the Successful Offeror to complete and submit these forms will be made after a final determination of bond requirements and prior to finalizing the Contract. There is no requirement for these forms to be completed or submitted with your proposal. THE SUCCESSFUL OFFEROR WILL NOT BE ALLOWED ON THE JOBSITE UNTIL THE BOND REQUIREMENTS (IF APPLICABLE) ARE COMPLIED WITH AND COPIES OF COMPLETED BONDS ARE RECEIVED AND APPROVED BY PHOENIX CONSTRUCTORS JV / PANYNJ.



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24.0 QUALIFICATION STANDARDS AND EVALUATION

24.1 Criteria

"PC" will make the award on a "BEST VALUE BASIS" to the responsible Offeror whose Proposal is most advantageous to Phoenix Constructors / PANYNJ. Accordingly, "PC" may not necessarily make an award to the Offeror with the highest ranking on non cost factors nor award to the Offeror with the lowest compensation proposal if doing so would not be in the overall best interest of "PC" and the Port Authority of New York and New Jersey. As proposals are considered by "PC" to be more equal in their technical merit, the evaluated cost or price becomes more important so that when technical proposals are evaluated as essentially equal, cost or price may be the deciding factor.

1st Step of RFP

Subcontractor **Pre-Qualification** Packages will be evaluated with the following overall criteria on a "BEST VALUE BASIS" at the sole discretion of Phoenix Constructors JV / PANYNJ:

- Team Composition, including but not limited to Company Histories, Experience, and References
- Company Certifications (e.g. AISC Shop Certification(s) or equivalent)
- Financial Records, Balance Sheet, Assets, Income
- Management Team, Resumes of Key Personnel
- Shop Staff, Average Shifts, Productivity, Backlog
- Bonding or Acceptable Equivalent and Insurance Capabilities
- Safety Records (Recordable Incidents, Lost Work Day, EMR)
- Quality Control / Quality Assurance Procedures

2nd Step of RFP

Subcontractor **Proposals** will be evaluated with the following overall criteria on a "BEST VALUE BASIS" at the sole discretion of Phoenix Constructors JV / PANYNJ:

- Proposed Price
- Technical and Management Approach



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- o Management of Fabrication, Erection, Connection Engineering, Detailing Components
- o Cranes, Equipment, Site Logistics, Means and Methods Plan
- Ability to Meet Schedule
- Quality Control Plan
- EHS / Safety Plan
- MWBE Participation Plan
- Exceptions or Qualifications

25.2 Investigation, Discussions, Negotiations

"PC" may investigate responsibility, references or any aspect of the Offerors' Prerequisites, Technical or Experience and Business Risk Proposals, cost, or pricing as necessary to determine whether the Offeror is qualified or to confirm the accuracy and/or validity of any of the information presented. An Offerors' failure to supply information promptly following oral or written notice by "PC" may be grounds for disqualification and rejection of its Proposal. "PC" representatives may visit the Offerors' facilities, and the Offeror shall cooperate in making any reasonable arrangements in these regards. Each Offeror may be invited for a presentation, interview and meeting to discuss any aspect of its Offer and to answer specific questions.

PC may request a Best and Final Offer from those offerors deemed to be technically qualified and within the competitive price range. However, PC reserves the right to (1) negotiate with any selected offeror(s) or (2) may select and award based upon the original proposals without oral presentations, discussions, or negotiations.

25.3 Financial Capability Determination Information

PC reserves the right, prior to award, to require the Offeror to submit information that PC will use to make a determination whether the Offeror has the financial capability to perform the contemplated contract. Such information may include, but not be limited to: annual reports; lines of credit with financial institutions and suppliers; SEC Form 10K, and any other information that may be required by PC.

25.4 Single Proposal

In the event a single Offer is received, "PC" may conduct a price and/or cost analysis of the Offer. The Offeror may be required to furnish cost and pricing



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data to support this effort. Negotiations may be conducted with the single Offeror or the Offer may be rejected.

26.0 NOTICES TO OFFERORS

26.1 Precedence of Requirements

In the event of a conflict among the provisions of the RFP instructions, the RFP correspondence, other documents and the resulting contract, the terms of the contract shall govern.

26.2 Phoenix Constructors JV prohibits the participation of any of its respective affiliates in this solicitation process.

27.0 PROTEST PROCEDURES

If the instance arises that a Subcontractor feels that there are faults in Phoenix Constructors JV's procurement operations, the Subcontractor must file a formal protest. *All protests must be received in writing and be concise and logically presented to facilitate review by the Phoenix Constructors JV. All protests will include:*

- Name and address of the protestor including telephone and fax number and email address
- The solicitation title and number
- *The contract title and number*
- A statement concerning the protestor's interest in the award or non-award of the Subcontract/Purchase Order for the purpose of filing the protest
- A comprehensive statement of the legal and factual grounds for the protest that must include a detailed description of the resulting prejudice to the protestor
- Copies of all relevant and supporting documents and information
- The relief required and the reasons therefore

All protests must be submitted to:

Phoenix Constructors, JV
Procurement Manager
115 Broadway, 18th Floor
New York, NY 10006

Protests based upon alleged apparent improprieties of the solicitation shall be filed before proposal opening or the closing date for receipt of proposals or bids. In all other cases protests shall be filed no later than five (5) business days after the basis of the protest is known or should have been known, whichever is earlier. The written protest must be received no later than 5:00PM on the fifth day.



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Failure to comply with any of the protest requirements will be just cause for the dismissal of the protest.

Upon receipt of the protest, the Contract Administrator will review the basis of the protest and supporting data and use best efforts to issue a decision within 10 days after receipt of the protest. The Contract Administrator may take any action or make any request he/she deems necessary in order to investigate the protest, including but not limited to, extending the time to issue a decision in order to obtain evidence and other pertinent information.

The protestor will be provided a copy of the written decision by the Contract Administrator. This decision will be considered final unless within three (3) business days of receipt of the written decision the protestor appeals to the Phoenix Constructors' Procurement Manger. The appeal must be sent by certified mail to the address listed above.

No evidence or information may be introduced or relied upon in the appeal that has not been presented to the Contract Administrator. The Procurement Manager will review the appeal, supporting documents, and the decision of the Contract Administrator and issue a written decision within five (5) days of receipt if practical. The Procurement Manager may take any action or make any requests he or she deems necessary including extending the time to issue a decision in order to render a decision on the appeal.

The decision by the Procurement Manager or his/her designee shall be conclusive, final and not subject to further appeal to any entity or agency.

The FTA will only entertain a protest that alleges that the Phoenix Constructors JV failed to follow their protest procedures. Any protest concerning the PC's failure to follow protest protocol must be filed in accordance with FTA Circular.

END OF INSTRUCTIONS TO OFFERORS



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EXHIBIT 1

STATEMENT OF WORK

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| Approvals | Print Name | Signature |
|---------------------|-----------------------|----------------------------------|
| Project Manager | Brian Reilly | <i>Brian Reilly</i> 11/20/08 |
| Procurement Manager | William T. DeCamp III | <i>W. DeCamp III</i> 11/20/08 |



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SCOPE OF WORK

1.0 INTRODUCTION / BACKGROUND

The purpose of this Statement of Work is to define the scope of the **Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work** to be performed as a component of the Station Construction and Transit Hall Structure to Grade, Work Package #20 Contract No: WTC-284.458 at the World Trade Center PATH Station Project.

Work Package #20 has been organized into three distinct Work Areas (WA) for the Subcontractor's consideration and pricing:

1. **Work Area 1 - PATH Station**
2. **Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)**
3. **Work Area 3 – Transit Hall**

1.1 During the 1st Step of the RFP, the bidders will be required to attend a **MANDATORY Pre-Bid meeting to be held on Wednesday, 12/3/2008, starting 1:00 PM EST at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.**

1.2 A site visit and attendance at the pre-bid meeting are mandatory for the Subcontractor to see existing conditions and to completely understand the site logistics and access to the work area. Therefore, there will be a second **Mandatory Pre-Bid Meeting / Site Walk-Through for the 2nd Step of the RFP.** The meeting will be held on **Tuesday 12/16/2008 through Wednesday 12/17/2008, starting at 8:00AM EST each day.** *The meeting will be held at the Phoenix Constructors JV offices, located at 115 Broadway, 18th Floor.*

1.3 Security Requirements

The Subcontractor is advised that certain drawings and/or documents to be furnished to the Subcontractor for the purposes of preparing this bid are marked "Confidential and Privileged". These drawings and/or documents are security stamped and traceable to the Subcontractor. They may not be scanned, copied, transmitted, or reproduced by any means or methods without express written consent of the Port Authority



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of New York and New Jersey (PANYNJ). The Subcontractor is to appoint an Officer of the Company to administer and monitor the security of all Confidential and Privileged documents. This officer is subject to approval by the Owner, and may be required to participate in training relating to document security. All security plans remain the sole property of PANYNJ and are subject to audit and return on demand by PANYNJ. The Subcontractor is further advised that the World Trade Center Construction Site is subject to rigorous security control. All trucks are subject to inspection and all employees are issued site security badges with daily check-in scanning.

Exhibit "41" Subcontractor SWAC WTC PATH ID Badge Guidelines are project requirements and are part of the contractual obligations. The Subcontractor must include all costs associated with the process stated therein.

WTC ID or VEHICLE PASS – "The Port Authority of NY & NJ World Trade Center Site Rules and Regulations" (Rules and Regulations), as provided in this Request for Proposal, is hereby incorporated by reference in its totality. As required by the Rules and Regulations Part B, Section 3(a), all Subcontractors performing work on site are required to obtain valid WTC Site IDs. The Subcontractor is advised that all employees accessing the World Trade Center Construction Site will be required to apply for an access card issued by The Port Authority, which involves submitting to a background check and attending a mandatory, Port Authority provided, one (1) hour safety class. Please note that this process must be started immediately, as there is a lead time on scheduling the classes and processing the paperwork.

As described in the Rules and Regulations Part B, Section 3(c), "All WTC Site IDs and Vehicle Passes are the property of The Port Authority of New York and New Jersey." In accordance with the Rules and Regulations Part B, Section 2 (b), upon the completion of Subcontractor's associated work, all WTC Site IDs or Vehicle Passes **MUST BE RETURNED** to the WTC Site Manager or his or her designee. Failure to return such identification will result in associated penalties and may, at the sole determination by Phoenix Constructors JV, result in a delay of final payment until the return of all associated identification.

2 DESCRIPTION OF WORK – GENERAL

2.1 Definitions:

Subcontractor's Initials _____

Company's Initials _____



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- 2.1.1 All references in this Exhibit 1 Statement of Work, the Drawings and the Specifications to "Contractor" or "Subcontractor" shall mean the Subcontractor.
- 2.1.2 All references in this Exhibit 1 Statement of Work to "Company" shall mean Phoenix Constructors JV.
- 2.1.3 All references in this Exhibit 1 Statement of Work to "Owner" or "Authority" shall mean the Port Authority of New York and New Jersey.
- 2.1.4 All references in this Exhibit 1 Statement of Work to the "Engineer" shall mean The Port Authority of New York & New Jersey.
- 2.1.5 All references in this Exhibit 1 Statement of Work to the "Architect" shall mean Downtown Design Partnership and The Port Authority of New York & New Jersey.
- 2.2 Subcontractor shall include all engineering, field measuring, detailed shop drawings, labor, equipment, materials, and each and every item of expense to perform the **Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work** in accordance with Work Package No. 20 - Station Construction and Transit Hall (Contract 284.458) shown on the project drawings and specifications, including but not limited to the tasks described in Section 3.0.
- 2.3 Work shall be performed in accordance with the requirements of the contract drawings, specifications and exhibits listed in Section 4.0. Subcontractor is advised that the project will be constructed in and around an active railroad and an electrical substation.
- 2.4 The Subcontractor acknowledges having visited the job site to thoroughly familiarize himself with the **Work Areas** and all existing conditions. The Subcontractor shall field measure and survey all existing conditions as required.
- 2.5 Sufficient manpower shall be provided at all times to maintain progress of the Work. A shortage of labor in the industry shall not be accepted as an excuse for not properly manning the job.
- 2.6 The Subcontractor represents that he is familiar with and has expertise in the performance of the Work. Further, the Subcontractor is cognizant of, and agrees to, the project requirements for premium quality consistent



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with a first class building in accordance with the best practices of the trade.

- 2.7 The Subcontractor has examined the Drawings, Specifications, and Exhibits listed in Sections 4.3, 4.4 & 4.5 and shall identify all options and cost savings available to Phoenix Constructors JV and the Owner while providing the highest quality of work. Modifications made to conform to all applicable Codes and good practice will be included at no additional costs. All other drawings for the project are available for review and reference at Phoenix Constructors JV's office. The Subcontractor will review these drawings for examination of the work of others and investigation of the Subcontractor's Work which may also be shown on other drawings not included under Sections 4.3, 4.4 and 4.5. The Subcontractor will also review detail sheets in other packages (WP #9 and WP#21) that require coordination with the work included in this contract. The current drawings for WP #9 and WP #21 are available for review at the Phoenix Constructors JV office. A copy of these drawings will be provided to the successful bidder upon contract award.
- 2.8 Immediately upon award of the Contract, the Subcontractor will prepare complete shop drawings and present required submittals for approval as required by the Engineer/Architect. The Subcontractor shall submit samples of all materials for approval, as described in the Specifications. The materials used on the project shall match the approved samples in all situations, and shall be in strict accordance with the approved range in order to assure uniformity of appearance and design intent.
- Shop drawings and submittals shall be produced in a sequence consistent with job progress as approved by Phoenix Constructors JV and Engineer / Architect through the approved shop drawing and submittal schedule. Shop drawing distribution and procedure shall be approved by Phoenix Constructors JV prior to the start of the Work.
- 2.9 The Subcontractor shall bear all costs for the shipment of construction documents, shop drawings, samples, etc. to Phoenix Constructors JV from the Subcontractor by overnight delivery service, as determined necessary by Phoenix Constructors JV.
- 2.10 The Subcontractor shall attend job meetings scheduled by Phoenix Constructors JV, will properly coordinate the Work with the work of others, and resolve any matters related to completion of the Work on schedule. The Work of the Subcontractor shall be performed in a manner that does not impede or delay another subcontractor / contractor in the performance of his work.



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The Subcontractor shall coordinate the Work with other trades so as to ensure that built-in items are furnished in sufficient time for the subject trade to include them in their work. Added costs resulting from a failure to comply with this requirement shall be borne by the Subcontractor

- 2.11 The Subcontractor will protect existing construction while performing the Work. Any work performed by others that is damaged by the Subcontractor or its employees or agents shall be the sole responsibility of the Subcontractor to repair or replace at no additional cost to Phoenix Constructors JV, including adjacent work damaged due to the corrective work of the Subcontractor.
- 2.12 The Subcontractor shall maintain Superintendents or Foremen at the jobsite during any time in which its employees are working on the Project site.
- 2.13 All deliveries of material shall be coordinated with Phoenix Constructors JV's field personnel, giving a minimum of 72 hours advance notice. The Contract price includes weekend and off-hour deliveries as scheduled by the Subcontractor and or Phoenix Constructors JV. The Subcontractor shall pay special attention to the ingress / egress restrictions imposed by the PANYNJ, PATH and NYCT.
- 2.14 The Subcontractor will maintain the Construction Schedule as established by Phoenix Constructors JV and will properly staff the Project to keep up with the job progress. The Subcontractor will submit an overall fabrication and installation schedule prior to award of the Contract, and this schedule shall be further established and coordinated in detail with Phoenix Constructors JV. In addition, the Subcontractor shall submit a detailed payment breakdown for approval.
- 2.15 The Subcontractor understands and agrees that time is of the essence, and that overtime and multi-shift work will be required to maintain pace with the Construction Schedule. The Subcontractor shall adhere to the work restrictions and working hours as depicted in Exhibit 96 - Attachment "D" Revision # 0 – October 17, 2008 "Hours of Work", particularly in relation to scheduling closures / shut-downs / or General Orders (GO) for the PATH or NYCT stations or tracks. Any overtime / shift work will be performed at no additional cost to Phoenix Constructors JV or to the Authority.



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- 2.16 The Subcontractor is responsible for its own welding hookups.
- 2.17 Where initial protection of openings via safety planking is by others, and the Subcontractor removes such protection in order to perform the Work, the Subcontractor will provide whatever safety planking and/or other temporary protection necessary to protect all openings while working in the area in accordance with the regulations of all governmental agencies having jurisdiction, and shall replace the initial safety planking when the Work is completed in said area.
- 2.18 The furnishing of temporary protection around the work area as per OSHA requirements is to be by the Subcontractor. Should the Subcontractor remove same for the installation of the Work, the Subcontractor shall provide manpower to guard opening until temporary protection is reinstalled by the Subcontractor.
- 2.19 The Subcontractor will be fully responsible for all engineering, surveying, and layout of his Work. Axis lines and bench marks will be provided by Phoenix Constructors JV.
- 2.20 The Subcontractor will be responsible for rigging and hoisting all of his equipment and material.
- 2.21 The Subcontractor shall furnish labor, materials, design, engineering and equipment to erect, dismantle and transport any cradles, temporary support systems, working platforms, and scaffolds required to perform and complete his work.
- 2.22 All materials delivered shall be adequately protected from weather in accordance with the manufacturer's recommendations at all times, and shall be received and stored at the jobsite in an approved manner and location as established by Phoenix Constructors JV. There is limited onsite space for storage; the Subcontractor is solely responsible for scheduling and staging deliveries as required and coordinating delivery logistics with the Phoenix Constructors JV superintendent.
- 2.23 All trash and debris generated by the Subcontractor shall be placed in containers provided by Phoenix Constructors JV. All oversized debris (that which does not fit in a mini-container without breaking up) shall be brought to a designated area by the Subcontractor. Subcontractor will hoist these containers to grade as directed by Phoenix Constructors JV.



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- 2.24 All Work furnished or installed by or through the Subcontractor shall be fabricated and installed using only experienced labor and labor which is compatible with the local union jurisdiction to ensure labor harmony. The Subcontractor shall advise Phoenix Constructors JV immediately of any labor disputes experienced or anticipated.
- 2.25 Should questions of union jurisdiction arise, the Subcontractor shall immediately take steps to settle such disputes and will use such labor as may be determined to have jurisdiction, at no additional cost to Phoenix Constructors JV. The Subcontractor will be responsible for time lost and monetary damages because of delays arising from such disputes.
- 2.26 The Subcontractor shall provide Phoenix Constructors JV with the names and addresses of material manufacturers, suppliers and second-tier subcontractors anticipated to be used. These subcontractors shall be governed by all Commercial, General Terms and Conditions and Supplementary Conditions (including insurance & bonding requirements by which the Subcontractor is governed. **No second tier subcontractors may be used or allowed to enter the jobsite without prior written approval from Phoenix Constructors JV and the Authority.**
- 2.27 All Work shall be in accordance with the requirements of the Engineer / Architect, the New York City Building Code, the Owner's inspecting agencies, and any other governmental agencies having jurisdiction.
- 2.28 The Subcontractor is aware that Phoenix Constructors JV expects the fabrication and installation of all Work to be in perfect condition; no allowances will be made for substandard work. Punch lists issued by the Engineer/Architect must be completed prior to final payment. If, during the performance of punch-list work, the Subcontractor damages other and/or adjacent work, the Subcontractor shall be solely liable for the costs of repairing the damaged work.
- 2.29 Prior to installation of the Subcontractor's work, the Subcontractor shall inspect all surfaces to which the work shall be installed upon or fastened to, in order to verify that these sub-surfaces have been prepared properly, or are in an acceptable condition to receive the work. Should any deficiencies be found, the Subcontractor shall notify Phoenix Constructors JV immediately in writing. Installation of the Work shall signify acceptance of the underlying materials.
- 2.30 The Subcontractor is aware that Phoenix Constructors JV will provide an on-site Safety Manager. The Subcontractor shall provide

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Company's Initials _____



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his own full time on site Safety Manager / Representative. The Subcontractor and its Site Safety Manager / Representative will cooperate and comply with Phoenix Constructors JV's Safety Manager in addition to complying with the rules and regulations of the Department of Transportation, Department of Highways, and the Port Authority of New York and New Jersey, PATH and NYCT

2.31 The Subcontractor is required by OSHA regulations to institute a hazard communication program. Under said program, the Subcontractor must inform both Phoenix Constructors JV and all other contractors on the site of any hazardous chemicals being used by the Subcontractor's employees on the Project. The Subcontractor shall provide Phoenix Constructors JV and all other contractors with copies of a Material Safety Data Sheet (MSDS), warn other contractors in the Subcontractor's work area of the existence of any hazardous chemicals, insure that any containers containing hazardous chemicals are appropriately labeled, and maintain an inventory of any such chemicals.

2.32 All scheduled job safety meetings will be attended by designated Subcontractor personnel. Tool box meetings will be held with the Subcontractor's own workers. Records of these meetings will be kept at the job site office by Phoenix Constructors JV.

2.33 Field tickets for authorized work must be presented for signature to Phoenix Constructors JV's Superintendent on a daily basis and invoiced within thirty (30) days. Claims submitted after thirty (30) days will be rejected. Phoenix Constructors JV's Superintendent's signature indicates only the following:

The signature of the Phoenix Constructors JV Project Superintendent signifies that work was done and/or verifies time and/or materials expended.

The actual determination of work being extra to the contract must be established by the Phoenix Constructors JV Project Manager and approved by Owner.

2.34 The Subcontractor shall comply with, and cooperate (and cause its subcontractors and material-men to so comply and cooperate) with other contractors, Phoenix Constructors JV and Architect/Engineer in complying with *Legal Requirements, including but not limited to OSHA requirements.* Among other things, the Subcontractor shall be responsible for performing corrective work within specified periods to cure, appealing from decisions or orders requesting evidentiary material as may be

Subcontractor's Initials _____

Company's Initials _____



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necessary or as may be requested by Phoenix Constructors JV to fully protect the rights and interest of Phoenix Constructors JV, Owner, and Architect / Engineer, with respect to possible, threatened or pending proceedings by others, except violations caused by others.

2.35 Alcohol, drugs and weapons shall not be allowed on the job site under any circumstances, and the use thereof shall be cause for immediate expulsion of the personnel responsible and revocation of the offender's site security badge. There is no smoking on site.

2.36 The Work of the Subcontractor shall commence upon execution of this contract or notification to proceed. The Subcontractor must immediately satisfy specific contract requirements, which will otherwise prohibit on-site activities, delay work, and/or prevent payment. Within two weeks of Notice to Proceed, the **Subcontractor shall prepare and submit to Phoenix Constructors JV the following documents:**

- Insurance Compliance & Certificates
- Bonding Compliance & Certificates
- Submittal, Fabrication and Installation Schedules & Logs
- Trade Payment Breakdown
- MBE/WBE Subcontracting Plan
- Quality Control Plan

2.37 The Subcontractor shall at its own expense, prepare, maintain and update progress schedules for approval per Exhibit 97 – Specifications Division 1, Chapter 1, General Provisions, Progress Schedule. The Subcontractor shall also provide the necessary input and information for Phoenix Constructors JV's master schedule.

2.38 The Subcontractor shall abide by all requirements of the State of New York, City of New York and the Port Authority of New York and New Jersey for Work in or adjacent to areas of the project. The Subcontractor shall make every effort to minimize the impact of all construction activity to pedestrians.

2.39 All professional engineering and design costs, performance of site surveys, investigate analysis, etc., which may be required for the



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preparation and submission of the Subcontractor's shop drawings, details, calculations, procedures, including erection for temporary work / shoring and performance of coordination are included in the scope of the Work.

2.40 While working on site, Subcontractor's Superintendents and Foremen will have radios keyed into Phoenix Constructors JV's frequency. Radios are to remain on at all times that the Subcontractor's manpower is on site.

2.41 Logistics and Utilization of Cranes on the Jobsite

The following assumption and criteria are to be taken into consideration during planning and preparing this RFP:

The Subcontractor shall submit a Means and Methods Statement with their proposal. The Means and Methods Statement shall include how the Subcontractor intends to distribute and erect large structural elements to remote areas of the site including the types, sizes and locations of the Cranes planned for the work. Furthermore, the Means and Methods Statement shall identify if any temporary access ramps or trestles are planned and included in their proposal to facilitate material distribution and steel erection at the jobsite.

2.42 The Site Access and Staging Restrictions described in Attachment "F", Revision #0, dated October 17, 2008 and below are included in this scope of work.

2.43 Information about and the requirements of Work Trains and Transfer Yard described in Attachment "F", Revision #0, dated October 17, 2008 and below is included in this scope of work.

2.44 Information and the requirements of about Record Documents described in Attachment "F", Revision # 0, dated October 17, 2008 and below is included in this scope of work.

3 DESCRIPTION OF WORK – SPECIFIC:

Work Package # 20 consists of three distinct Work Areas, identified as:

A. Work Area 1 – PATH Station

B. Work Area 2 – 1-Line Subway Box (Greenwich Street Corridor)



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C. Work Area 3 – Transit Hall

3.1 For the convenience of the Subcontractor for preparing the bid proposal, the following general identification regarding the different types of steel – “Special Shape Exposed Steel”, “Standard Profile Steel and Built up Sections”, and “1-Line Steel” – relating to Work Areas 1, 2, and 3 is made. This identification is only for general information to aid the Subcontractor’s initial understanding of the scope of work and may not encompass the complete scope of work. The Subcontractor is fully responsible for their own take off and identification of the steel types and components as per the contract documents.

3.1.1 Special Shape Exposed Steel: The Special Shape Exposed Steel is shown in the contract drawings and documents and mainly consists of the following elements:

- A) Work Area 1 – PATH Station:** Trusses, Ribs, Arches, Center spine, Platform Longitudinal Girders, Platform Columns, Mezzanine Floor Steel, Columns above Mezzanine Level to Roof Framing, Bent Plates and Bottom Plates for Slab at Elevation 307’.
- B) Work Area 2 – 1-Line Subway Box (Greenwich Street Corridor):** Mezzanine Arches (Ribs) below the 1-Line Subway Box.
- C) Work Area 3 – Transit Hall:** East Elevators; East Stairs, Landings and MTA access; West Stairs, Landings and MTA access, East end arch, West end arch, Columns.

3.1.2 Standard Profile Steel and Built up Sections:

- A) Work Area 1 – PATH Station:** Box Girders, Plate Girders.
- B) Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor):** Columns at Elevation 231’ (Plates)
- C) Work Area 3 – Transit Hall:** Structural encasement plates, Structural Embedments for Transit Hall Slabs/Walls, Columns, Framing for floor slabs.

3.1.3 1 Line Subway Box (Greenwich Street Corridor):

- B) Work Area 2- 1 Line Subway Box:** West Super Columns, East Super Columns, 1 Line Subway Box East Arch, 1 Line Subway Box West Arch, 1 Line Subway Box Transverse Beams.



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3.2 Under this Work Package, Subcontractors have the option to submit their separate proposals, inclusive of all costs and obligations, for the following scopes of work:

- A. **Option A:** Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to all Work Area 1 Path Station
- B. **Option B:** Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to Work Areas 2+3 1- Line Subway Box and Transit Hall.

As well as submitting a proposal for one of the above options, Subcontractors will have the option to submit an additional proposal for the following alternate scope of work:

- C. **Alternate Option C:** Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to Work Areas 1+2+3 Combined.

The scopes of work associated with Work Areas 1, 2, and 3 are further described herein:

3.2.1 Work Area 1 - PATH Station

All work as per this Exhibit 1 - Statement of Work for Work Area 1 - PATH Station West Bath tub. The general boundaries of Work Area 1 are marked on PCJV Sketches SK-1, SK-2, and SK-3 dated November 6, 2008. At the different elevations, the boundary of Work Area 1 zigzags and straddles adjacent Work Packages (WP #9 and WP #21) where work is being performed by other contractors. Work performed in other Work Packages is shown as "N.I.T.P." ("Not In This Package") on the contract drawings. The scope of work for Work Area 1 is roughly delineated by and inclusive of all work shown on the contract drawings that is west of the expansion joint at grid line D13. Fabrication and erection of the PATH Hall East Box Girder between grid lines D13 and D19 is included in Work Area 1. The super columns on grid lines D1 and D13 are NOT included in Work Area 1 and are to be fabricated and installed by the Subcontractor for Work Area 2, as shown on PCJV Sketches SK-1, SK-2, and SK-3 dated



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November 6, 2008. Subcontractor shall pay special attention to the required construction phasing and sequence of construction.

NOTE: The Subcontractor is made aware that the foundations for the Super columns will not be in place until a later date. The construction and erection of the PATH Hall East Girder, the Transit Hall West End Arch at gridline WX, the 1 Line Subway Box west arch truss at grid D13, and the 1 Line Subway Box east arch truss at gridline D1 are to be constructed on temporary support system designed by the Subcontractor, in order for Work Area 1 Path Station and Work Area 3 Transit Hall construction to proceed without the benefit of having permanent foundations in place. Once the permanent foundations are in place, the scope of this Subcontractor includes transferring loads to the permanent foundation structure.

3.2.2 Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor)

All work as per this Exhibit 1 – Statement of Work for Work Area 2 – 1 Line Subway Box (Greenwich Street Corridor). The general boundaries of Work Area 2 are marked on PCJV Sketches SK-1, SK-2, and SK-3 dated November 6, 2008. At the different elevations, the boundary of Work Area 2 zigzags and straddles adjacent Work Packages where work is being performed by other contractors. Work performed in other Work Packages is shown as "N.I.T.P." ("Not In This Package") on the contract drawings. The scope of work for Work Area 2 is roughly delineated by and inclusive of all work shown on the contract drawings that is east of the expansion joint at grid line D13 and west of the expansion joint at grid line D1. The Line 1 West Arch Truss at grid line D13 and the Line 1 East Arch Truss at grid line D1 are included in Work Area 2. The supply and installation of the super columns with bearing assemblies on grid lines D1 and D13 is included in Work Area 2, as shown on PCJV Sketches SK-1, SK-2, and SK-3 dated November 6, 2008. The reinforced concrete footings for all super columns will be constructed by Phoenix Constructors JV. The PATH Hall East Box Girder between grid lines D13 and D19 and the Transit Hall West End Arch at grid line WX are NOT included in Work Area 2. Subcontractor shall pay special attention to the required construction phasing and sequence of construction.

The scope of work includes the steel column jackets shown on the contract drawings within the boundaries of Work Area 2.



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NOTE: The Subcontractor is made aware that the foundations for the Super columns will not be in place until a later date. The construction and erection of the PATH Hall East Girder, the Transit Hall West End Arch at gridline WX, the 1 Line Subway Box west arch truss at grid D13, and the 1 Line Subway Box east arch truss at gridline D1 are to be constructed on temporary support system designed by the Subcontractor, in order for Work Area 1 Path Station and Work Area 3 Transit Hall construction to proceed without the benefit of having permanent foundations in place. Once the permanent foundations are in place, the scope of this Subcontractor includes transferring loads to the permanent foundation structure.

3.2.3 Work Area 3 – Transit Hall

All work as per this Exhibit 1 – Statement of Work for Work Area 3 – Transit Hall East Bathtub. The general boundaries of Work Area 3 are marked on PCJV Sketches SK-1, SK-2, and SK-3 dated November 6, 2008. At the different elevations, the boundary of Work Area 3 zigzags and straddles adjacent Work Packages where work is being performed by other contractors. Work performed in other Work Packages is shown as "N.I.T.P." ("Not In This Package") on the contract drawings. The scope of work for Work Area 3 is roughly delineated by and inclusive all work shown on the contract drawings that is east of the expansion joint at grid line D1. The fabrication and erection of the Transit Hall West End Arch at grid line WX is included in Work Area 3.

The scope of work includes the steel column jackets shown on the contract drawings within the boundaries of Work Area 3.

The scope of work includes furnishing and installing the steel spall plates with shear studs (to the underside of the cast-in-place concrete slab) and built up beams.

3.3 Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work applicable to all Work Areas 1, 2 & 3:

This Exhibit 1 Statement of Work is intended to define, but not limit, the work performed under this subcontract.

The Work shall include all labor, materials, supervision, equipment, engineering, shop drawings, erection drawings, Cranes, rigging and lifting devices, accessories, tools, services, shipping, transportation, customs

Subcontractor's Initials _____

Company's Initials _____



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duties and fees, insurance, handling, offloading, storing and other things necessary for the complete performance of the supply, furnish, fabrication, delivery and erection of **Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work** of Work Package # 20 - Station Construction and Transit Hall Structure to Grade - in strict accordance with this Statement of Work, the contract drawings and specification and with the all subcontract documents.

The Work shall include each and every item of expense required to furnish, fabricate, and install all structural steel sections and members including, but not limited to, beams, built-up beams, columns, built-up columns including welded studs and couplers, built-up composite section, arches, backspan arches, ribs- arches, center spine, box girders, plate girders, trusses, composite trusses, struts, angles, channels, gusset plates, plates, stiffeners, splices, support angles, hangers, connections, bolts, shop welding, billet plates, bearing plates, bearing assemblies, built up fascia, field welding, bolting, moment connections, *fracture critical* members, anchor bolts and embed plates, anchors, expansion bolts, metal deck, pour stops , edgings including reinforcing and framing for the openings in the metal deck, sheer studs, void forms, lenton weldable mechanical couplers, steel channels with welded couplers, spall plates with studs, steel jackets for reinforced concrete and steel column, temporary support and bracing steel, cranes, rigging, lifting and hoisting devices, jacking, temporary construction work platforms, cradles, scaffolding, engineering, quality control and all other members and elements associated with the steel erection method and sequence used by the Subcontractor to complete the Work.

The Work shall include all steel column jackets as shown on drawings.

The Work also shall include furnishing and installing of the precast concrete elements: floor planks, duct units, wall panels and stairs.

The Work shall include all surface preparation and coating of the steel as per the contract documents, including primer paint and Intumescent Fire Resistant Coating.

The Work shall include all engineering, shop drawings, labor and material required for the supply, fabrication, delivery, and erection of the columns, beams, arches, trusses, built up sections, and plate girders, fabricated from flat steel and curved plates, shaped and welded to acute angles and radiuses. The arches, consists mainly of built up heavy steel plate welded sections with flat and curved plates, forming the exposed exterior of the sections. The work includes full penetration welds, ground smooth,



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surfaces prepared to SSPC-SP10 (Near White Blast cleaning, unless noted otherwise on the drawings) and coated with primer paint compatible with the specified Intumescent fire resistant coating system and subsequently coated with the Intumescent fire resistant coating as specified in the contract documents. All fabricated steel is to be delivered and off loaded Freight on Board (F.O.B.) to the **World Trade Center jobsite. All structural elements are to be checked and assembled to manageable sections prior to being delivered to the jobsite for erection by the Subcontractor as required.** The Subcontractor is solely responsible for all loss, breakage or damage to the fabricated products occurring prior to final installation on site and acceptance by Phoenix Constructors JV and the Owner. The acceptance of the fabricated products at the fabrication shop and/or at the holding area, does not release the Subcontractor from their contractual obligations for any defects and misfits discovered later on at the job site from.

This Subcontractor is required to fabricate and assemble the structural members in the shop to the greatest extent possible. The Subcontractor is also required to properly mark and match-mark materials for field assembly.

In an effort to maintain the highest quality and achieve the highest aesthetical standards, it is required that any and all field splice locations shall be fabricated as a single unit, with a precision-cut joint or shall be pre-assembled into a single unit to confirm the connection fit-up prior to shipping.

Splices will be permitted only where indicated on the contract drawings or approved shop drawings. Bidders must pre-qualify additional splices (beyond what is shown on contract drawings) if required with sketches with their bid proposal. Any other field splices will not be permitted.

- 3.4 The scope of the Work includes all steel pipe sleeves, electrical device boxes and embeds that are built into the steel arches or other steel members.
- 3.5 The scope of the Work includes all transom steel tabs attached or built into the steel to receive storefronts by others.
- 3.6 The scope of the Work includes furnishing and installation of Lenton weldable couplers welded in the fabrication shop and supply only of the anchor bars and terminators.



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- 3.7 The scope of the work includes C10 Channels including Lenton weldable mechanical couplers and the threaded bars, shown on drawings.
- 3.8 The scope of the Work includes all shop-applied prime painting, with the exception of field connections areas that are to be masked out. The Work includes field painting the previously masked out areas after field connections are completed and field touch up of areas where shop-applied coatings were damaged.
- 3.9 The scope of the Work includes SSPC -SP10 surface preparation on all steel elements and primer paint according to the painting specification, unless otherwise noted on the contract documents.
- 3.10 **Intumescent Fire Resistant Coating:** The scope of the Work includes SSPC - SP10 surface preparation, primer paint according to painting specification and compatible with Intumescent Coating System, and UL approved two (2) hour fire rated assembly, unless otherwise noted in the contract documents. The Work includes any top coat required to warranty adherence of the Intumescent fire resistant coating and to meet UL 263 for exterior exposure. The final surface appearance to be smooth with slight orange peel texture, in accordance with the approved sample. The scope of work also includes all field application of coating system at locations of field connections, field splices and repairs of areas damaged during shipping to the storage area and damage that occurs during erection.
- 3.11 **The scope of the Work includes all costs associated with engineering, fabricating and testing of samples to obtain UL designs for fire rated assemblies for the intumescent fire resistant coating thicknesses, related to the shapes and assemblies associated with this project.**
- 3.12 All supports, cradles, containers, protection and other devices or equipment required for shipment / interim storage and steel erection are part of this scope of work.
- 3.13 **The scope of work includes shipment of all fabricated members to the World Trade Center jobsite. The Subcontractor shall bear all costs associated with shipping the fabricated material to the jobsite, including but not limited to customs costs, dues, customs release bonds, agent fees, demurrage charges, loading and unloading charges at the receiving port(s) in the USA.**



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- 3.14 The Subcontractor is responsible for complying with and implementing the Sustainable Design Requirements and Performance Criteria as described in the contract specifications Section 01352 and Section 05120, 1.05. All submittals must accompany appropriate documentation for compliance with Sustainable Design Guidelines for WTC Redevelopment Projects, dated 25 March 2005, plus errata issued 7 August 2006 and "LEED" (Leadership in Energy and Environmental Design) for New Construction (NC) version 2.1 rating of certified, silver, gold and platinum, as set forth by the US Green Building Council.

Note: The 500 mile restriction on material procurement for structural steel is waived for the structural steel related to this work package.

The structural steel shall contain a minimum of 40 percent (by weight) recycled content calculated by adding the percentage of the post-consumer recycled content to one-half of the percentage of the post-industrial recycled content. Certify the recycle content in accordance with the Sustainable Design Submittal Requirements of specification Section 05120.

Metal deck shall contain a minimum of 25 percent (by weight) recycled content calculated by adding the percentage of post-consumer recycled content to one-half of the post-industrial recycled content percentage. Certify the recycled contents in accordance with the Sustainable Design Submittal Requirements of specification Section 05311.

- 3.15 All connection designs, detailing and erection drawings prepared by the Subcontractor shall be performed under the supervision of a Professional Engineer licensed to practice in the State of New York, USA. **Calculations and Connection Details shall also bear the signature and seal of a Professional Engineer licensed to practice in the State of New York, USA.**
- 3.16 The Subcontractor shall design and provide any stiffeners, doubler plates, reinforcing plates, etc. and connections that may be required to develop and /or transfer the forces and/ or connection design criteria shown on the contract documents.
- 3.17 The Subcontractor shall provide all lifting points, pad eyes and all other necessary handling devices.
- 3.18 The scope of work includes Shop Standards, Shop Details, and Erection Drawings with specific information as described in the contract



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documents. All submittals and drawings shall be provided in the English language and Imperial units.

3.19 All shop drawings and submittals shall be planned and prepared in accordance with specification Division 1, Article 75.

3.20 Steel Mock-Ups

As per specification section 05120 Para 1.06 J., the Subcontractor shall prepare all steel mock-ups, as indicated in the contract documents, to demonstrate the proposed fabrication procedure and verify inspect-ability of each weld within the assembly.

3.21 Structural Steel "Type 1" Samples:

A. **Finished Painted Samples:** Two samples of 12" by 12" by ½ thick steel plates with full penetration groove weld full length plate. Weld shall be ground in accordance with specification Section 05120 Para 2.02 F.2 and plate shall be properly prepared to finish painted in accordance with requirements of specification section 05120.

B. **Required Painted Samples:** (to be prepared in the presence of the Engineer): Two samples of 12" by 12" by ½ inch thick steel plate with full penetration groove weld full length of plate. Plate shall be intentionally damaged with two gouges at least 2 inch long by ¼ inch in depth and repaired. Plate shall be straightened and welds shall be grinded smooth. Plate shall be properly prepared and finished painted in accordance with the requirements of specification Section 05120.

3.22 General Notes:

A. Phoenix Constructors JV and the Owner will not be responsible for loss, breakage or damage to any facilities arising directly or indirectly out of or in conjunction with the work being or to be performed by the Subcontractor. The Subcontractor is responsible for all repairs.

B. Phoenix Constructors JV Procurement personnel must approve all changes in writing before changes are executed by the Subcontractor. Subcontractor will record all changes on the final as-built documents.



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- 3.23** For the purpose of this work, all fabrication shops shall be certified as follows:
- A.** Under the AISC certification program as Category STD (Standard for Steel Building Structures).
 - B.** For members designated on the contract documents as bridge members, the fabrication shop(s) shall be certified under the AISC certification program as Category CBR (Major Steel Bridge).
 - C.** For members designated on the contract documents as FCM's, the fabrication shop(s) shall have a fracture critical endorsement of the AISC if a firm is in the U.S.A.
 - D.** For fabricators located outside the U.S.A. without AISC certification, fabricator shall be certified under a certification program with requirements deemed equivalent to the applicable AISC Category, as determined by the Authority.
 - E.** If prime fabricator subcontracts any portion of the work, the subcontractor is subject to the same requirements as the prime fabricator.
- 3.24** As per specification section 05120 Para 1.08.C.1, the fabricator shall employ a welding consultant responsible for the review or writing all shop and field welding procedures (see also Specification Section 05120 Para 1.07.B.1d). The proposed welding consultant shall be submitted for approval by PANYNJ.
- 3.25** Subcontractor shall employ a Structural Steel Consultant for the sole purpose of checking inter-phase connection details and coordination of steel fabrication among all fabrication facilities and joint venture partners and/or subcontractors to the Prime Subcontractor, including trouble shooting shop fabrication misfits and schedule issues. The proposed Structural Steel Consultant shall be submitted for approval by Phoenix Constructors JV.
- 3.26** The Scope of work includes built in MEP and/or electrical box housings, conduits and mountings into the structural steel elements. The Scope of work includes MEP penetrations, housing and seating as indicated on the drawings and contract documents.



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- 3.27 The Subcontractor is to provide unit prices for lifting and placing equipment that has limited or no access after the steel framing is complete. This equipment would include items such as MEP, escalator, and elevator equipment. The Subcontractor shall hoist and place such equipment at the direction of Phoenix Constructors JV, based on the approved unit rates. See Exhibit 2A for a list of equipment that will potentially require hoisting and placing.
- 3.28 The Structural steel Subcontractor shall furnish and deliver all embedded items as required for structural steel installation. This includes angles, anchor bolt assemblies, plates, bearing plates, channels, etc. that are required to be cast in with concrete pours. These items shall be delivered early, during concrete work by others, and out of sequence with the balance of the project.
- 3.29 The Subcontractor shall furnish and install all support angles or plates required for structural steel framing that are mechanically fastened to the concrete. Reference drawing details for this type of typical conditions.
- 3.30 The Work includes all elevator shaft, escalator and hoist-way related structural steel members. This shall include all elevator support beams that are shown in the contract documents.
- 3.31 The Work shall be furnished and installed in accordance with the contract Drawings and Specifications and subsequent approved drawings prepared by the Architect and/or Engineers for the project. Any deviations from said Drawings and Specifications shall require prior written approval from Phoenix Constructors JV. The cost of any corrective work required as a result of unapproved deviations shall be born solely by the Subcontractor. The Subcontractor shall not perform any extra or unit price work without prior written approval to Phoenix Constructors JV. Any extra work performed without such approval shall not be reimbursed.
- 3.32 The Subcontractor includes all trade specific work unless noted otherwise in this scope of work as being "specifically excluded". All on-site, trade specific work will be governed by New York City Union Labor requirements.
- 3.33 All beam penetrations detailed on the drawings are included in the scope of work. All other penetrations that are not shown on the drawings will be performed as directed by Phoenix per unit price schedule.
- 3.34 The Subcontractor shall be responsible to prepare and "touch-up" painting of all field connections masked out during fabrication, welds, abraded



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areas, and otherwise damaged finish on shop applied paint, primer, or Intumescent fire resistant coating after the erection is complete.

- 3.35** Out of sequence work and "leave outs": this Subcontractor shall, as directed by Phoenix Constructors JV / PANYNJ, omit the erection of designated members as necessary for hoist-ways, material loading locations, temporary holes, shafts, etc. or for operations of other subcontractors. The members are to be stored in approved locations until Phoenix Constructors JV requires their installation. All out of sequence fabrication required for the installation of these omitted members shall be included.
- 3.36** This Subcontractor will cooperate in hoisting for other trades as designated by Phoenix Constructors JV and compensation shall be made directly from those trades to this Subcontractor at reasonable rates listed in the Unit Price Schedule. Should the unit rate not be appropriate, a reasonable rate will be negotiated based on the type of hoisting that is required.
- 3.37** The Scope of work includes mobilization, dismantling and removing of the hoisting equipments (Cranes) from the work area and completing leave out framing as directed by Phoenix Constructors JV.
- 3.38** Mill Order: The Subcontractor shall be prepared to place the steel mill order(s) with the fabrication plant within twenty (20) working days after receipt of the notice of award or subcontract based upon development of a connection engineering model (Tekla / X- Model).
- 3.39** The scope of work includes designing, engineering, procuring, fabricating and installing all temporary support systems and shielding required for the erection and installation of the permanent steel structure, precast concrete members and roof structure, as well as removing and disposing of the same after completion of the work. All temporary support steel to have one coat of primer paint. All design and engineering of the temporary support systems are to be performed under the supervision of a New York State licensed Professional Engineer (PE) and all drawings and calculations of temporary support systems are to be signed and sealed by the New York State licensed PE and submitted for Phoenix Constructors JV and PANYNJ approval prior to implementation.
- 3.40** The scope of work includes shipment of all precast members to the World Trade Center jobsite. The Subcontractor shall bear all costs associated with shipping the fabricated material to the jobsite,



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including but not limited to customs costs, dues, customs release bonds, agent fees, demurrage charges, loading and unloading charges at the receiving port(s) in the USA.

3.41 The drawings and specifications represent and show the required work in detail, integrating all aspects of the Work, including the suggested sequence of the Work, availability of specific areas, access restraints and other relevant field conditions for the erection of the structural steel members, metal deck, precast concrete units and application of intumescent fire resistance coating system.

3.42 Precast Concrete: The Scope of the Work includes supply, fabrication and installation of precast Concrete floor planks, duct units, wall panels and precast stairs in accordance with the drawings, specifications and the contract documents. The scope of work consists of shop drawings, engineering, formwork, off site precasting, curing, trucking to the job site, hoisting and setting the units in place. The scope of work includes supply and installation of elastomeric pads, steel plates and angles welded in place as detailed and shown on contract drawings. The scope of the Work includes supply and installation of stainless steel threaded rods and nuts, drilling and grouting of dowels, grouting of joints and girder splices, as shown on the contract drawings. The precast concrete scope of work includes supply and casting of inserts, dowels, corner angles with welded shear studs and embeds as referenced in the contract documents.

Also included in the Work is the design, furnishing, installation and removal of all temporary support structures required to erect the precast concrete units over the PATH tracks.

3.43 The Scope of Work includes hauling of the fabricated steel and precast concrete members to the job site and preparing and assembling all components in accordance with the Subcontractor's proposed erection method and sequence in accordance with the field conditions and availability of the site, as stated in the contract documents. *The proposed method and sequence of steel and precast concrete erection shall be submitted for Phoenix Constructors JV and PANYNJ approval.*

3.44 For guidance in preparing the Means and Methods Statement and bid proposal, the Subcontractor is advised to refer to the contract drawings, specifications, and documents for full description of the suggested construction phasing, constraints and temporary support systems. The Scope of Work includes the construction phasing,



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temporary protection and shielding described and depicted on the contract documents.

- 3.45** The Scope of work includes, shop drawings, engineering, supply and installation of Metal Deck and shear connectors, pour stops including reinforcing and framing for the openings in the metal deck. The scope of the work includes cutting and fitting of the metal deck to accommodate shop welded lenton coupler sockets and installation of the threaded lenton coupler rods as per contract documents.
- 3.46** The Scope of work includes shop and/or field applied Intumescent coating to all steel members including shop fabricated steel and field connections. Fabricated steel will have shop applied, SSPC-SP10 surface preparation, a primer coat according to the painting specifications that is compatible with the specified Intumescent Coating.
- 3.47** The proposed Intumescent coating material and application to be identical to representative assemblies tested for the fire performance characteristics, according to test method indicated by UL or other testing and inspecting agency acceptable to the Authority. The Subcontractor is responsible for the fire performance testing in order to secure UL ratings/design for all assemblies, as well as the Fire Performance Characteristics tested per ASTM E119, Surface Burning Characteristics tested per ASTM E84 and Rating per building code of New York City for building classification and construction groups, or other New York Department of Building approval acceptable to the Port Authority of New York and New Jersey for use in New York City, USA.
- 3.48** The Scope of the Work includes all supports, cradles, containers, protection and other devices, equipment or material required for storage of material at the fabrication shop or storage area and hauling the material to the job site.
- 3.49** The Scope of the Work includes all engineering, shop drawings, details and erection drawings showing the sequence of erection for all temporary support systems, bracings and other devices necessary for the steel component assembly, erection in place, and permanent connection of the steel trusses, girders, arches and all other members. The Work also includes erection of the temporary work and removal at a later stage.
- 3.50** The Scope of Work includes all supports, cradles, temporary bracings, propping and other devices required to align and stabilize



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steel members during the steel erection process and completion of permanent connections.

- 3.51 The Scope of Work includes leaving part of the temporary supports and stabilizing steel in place, for removal at a later stage as directed by Phoenix Constructors JV. The removal of the temporary support may entail overhead restraints where crane access will not be available. Temporary supports will need to be removed in sections utilizing alternate equipment that will not exceed the loading criteria for the new station mezzanine floor. All submittals, including shop drawings and calculations are to be prepared in accordance with the contract specifications.
- 3.52 All design and erection drawings for temporary construction supports, bracing and rigging shall be prepared by the Subcontractor under the supervision of a Professional Engineer licensed to practice in the State of New York, USA. Drawings and calculations shall also bear the signature and seal of a Professional Engineer licensed to practice in the state of New York, USA.
- 3.53 The Subcontractor shall grind smooth all lifting points, pad eyes and all other necessary handling devices, prepare surface and touch up primer and/or intumescent coating application per contract documents.
- 3.54 All welding, both in the shop and in the field shall be performed by welders, inclusive of all required fire watches, certified by AWS or other agency as acceptable to the Port Authority.
- 3.55 The Subcontractor shall provide for, and include all costs for, off-site storage of all fabricated materials, which are to be kept ready for delivery within 72 hours of notice from Phoenix Constructors JV.
- 3.56 The Subcontractor shall unload all items fabricated under this scope of work and shall place these in a location at the project site designated by Phoenix Constructors JV. There is very limited space on site for storage of material prior to erection.
- 3.57 The Subcontractor shall field measure all conditions affecting his work prior to fabrication unless directed otherwise by Phoenix Constructors JV.
- 3.58 Subcontractor shall survey and verify all dimensions and elevations as indicated on the plans and provide connection detailing calculations and drawings signed and sealed by this Contractor's NY Professional Engineer. Calculations shall be submitted at the same time as the shop



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drawings. Subcontractor is aware of the typical details and requirements of the Engineer and will perform the steel work in accordance with these standards.

- 3.59 Any modification of bracing, shoring, or posting for rigging equipment into the structure must be submitted to and approved by the Engineer and Phoenix Constructors JV. The Structural Engineer employed by this Subcontractor shall provide any calculations or drawings required by local codes or ordinances covering the analysis of any loads imposed to the permanent structure due to rigging equipment and shall affix a licensed professional engineer's seal to same.

The Subcontractor shall submit drawings for approval showing rigging equipment, locations and connection details for any steel that will be added to the structure if required to support the rigging equipment. The Subcontractor shall also submit calculation for approval for all loading conditions for rigging equipment.

- 3.60 Subcontractor shall coordinate his work with that of other trades, as closely as possible, inclusive of power requirements for welding. Coordination meetings with any other trades affected by this Subcontractor's work may be called by Phoenix Constructors JV for this purpose.
- 3.61 Subcontractor must furnish any scaffolding, rigging, labor, tools, tool shed, workers shanties, equipment, etc., that is necessary for the execution of his work, including obtaining permits for same and payment of all fees. Subcontractor is to include in his price two relocations for each of these shanties. The Subcontractor is advised that there is very limited space on site for shanties or field offices.
- 3.62 Subcontractor shall fabricate and install all work true, plumb, and level and any corrective work shall be this Subcontractor's responsibility to correct at no cost to Phoenix Constructors JV.
- 3.63 All materials shall be delivered in manufacturer's/fabricator's original packaging (as applicable), with piece marks to clearly identify the items. Deliveries shall be coordinated with Phoenix Constructors JV. Prior to and following delivery to site, all materials shall be properly stored and protected from weather at all times. The Subcontractor shall be responsible for the handling, storage, protection and security of all equipment and materials supplied under this contract until work is complete and turned over to Phoenix Constructors JV.



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3.64 Subcontractor shall submit a lifting plan showing crane/equipment placement, as well as anticipated loads and crane/equipment capacity. The crane placement and lifting plan shall be signed and sealed by a New York State licensed PE and submitted for Phoenix Constructors JV and PANYNJ approval.

3.65 Organizational Interfaces

Work will be per the drawings and specifications.

3.66 The scope of the Work includes all other work not specifically described but required to perform the above said scope.

3.67 Work Not Included

- Any work specifically noted "NIC" or "NITP" on the contract drawings is excluded from this scope of work.
- Cast in place concrete is not included.
- Demolition of existing structure is not included.

3.68 Work shown as "Mezzanine Level Precast Alternate" instead of cast-in-place concrete to be priced as an "Alternate" for Owner's approval and inclusion in this work package.

3.69 Hours of Work and Platform / Track Outage

Refer PANYNJ Attachment "D" Revision # 0 – October 17, 2008

3.70 Site Conditions and Known Hazards Include, But Are Not Limited To:

- Dust (Eye Protection)
- Poor lighting
- High Voltage
- Tripping Hazards
- Elevated Work Zones (Fall Hazard)
- Work Adjacent to an Active Railroad



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- Work in and around Public Areas.

3.71 Additional Safety Requirements

In addition to the safety requirements contained in the contract documents, the Subcontractor shall adhere and enforce the following:

Subcontractors to submit pre-task plans for any work identified by Phoenix Constructors JV that would warrant such plans.

Abide by the attached WTC Site Traffic Rules and Load Chart attached. Be specifically mindful that pre approval of truck loads is required.

Subcontractor will provide an approved Safety Plan and hold site specific safety meetings. Minutes of these meetings will be provided in a timely manner to Phoenix Constructors JV Safety Department.

Personal Protective Equipment, including but not limited to: Safety Glasses, Work Boots, High Visibility Reflectorized Safety Vests, Gloves, etc. must be worn at all times when in a work area.

Subcontractor to comply with "DOB Rules and Requirements for Crane Inspections"

4. TECHNICAL REQUIREMENTS AND ORDER OF PRECEDENCE

The primary bidding documents for the establishment of the scope of work and for determining construction costs are the Project Drawings, the Project Specifications and other documents as specified in this Subcontract. As such, requirements contained in this summary of the scope of work shall be considered as examples, and not an exhaustive set of requirements. The purpose of highlighting some of the basic requirements is intended to be illustrative, rather than specific or detailed.

If a conflict occurs between this description of work, and the detailed engineering drawings or specifications, the drawings and specifications will take precedence. If a conflict exists between the contract drawings and specifications, the Subcontractor shall promptly provide written notice to Phoenix Constructors JV for resolution before proceeding. Failure to obtain resolution from Phoenix Constructors JV shall result in the Subcontractor proceeding at its own risk.

All Work shall be performed in strict accordance with the Drawings, Specifications, Exhibits, and any other documents, which by this reference are made a part of the Subcontract, including this Statement of Work.



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All inspections by the Owner shall be arranged by Phoenix Constructors JV. Subcontractor shall request such inspection through Phoenix Constructors JV only after the Work is ready for inspection.

4.1 Design Interfaces

Design and detailing of connections, engineering, design and detailing of temporary support structures, designing and implementation within the approved criteria and tolerances, protection shields, working platforms, crane lifting plans and all other elements necessary for the safe erection and installation of the work is included in this scope of work. All design and engineering work for this subcontract shall be performed by New York State licensed and qualified professionals employed by the Subcontractor and subject to approval by the Engineer/ Architect of the Record.

Subcontractor shall submit to Phoenix Constructors JV a Job Hazard Analysis (JHA) for all crane erection and dismantling procedures. This analysis shall include an evaluation of all project specific risks based on actual conditions to be encountered, and a mitigation plan for those tasks.

4.2 Codes and Standards

Reference the information contained in the Drawings and Specifications.

4.3 Specifications

Refer to Exhibit 98

Attachment 'S' Specification "Confidential & Privileged"

Attachment 'A' Specifications "Unrestricted"

4.4 Drawings

Refer to Exhibit 99

Attachment 'S' "Confidential & Privileged"

Attachment 'A' "Unrestricted"

4.5 Exhibits / Attachments

Refer to Exhibit 96



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Attachment letter dated 10/17/2008

Attachments 'A', 'B', 'C', 'D', 'E', 'F', and 'S' dated 10/17/2008

Exhibit 30A – Representation and Certifications

Exhibit 30B – Subcontractor Prequalification Questionnaire

NOTE: Exhibits 30A and 30B **MUST** be completed and originals submitted with the RFP. All signatures **MUST** be original and preferably in BLUE ink, no photocopies.

Refer to Schedule 1 of the Contract for a Complete Listing of the Exhibits.

Upon Contract award, the following Attachments will be issued electronically: 2D, 3, 4, 21A, 21D, 21E, 21F

5 MATERIAL, EQUIPMENT, FURNISHED BY SUBCONTRATOR

5.1 ALL MATERIALS AND EQUIPMENT REQUIRED TO DESIGN, ENGINEER/DETAIL, FABRICATE, DELIVER TO THE JOBSITE, AND ERECT ALL ITEMS LISTED IN SECTION 3.0 AND PRESENTED IN CONTRACT DRAWINGS AND SPECIFICATIONS ARE TO BE FURNISHED BY THE SUBCONTRACTOR.

6 MATERIAL, EQUIPMENT, OR SERVICES FURNISHED BY COMPANY

6.1 Phoenix Constructors JV will furnish or cause to be furnished to Subcontractor, without cost to Subcontractor the items below in connection with performance of the Work:

All labor and equipment required for the maintenance and protection of traffic.

Axis lines and benchmarks shall be provided by Phoenix Constructors JV.

Water & General lighting.

Note: There is limited power available at the jobsite. Subcontractor is responsible for generating and providing any additional or supplemental power required for the performance of his Work.



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7 GENERAL CONDITIONS

7.1 General Notes:

All Work must comply with OSHA, local, state and federal regulations, as well as a project specific requirements defined by Phoenix Constructors JV and the Port Authority.

Subcontractor agrees that the Work shall be executed in accordance with the generally accepted construction practices and is required to *assume sole and complete responsibility for job site conditions during the course of the project, including safety to all persons and property at all times.*

- 7.2** This is a tax exempt project. All materials that will permanently be incorporated into the project at completion shall be tax exempt.
- 7.3** Subcontractor shall familiarize themselves with the Laws, Rules and Regulations regarding Environmental Matters of the Port Authority.
- 7.4** The on-site work is covered by OCIP. All contractors/subcontractors will be subject to approval of the Port Authority of New York and New Jersey (PANYNJ). The Subcontractor shall be able to obtain additional insurances in accordance with the insurance requirements of the Port Authority and the New York Transit Authority. Insurance requirements are available for viewing at the Phoenix Constructors Office.
- 7.5** Subcontractor shall adhere to the M/WBE requirements and percentages as set forth in the contract with the Port Authority.
- 7.6** Subcontractor's work shall be in strict accordance with the Site Quality Control Plan on file at Phoenix Constructors JV office.
- 7.7** Subcontractor's work shall be in strict accordance with the Site Safety Plan – Preliminary Health and Safety Plan (HASP) (Exhibit 15A) included in CD format (enclosed) and on file at Phoenix Constructors JV office.

8 ENGINEERING REQUIREMENTS

- 8.1** Engineering required per the drawings, the specifications and this Statement of Work shall be provided by the Subcontractor.
- 8.2** Furnished by Company



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For reference by the Subcontractor, Phoenix Constructors JV will supply or cause to be supplied the following information to the Subcontractor, without cost to Subcontractor, for or in connection with performance of the Work:

Phoenix Constructors JV Quality Control Plan – Exhibit 18

Phoenix Constructors JV Site Safety Plan – Health and Safety Program - Exhibit 15A

9 PERFORMANCE SCHEDULE AND SEQUENCE OF WORK

9.1 Subcontractor shall commence performance of the Work immediately after receiving Notice to Proceed from Company.

Invitation to Bid Proposals Issued: 11/21/2008

1st Step RFP Pre-bid Meeting 12/3/2008, 1:00 PM EST

1st Step RFP; Bidder's Questions/RFC – "Last Request Date":12/04/2008

1st Step RFP; Bidder's Questions/RFC – "Last Response Date":12/05/2008

1st Step RFP Pre-Qualification Package Due Date: 12/09/2008

Short List Offerors (Bidders):12/10/2008 thru 12/12/2008

Inform Short List Bidders Approved for 2nd Step Bidding Process. 12/12/08

2nd Step RFP Mandatory Pre-bid Meeting / Site Visit by Invitation only: 12/16/2008 thru 12/17/2008

**2nd Step RFP Issued to Selected Offerors (Bidders):
12/16/2008 thru 12/17/2008**

2nd Step RFP; Bidder's Questions/RFC – "Last Request Date":1/30/2009

2nd Step RFP; Bidder's Questions/RFC – "Last Response Date":2/5/2009

2nd Step, RFP Due Date: 2/9/2009



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Open Bids: 2/10/2009

Bid Review: 2/10/2009 thru 2/18/2009

Final Meeting with Selected Offerors (Bidders) & Request
clarifications/BAFO: 2/20/2009 thru 2/23/2009

Clarifications / BAFO from Selected Bidders: 2/24/2009 thru
3/4/2009

Oral Presentations by Selected Bidders: TBD

Finalize and Recommend for Award: 3/05/2009 thru 3/13/2009

Anticipated Contract Award date: 3/17/2009

9.2 Time for completion:

The below dates and Milestone dates referenced in Attachment "C" dated
10/17/2008 are tentative dates to be used for planning purposes only.

(A) Work Area 1 - Path Hall Steel: 3rd Quarter 2010

(B) Work Area 2 - 1 Line Subway Box Steel: 3rd Quarter 2010

(C) Work Area 3 - Transit Hall Steel: 4th Quarter 2011

10 REPORTING REQUIREMENTS AND COORDINATION MEETINGS

Subcontractor shall promptly submit the schedules and reports as work is
completed as set forth below.

10.1 Schedules and Reports

Contract Daily Report (See Exhibit "21A").

All other schedules and reports as required elsewhere in this Contract.

10.2 Other Meetings

Subcontractor participation in certain nonproductive activities shall be
required. These activities shall include, but not be limited to:

Upon award of this Contract, Subcontractor shall be required to
attend, a pre-construction meeting, prior to mobilization, at the job-



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site, or at another local location to be determined upon Contract award.

Indoctrination and orientation of all Subcontractors' employees prior to commencing work at the jobsite. (This includes the entire labor force and all new hires).

World Trade Center Site Identification Badging Process run by the Port Authority of New York and New Jersey is required for all Subcontractors' employees who will require access to the construction site. This process involves a background check and attendance at a mandatory safety class provided by the Port Authority.

A weekly gang box safety meeting shall be organized and conducted by Subcontractor and attended by all of Subcontractor's craft employees prior to commencement of work. Subcontractor shall be responsible for arranging and conducting this meeting with its craft employees.

11 DATA REQUIREMENTS

11.1 For all PCJV supplied documentation, one (1) copy only of such documentation will be provided by PCJV to Subcontractor.

11.2 Subcontractor shall submit the following data to PCJV as part of the Scope of Work:

Safety Program for review prior to commencement of Work.

All necessary QA/QC documentation as the work progresses.

QC Plan in accordance with Article 14.0, titled "Quality Control", subparagraph 14.2 for review prior to commencement of work.

11.3 Subcontractor's performance of his obligations hereunder shall not be deemed complete until Company is in receipt, on proper forms, of all Technical Data, As-Built Drawings, and other documents to be submitted to Company as part of Subcontractor's Scope of Work. Failure of Subcontractor to comply with the above data requirements will entitle Company to withhold any progress payment, or final payment, pending Company's receipt of all the above data without prejudice to any other remedy of Company.

Subcontractor's Initials _____

Company's Initials _____



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- 11.4 All submittals (shop drawings, calculations, etc) shall be provided in English and Standard (Imperial) units and shall be in accordance with all USA standards (AISC, AWS, etc) as per the contract specifications.
- 11.5 Subcontractor shall show the Company Contract Number and identifying item numbers, if applicable, on all data submitted pursuant to this Article 11.0.

12 COMMUNICATIONS

All communications pursuant to or in connection with this Contract shall be identified by PCJV's Contract Number and shall be communicated as set forth below:

12.1 Contractual Notices

All contractual notices given under this Contract shall be sufficient if in writing and delivered in person to an officer of the party to be notified, or sent to the party to be notified, addressed as set forth below, by registered mail, telex, facsimile or cable. Telexes, facsimiles and cables must be confirmed in writing within three (3) days thereafter.

Contractual notices to PCJV shall be addressed to Company's Project Office set forth herein:

Phoenix Constructors JV
 115 Broadway, 16th Floor
 New York, NY 10006
 Attn: Brian Reilly
 646-467-7127 (phone)

With copy sent to:

Phoenix Constructors JV
 115 Broadway, 18th Floor
 New York, NY 10006
 Attn: Javed I. Qureshi
 646-467-7219 (phone)
 212-566-2350 (fax)

Contractual notices to Subcontractor shall be addressed to Subcontractor's Address set forth herein marked Attn.: TBD

13 CLEAN-UP SAFETY, WORK RULES AND REGULATIONS

Subcontractor's Initials _____

Company's Initials _____



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13.1 Cleanup

Subcontractor shall at all times keep its work area in a neat, clean and safe condition and remove from the Owner's premises and the vicinity thereof and properly dispose of all debris and rubbish caused by Subcontractor's operations. Upon completion of the Work, Subcontractor shall promptly return unused materials furnished by PCJV and remove from Owner's premise all of Subcontractor's equipment, material, scaffolding and like items, leaving Owner's premises and the vicinity clean, safe and ready for use.

In the event Subcontractor shall fail to maintain its work area as described above and in a manner satisfactory to Company, or to effect such cleanup or removal immediately after receipt of written notice to do so, PCJV shall have the right without further notice to Subcontractor to perform such cleanup and remove such items on behalf of, at the risk of and at the expense of Subcontractor. Company may store items removed at a place of its choosing on behalf of Subcontractor and at Subcontractor's risk and expense. PCJV will promptly notify Subcontractor of such place of storage. Subcontractor shall promptly reimburse Company for the costs of such cleanup, removal and storage.

13.2 Safety

All Subcontractors working on the WTC Permanent PATH Terminal HUB Project shall have in effect their own safety plan and shall designate a Safety Manager / Representative. At a minimum, the Subcontractor's Safety Manager / Representative, shall have completed OSHA 30-Hour safety training. The Subcontractor's Safety Manager / Representative should also provide Phoenix Constructors JV with any other safety certifications or competent person training related to the trade of work. The Subcontractor's Safety Manager / Representative shall be on site at any times the Subcontractor's work force is on site.

Subcontractor's Safety Manager / Representative shall be responsible for initiating the safety program, ensuring that jobsite safety requirements and procedures are being accomplished, conducting safety inspections of Work being performed, and documenting safety activities. The Safety Manager / representative will also be responsible for a continuing survey of its operations, to ensure that the probable causes of injury or

Subcontractor's Initials _____

Company's Initials _____



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accident are controlled and that operating equipment, tools and facilities are used, inspected and maintained as required by applicable safety and health regulations.

PCJV and Owner will have the right to stop Work whenever safety violations are observed which could jeopardize the well being of personnel and equipment. The expense of any such Work stoppage and resultant standby time shall be borne solely by the Subcontractor. The failure or refusal of Subcontractor to correct the observed violation may result in the termination of the Contract, and/or the dismissal from the jobsite of those responsible for such failure or refusal.

Subcontractor shall submit to Phoenix Constructors, prior to the commencement of any work, a detailed pre-task plan indicating how the Subcontractor shall comply with Phoenix Constructors' 100% tie-off policy for all work conducted at heights greater than or equal to 6'-0" above a solid surface. This plan shall include but not be limited to details on methodology for the tie-off of individuals engaged in connecting, bolting and decking. Subcontractor shall also outline how it intends to use manlifts and personnel netting.

Subcontractor shall provide to PCJV a copy of all reports made to government agencies or insurance companies relating to any jobsite accident or injury during Subcontractor's performance of the Work.

13.3 Work Rules and Regulations

Subcontractor shall comply with all work rules and regulations set forth in Exhibit 15A, entitled Health and Safety Program (HASP) Manual (CD).

13.4 Hazardous Substances

Subcontractor shall comply with applicable hazardous substance disclosure requirements set forth in Exhibit "16" entitled HAZARDOUS AND TOXIC SUBSTANCES DISCLOSURE REQUIREMENTS.

13.5 OSHA Permits and Programs

Subcontractor shall initiate and maintain such permits and programs as may be necessary to comply with requirements set forth by the Occupational Safety and Health Administration (OSHA) and any other

Subcontractor's Initials _____

Company's Initials _____



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local, state and federal regulations, and the rules and regulations of the Port Authority.

A copy of all permits will be provided by Company prior to commencement of Work at the jobsite. If OSHA permits are not required to perform Work, a letter shall be submitted to Company prior to commencement of Work at the jobsite stating that no permits are required.

14 QUALITY CONTROL

- 14.1 Subcontractor shall be responsible for the performance of all shop / field inspections and testing activities. Subcontractor shall adhere to the Project Quality Procedures contained in Article 80 of Exhibit 97.
- 14.2 All Shop and field fabrication inspection shall be carried out by certified inspectors employed and paid by the Subcontractor.
- 14.3 The Subcontractor or supplier is to submit for approval a Quality Plan acceptable to both the Phoenix Constructors JV (PCJV) and the Port Authority of New York and New Jersey (PANYNJ). The Plan is to be compliant with Article 80 of Contract WTC284.458 GC and the FTA-IT-90-5001-02.1 - Quality Assurance and Quality Control Guidelines available on www.fta.dot.gov. The Plan is to include implementation procedures, checklists, and reporting forms as necessary to detail the specifics of the Quality Activities. Subcontractors will be responsible for their own Quality Control and subject to audit by PCJV and the PANYNJ. The Subcontractor or supplier is to submit for approval a Quality Manager by name, who is independent of production forces. The qualifications and documentation of qualifications must accompany the submittal. Subcontractors electing to comply with the PCJV Quality Plan contained in Exhibit 18 in lieu of their own must do so by affidavit agreeing to comply with the PCJV Plan and all subsequent revisions. Implementation Procedures, reporting forms, and checklists will still be required for categories of work not already covered under the PCJV Plan.

15 CONSTRUCTION

Subcontractor shall provide, institute, and/or implement the following:

15.1 Security Program

Subcontractor is responsible for the security of its workers, tools, materials and equipment on (and to and from) the jobsite. All small tools

Subcontractor's Initials _____

Company's Initials _____



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and construction equipment belonging to Subcontractor must be clearly identified as such. Tools including personal tools are subject to inspection.

15.2 Construction Area Limits

PCJV and other Regulatory Agencies will designate the boundary limits of access roads, storage areas, and construction areas. Subcontractor shall not trespass in or on areas not so designated. Subcontractor shall be responsible for keeping all of its personnel out of areas not designated for Subcontractor's use.

15.3 Water Pollution

Subcontractor shall, at its expense, provide suitable facilities to prevent the introduction of any substances or materials into any stream, lake or other body of water which may pollute the water or constitute substances or materials deleterious to fish and wildlife.

15.4 Air Pollution

Subcontractor shall perform its Work so as not to discharge into the atmosphere from any source whatever smoke, dust, or other air contaminants in violation of the laws, rules and regulations of the governmental entities having jurisdiction.

15.5 Ventilating

Prevent hazardous accumulations of dust, fumes, mists, vapors or gases in areas occupied during construction;

Provide local ventilation to prevent harmful accumulation of hazardous substances into atmosphere of occupied areas;

Dispose of materials in manner that will not result in harmful exposure to persons or disrupt or otherwise effect operation of existing facilities.

Ventilate storage spaces containing hazardous, volatile or temperature sensitive materials.

15.6 Site Signs



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Identification signboards and notices for safety or instruction are permitted on site only after approval of PCJV for format, location and quantity.

END OF SCOPE OF WORK



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PROPOSAL FOR WORK AREA 1, PATH STATION

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

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1.0 PAYMENT SCHEDULE

Full compensation to Subcontractor for full and complete performance by Subcontractor of all the Work, compliance with all terms and conditions of this Subcontract, and for Subcontractor's payment of all obligations incurred in, or applicable to, performance of the Work, shall be the sum of the following lump sums and the value of the unit prices set forth below, for adjusting future additions / deletions from the contractual scope.

1.1 Firm Fixed Price

The undersigned, having examined the proposed RFP / Contract documents for the work package referenced above and having visited the job site and examined the conditions affecting the work, hereby proposes and agrees to furnish all labor, materials, equipment, and appliances, and to perform operations necessary to complete the work as required by said proposed RFP / contract documents " Station Construction and Transit Hall Structure to Grade - Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work.

A. Work Package # 20, Furnish, Fabricate and Erect, Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work
PROPOSAL FOR WORK AREA 1, PATH STATION

The total price for performing all work is \$ _____ this is (in words) _____ dollars.

B. Alternate Option - Furnish, Fabricate and Install Precast Concrete Floor and Walls instead of Cast in Place Concrete as indentified and depicted on the Contract drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1, S1413-1 & S1414-1

The total price for performing all work is \$ _____ this is (in words) _____ dollars.

The Price is firm and fixed for the duration of the Subcontract and is not subject to escalation for any cause. The price shall be furnished in US dollars and are not subject to change based upon currency fluctuations. Payment for actual quantities at the Unit Price shall constitute full payment for the performance of the Subcontract and covers all cost of whatever nature incurred by the Subcontractor in accomplishing the Work in accordance with the provisions of this Subcontract.



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PROPOSAL FOR WORK AREA 1, PATH STATION

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

Phoenix Constructors JV and Port Authority of New York and New Jersey has the exclusive right at their discretion to select and choose any single or combination of different proposals from the same or more than one bidder for the award. The bidders must consider and have appropriate allowance in their proposals for coordination and review of connection details at the common boundary lines for adjacent work packages, of the Work Package #20, WP#21 & WP# 9 & 9X, In addition to coordination with other WTC site stakeholders, i.e., memorial, towers 1,2,3 & 4, VOEC...

NOTE ** This pricing format MUST be used**

All prices shall be furnished in US Dollars and are not subject to change based upon world currency fluctuations.

| | DESCRIPTION | UM | Total |
|----|---|----------|-------|
| 1 | Total Weight of Permanent Steel | US Ton | |
| 2 | Steel Material | Lump Sum | \$ |
| 3 | Steel Fabrication | Lump Sum | \$ |
| 4 | Intumescent Fire Resistant Coating | Lump Sum | \$ |
| 5 | Shipping and Handling FOB Job Site | Lump Sum | \$ |
| 6 | Steel Erection Labor | Lump Sum | \$ |
| 7 | Metal Deck and Studs Labor and Material | Lump Sum | \$ |
| 8 | Precast Concrete Labor and Material | Lump Sum | \$ |
| 9 | Erection Equipment | Lump Sum | \$ |
| 10 | Temporary Construction | Lump Sum | \$ |
| 11 | Engineering | Lump Sum | \$ |
| 12 | Quality Control | Lump Sum | \$ |
| 13 | Total Bid Price | Lump Sum | \$ |

Instructions: i. Insert in line 1 the US tonnage of the permanent steel fabricated and erected.



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ii. The value in row 13 to be equal to the total bid price.

| | | | |
|----------|---|-----------------|-----------|
| A | <u>ALTERNATE OPTION</u> <u>Labor and Material</u> Precast Concrete Floor & Walls Instead of Cast in Place Concrete as indentified and depicted on the contract documents. Reference Drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1, S1413-1, S1414-1 | Lump Sum | \$ |
| B | Total Precast Alternate Option | Lump Sum | \$ |

1.1.1 To assist in the analysis of this proposal, the following information is **REQUIRED TO BE COMPLETED** by the Bidders. Failure to comply with this shall be considered Non Responsive RFP.

| FOR ANALYSIS ONLY | | | |
|-------------------|--|----------|-----------------|
| No. | Description | Quantity | Unit of Measure |
| 1A | Permanent Steel – Special Shape Exposed Steel | | LBS. |
| 1B | Permanent Steel – Standard Profile Steel and Built up Section. | | LBS |
| 2 | Temporary Supports System for Steel Erection | | LBS |
| 3 | Metal Deck | | SQ. Ft |
| 4 | Precast Concrete Floor Slab | | SQ. Ft |
| 5a | Precast Concrete Slab Ducts, Type A1 to A5 | | No. |
| 5b | Precast Concrete Slab Ducts, Type B1 to B5 | | No. |
| 5c | Precast Concrete Slab Ducts, Type C1 to C5 | | No. |
| 5d | Precast Concrete Slab Ducts, Type D1 to D5 | | No. |
| 6 | Precast Concrete Wall Units | | SQ. Ft |



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| | | | |
|----|--|--|--------|
| 7 | Precast Concrete Stair Units | | No. |
| 8 | Intumescent Coating | | SQ. Ft |
| 9 | Paint coating excluding area covered by Intumescent coating. | | SQ. Ft |
| | | | |
| 10 | Alternate Option - Precast Concrete Floor & Walls | | SQ. Ft |

1. In the case of Item No. 1A and 1B the quantity shall be the number of pounds of structural steel to be fabricated / erected; Line Item No.2 Temporary support system for steel erection; No. 3 square feet of Metal Deck to be installed; Line Item No.4 Total square feet of Precast Concrete Floor Slab Installed; Item No. 5a, 5b & 5c Total number of typical Precast Concrete Slab ducts (Sections identified as 5a, 5b, 5c & 5d) installed; Item No.6 Precast Concrete wall units in square feet; Item No. 7 Precast Concrete Stair units; Item No.8 total square feet of Intumescent Coating applied; No. 9 Total square feet of painted steel excluding steel covered by Intumescent coating. Item No.10 Alternate Option - Precast Concrete floor & Walls
2. In order to be eligible for the award of the structural steel work of this work package, the bidder must meet the following requirements:
 - A. The bid proposal must include Method Statement for Steel Fabrication including detailed information on all facilities to be used. Steel Erection methodology to include proposed temporary support structure, type and location of crane / lifting devices / sequence of steel erection, transferring load to permanent structure. The method statement to include basic steel erection sequence including milestone dates for compliance with the project schedule.
 - B. The bid proposal must include resumes of the Key Personnel allocated for this project including Project Manager, Shop & field Superintendents, Shop and Field Quality Control Managers, and person in-charge of Steel fabrication at the fabrication facility and Steel erection in the field.
 - C. Specification Sec. 07816 'Epoxy Intumescent Coating System' Page 4 Article 5. Submit at the time of the bid , the properties of the proposed product, on the manufacture's letterhead for each of the items listed below:
 - a). Tensile Strength: ASTM D638.
 - b). Bond Strength: ASTM D1002.



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- c). Compressive Strength: ASTM D695
- d). Explosion: No delamination, no cracking when tested four bar over pressure test.
- e). Hardness: ASTM D2240
- f). Chemical Resistance: ISO2812-1
- g). Water Absorption: ISO 2812-2
- h). Flame Spread: Class A (Class 1) when tested in accordance with ASTM E84
- i). Smoke Development: Class A (Class 1) when tested with ASTM e84

The undersigned understands and agrees to comply with and be bound by the subcontractors pricing and instructions and other RFP/ contract documents.

The Undersigned acknowledges the receipt of any addendum issued by listing all by number below:

The following Unit rates to be submitted with the RFP. Unit Rates to be inclusive of all material and labor costs. Unit Rates are fixed for the full duration of the contract.

| No. | Description | Unit | Rate | |
|-----|--|--------------|---------|--------------|
| | Shop Drawing and Engineering | Per Man hour | | |
| | Supply of additional Steel Beams Up to 12# / Inft 13 - 25# / Inft 26 - 50# / Inft | Per Ton | Furnish | Installation |



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| | | | |
|--|---------|---------|--------------|
| 51 - 100# / Inft | | | |
| 101 - 150# / Inft | | | |
| 151 - 200# / Inft | | | |
| 200 - 300# / Inft | | | |
| 300 - 398# / Inft | | | |
| Above 398# / Inft | | | |
| Sheer Studs - Furnish | Each | Furnish | Installation |
| Weld-able Lenton Couplers with Rod | Each | Furnish | Installation |
| <u>Columns</u> | Per Ton | Furnish | Installation |
| Up to 100# / Inft | | | |
| 101 - 200# / Inft | | | |
| 201 - 300# Inft | | | |
| 301 - 398# Inft | | | |
| Above 398# / Int | | | |
| Plating of WF Columns (Plating only, not WF Columns) | Per Ton | Furnish | Installation |
| 1/2" | | | |
| 1" | | | |
| 2" | | | |
| 3" | | | |
| 4" | | | |
| 6" | | | |



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| 8" | | | |
|---|--------------|---------|--------------|
| Plate Girders and Built Up Columns. (50 ksi, 65 ksi) including stiffeners. | Per Ton | Furnish | Installation |
| 1" Plates | | | |
| 2" Plates | | | |
| 3" Plates | | | |
| 4" Plates | | | |
| 5" Plates | | | |
| 6" Plates | | | |
| 8" Plates | | | |
| Shop Fabrication of Steel Including Primer Paint | Per Ton | | |
| Field Fabrication of Steel Including primer Paint | Per Ton | | |
| Shop Applied Intumescent Coating Including Surface Preparation and Base Primer | Per SQ. Ft. | | |
| Field Applied Intumescent Coating Including Surface Preparation and Base Primer | Per SQ. Ft. | | |
| Welding: 1/4 inch Fillet weld | Per Lin. Ft. | | |
| Welding: 5/16 inch Fillet Weld | Per Lin. Ft. | | |
| Welding: 1/2 inch Fillet Weld | Per Lin. Ft. | | |
| Welding : over 1/2 inch Fillet Weld | Per Lin. Ft. | | |
| Welding: 1/2 inch thick plate - Full | Per Lin. Ft. | | |



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| | | | | |
|--|---|--------------|--|--|
| | Pen. | | | |
| | Welding: 3/4 inch plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 1 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 2 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 3 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 4 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 5 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 6 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 7 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 8 inch thick plate - Full pen. | Per Lin. Ft. | | |
| | Utility Penetration through Steel Elements including reinforcement and stiffeners. Opening size | Each | | |
| | Opening under 6"x 6" | Each | | |
| | Opening size 6" x 6" | Each | | |
| | Opening size 8" x 8" | Each | | |
| | Opening size 8" x 12" | Each | | |
| | Opening size 12"x 18" | Each | | |
| | Opening size 18" x 24" | Each | | |



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| | | | | |
|--|---|------------------|---------|--------------|
| | Opening size 24"x 24" | Each | | |
| | Opening size 24" x 30" | Each | | |
| | Opening size 30"x 30" | Each | | |
| | Temporary overhead Shielding Protection at active platforms for construction Phasing | Per SQ. Ft. | | |
| | Temporary Barricade/ Protection Walls at Active Platforms | Per SQ. Ft. | Furnish | Installation |
| | Precast Concrete Unit - Typical Floor Planks | Per SQ. FT | Furnish | Installation |
| | Precast Concrete Units Type A1 to A5 Type B1 to B5 Type C1 to C5 Type D1 to D5 | Each | Furnish | Installation |
| | Precast Concrete Wall Units | SQ. Ft | | |
| | Precast Concrete Stair Units | Per Riser | | |
| | Unit rate per Crane pick as directed by Phoenix Loads under 5 Ton Loads over 5 Ton MEP Equipment: (8) Power Distribution Centers 6'- 6"W x 8'- 0"H x 8'- 0"D 4,000lbs each | Each Single Unit | | |



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| | | | | |
|--|--|--|--|--|
| | <p>(32) Power Distribution Centers 6'-0" x 8'- 0"H x 8'- 0"D 5,000 lbs each</p> <p>(6) 15KV Paralleling Switchgear 11'-0"W x 8'- 0"H x 8'- 0"D 10,000 lbs each</p> <p>(6) 2000KW, 13.8 KV Diesel Generator 21'- 0"L x 11'- 0"H x 8'- 0" D 45,000 lbs each</p> <p>(1) Generator Load Bank 12'- 0"L x 8'- 0"H x 6'- 0"D 19,000 lbs each</p> <p>(5) 2150 KVA Cast Coil Transformers 12'-0"W x 8'- 6"H x 6'-0"D 19,200 lbs each</p> <p>(5)Low Voltage Switchgear 4'-0"W x 8'-0"H x 6'-0"D 3500lbs each</p> <p>(10) Low Voltage Switchgear 5'-0"W x 8'-0"H x 6'-0"D 9,000lbs each</p> <p>(5) 15 KV Primary Switch 4'-0"W x 8'-6"H x 6'-8"D 3000lbs each</p> | | | |
|--|--|--|--|--|

Proposer:

Company Name: _____

By: (Officer) _____

Address: _____



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Date of Proposal: _____ Corporate Seal:

1.2 Supplemental Unit Rates, All-in Rates and Cost/Price Assumptions

No changes are authorized from the approved scope, unless they are approved in writing by the PC (i.e., co-signed amendment), prior to the time of execution.

When changes occur from the anticipated job site, the following unit rates will be used to negotiate changes which shall also be finalized through the PC as firm fixed price.

All pricing assumptions shall be clearly stated to allow a reviewer to assess the potential cost risks associated with the proposed design, and associated construction efforts.

1.3 Financial Terms

1.3.1 See Subcontract.

2.0 INVOICING INSTRUCTIONS

- 2.1 Invoices/Requisitions must be submitted by the 3rd day of each month to reflect work through the last Sunday of the previous month. Invoice/Requisitions received after the 3rd day will not be processed until the following month.
- 2.2 Contractual retention, calculated as ten percent of amount invoiced, shall be identified on the face of each progress invoice and withheld from amounts payable.
- 2.3 Subcontractor shall submit separate invoices in original and one copy complete with all supporting documentation (Exhibit 3 Partial Payment and Release, Exhibit 2A, Subcontractor Pricing and Invoicing Instructions, Appendix A, Schedule of Values) to Contractor's Office Address marked:

Phoenix Constructors, JV
115 Broadway
18th Floor
New York, NY 10006
Attn: Javed Qureshi



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- 2.4 Subcontractor's invoices shall be clearly marked with this Subcontract Number and the appropriate milestone description of activities and/or work related to the billing.
- 2.5 Subcontractor's invoices shall indicate the time period during which the Work was performed for which the invoice is submitted.
- 2.6 Phoenix Constructors JV shall not be obligated to pay for invoice items not fully supported by approved progress measurements and any other such documentation as may be required. PCJV reserves the right to make provisional payment on an invoice in dispute, pending audit and reconciliation of the total charge.
- 2.7 Subcontractor shall sign each invoice certifying that all Work covered by the invoice is complete and that the invoice is correct, authentic and the only one issued for the Work described therein.
- 2.8 Any payments made shall not be construed to be an acceptance of defective Work nor relieve Subcontractor of any of its obligations.
- 2.9 Invoices for Cost-Reimbursable Work shall be prepared and submitted as follows:
 - 2.9.1 Invoices for Labor shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing workers name, classification, and straight time and overtime hours. Labor categories and rates must correspond to those set forth in Rate Schedule "A" of this Exhibit 2A.
 - 2.9.2 Invoices for Subcontractor-Owned Equipment shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing the equipment type, number, size and hours. Equipment descriptions and rates must correspond to those set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110)
 - 2.9.3 Invoices for Subcontractor Rented Equipment shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing equipment type, number, size and hours along with a copy of Subcontractor's rental agreement and invoice from supplier. The applicable markup as set forth in this Exhibit 2A shall be set forth separately.



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2.9.4 Invoices for Materials shall be accompanied by field receiving documentation and a copy of Subcontractor's purchase order and invoice from supplier.

3.0 PRICING FOR CHANGES

Compensation to Subcontractor for changes in the Scope of Work, shall be in accordance with the provisions of Article 8, Change Orders of GC Long Form Subcontract Rev. 0, except to the extent otherwise provided below:

Phoenix Constructors JV may request, and Subcontractor shall provide, proposals for Scope of Work changes (additions and deletions) which are priced, at Phoenix Constructors JV option, by one or a combination of the following methods:

- a. Negotiated Lump Sums based upon a mutually agreed Scope of Work.
- b. Applicable unit prices set forth in Exhibit B, titled, Contract Unit Rates, if the Work is possible to be fairly classified under the Unit Price items.
- c. Negotiated Unit Prices not established in the Contract.
- d. On a "cost-reimbursement plus a fixed fee" basis, or at the labor and equipment rates as set forth in Rate Schedule "A" and "B".

3.1 Lower Tier Subcontracts

- 3.1.1 All subcontracts and services provided by others for performance of changes or extra work requested by Phoenix Constructors JV, which have not been objected to by PCJV shall be at actual cost to Subcontractor of such subcontracts or services provided by others (not to exceed such subcontract price) plus a mark-up for all overhead and fee of Subcontractor thereon which shall not exceed 10%.
- 3.1.2 *Subcontractor's invoices for work performed by any of Subcontractor's "lower tier subcontractors" may include an allowance for the "lower tier subcontractor's" overhead and fee which shall not exceed 10%.*
- 3.1.3 In no instance shall the mark-ups or rates for changes provided by lower tier subcontractor to Subcontractor exceed the mark-ups or rates for changes as stipulated in this Article 3.0.

3.2 Materials



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- 3.2.1 Compensation to Subcontractor for materials supplied by Subcontractor for incorporation into the permanent facility (excluding consumable, expendable, and small tools) shall be at actual invoiced cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by PCJV, plus a mark-up, for all fee and overhead expense not to exceed 10%.
- 3.2.2 Phoenix Constructors JV reserves the right to provide, at no cost to Subcontractor, materials, equipment, services, supplies or incidentals required to perform the Work. All refunds, trade discounts, rebates on materials, supplies and services, and all monies obtained from the disposal of surplus materials or supplies shall accrue to Owner.
- 3.3 **Labor**
Compensation to Subcontractor for construction labor, related costs and profit shall be in accordance with the rates set forth in Rate Schedule "A" entitled ALL INCLUSIVE LABOR RATES attached and incorporated herein.
- 3.4 **Equipment Rental**
3.4.1 Equipment rental rates, as set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110) shall apply for equipment used for extra work requested by Contractor.

Hourly rental for those items of equipment listed in the "Rental Rate 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 of 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.



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When utilizing the rental rates appearing in the Blue Book, the Phoenix Constructors JV (or Authority 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 if tool, equipment construction aid used on a particular Work package shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of tool, equipment or construction aid, or substitute item of equipment is at the construction site for use by the Phoenix Constructors JV or subcontractors whether under this Contract if any other contract with the Authority. Included within this period will be (i) work days of idleness results from acts or omission of the PCJV, Authority or third persons, breakdowns in the tool, equipment or construction aid or any other cause (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of tool, delivery to the construction site of the same substitute tool, equipment or construction aide. The number of workdays in the period for each rate shall be as indicated below:

| | |
|---|--------------|
| Three work days or less | Daily Rate |
| More than three work days but not more than fifteen work days | Weekly Rate |
| More than fifteen work days | Monthly Rate |

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 daily rental | 1/8 of Daily Rental from Blue Book |
| Hourly rate based on weekly rental | 1/40 of Weekly Rental from Blue Book |
| 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 Phoenix Constructor JV (or Authority Engineer) should determine that the nature, number of pieces or size of the tool, equipment or construction aid used by the Subcontractor 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 Phoenix Constructors JV (or Authority Engineer) to be suitable for the Work, the reasonable rental will not be based upon the tool, equipment or construction aid used by the Subcontractor but will be based on the smallest quantity or smallest or least elaborate tool equipment or construction aid determined by the Phoenix Constructors JV (or Authority 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, (b) with respect to Work performed in New Jersey, the taxes on the rental actually paid by the Subcontractor or lower tier subcontractor and (c) notwithstanding the number of hours during which such of tool, equipment or construction aid is utilized, the minimum rental therefore will be for a period of eight hours.

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

- 3.4.2 For equipment which is specifically mobilized to the jobsite for extra work, Subcontractor shall separately identify such transportation costs (including: loading, off-loading, assembly and disassembly) when submitting proposals to Phoenix Constructors JV for performing extra work. Transportation costs shall not be applicable to equipment already mobilized on the site.
- 3.4.3 When Subcontractor's equipment does not resemble the equipment having rental rates listed in Rate Schedule "B" for extra work, the rental rate shall be negotiated and agreed upon in writing by Phoenix Constructors JV.
- 3.4.4 Compensation to Subcontractor for equipment used for extra work which is rented from third parties and does not resemble the equipment having rental rates listed in the "Rental Rate Blue Book" must be approved by Phoenix Constructors JV in writing prior to rental and shall be at actual cost to Subcontractor, delivered to



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project site, as substantiated by invoices certified paid or by such documentation as may be required by Phoenix Constructors JV plus a mark-up, for all profit and overhead expense of Subcontractor thereon, of not to exceed 10%.

3.5 Time Sheets

3.5.1 For all work performed on a cost-reimbursable basis, Subcontractor shall submit daily time sheets for approval by Phoenix Constructors JV. An approved copy of the time sheets, which shall detail all hours worked, materials installed and equipment used, must be submitted in support of Subcontractor's monthly billing.

4.0 Rate Schedules

4.1 Rate Schedule "A" - All Inclusive Labor Rates

4.2 Rate Schedule "B" - Equipment Rental Rates

4.3 Rate Schedule "C" - List of SubSubcontractors



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RATE SCHEDULE "A"

ALL INCLUSIVE LABOR RATES

NOTES

1. **VACATION:** Includes vacations, statutory holidays, sick and other leave with pay.
2. **ALLOWANCES:** Includes workers compensation, unemployment insurance, and other taxes and insurance's measured by payroll, established employee benefits such as pension, health and life insurance's, bonus programs (excluding profit sharing), union assessments (if any), training funds, and industry and administration funds.
3. **OVERHEAD AND PROFIT:** Calculated on the base rate, overhead includes all home office and jobsite supervision above the level of general foreman and other non-manual personnel costs and all temporary, construction facilities shall not exceed 10%.
4. **ALL INCLUSIVE RATE:** Based on ____ (To be completed in by Offerer) hours per week ____ (To be completed in by Offerer) hours per day, ____ (To be completed in by Offerer) days per week.
5. **TRAVEL ALLOWANCE:** N/A
6. **OVERTIME:** The overtime rate per hour shall be limited to the actual cost to Subcontractor of the premium portion only of all applicable wages, craft fringe benefits and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Subcontractor shall submit supporting documents satisfactory in form and content to Contractor for its verification and approval. If only one overtime rate is shown, it shall be applicable for all overtime hours.
7. **LABOR RATES** entered in the above schedule shall be based on labor agreements, if any, and rates in effect on the Proposal closing date, unless otherwise noted. The quoted labor rates may be adjusted as approved by Contractor to reflect subsequent changes in labor agreements or rates if applicable.
8. No Charges will be accepted by Contractor for labor not listed in Rate Schedule "A".
9. Labor rates for stand-by time when specifically ordered by Contractor shall be at ____% (To be completed in by Offerer) inclusive rates in this Rate Schedule "A" less the profit portion thereof.
10. Subcontractor shall not invoice for field support/supervisory personnel assigned to a change in the Scope of Work if the change does not extend the time such personnel are required on site by the original Scope of Work.



RFP/CONTRACT NO.: W0TC-GC1-2-KN0186-020

**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK**

PROPOSAL FOR WORK AREA 1, PATH STATION

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| Item Description | Unit | Quantity | Rate | Total Price | Tax | Subtotal | Material | Overhead | Profit |
|--|------|----------|------|-------------|-----|----------|----------|----------|--------|
| Iron Worker- Journey Man | | | | | | | | | |
| Foreman - Iron Worker. Journey Man | | | | | | | | | |
| Crane Operator | | | | | | | | | |
| Oiler | | | | | | | | | |
| Welder | | | | | | | | | |
| Draftsman | | | | | | | | | |
| Shop Fabrication labor | | | | | | | | | |
| Dock Builder - Journey Men | | | | | | | | | |
| Foremen - Dock Builder Journey Men | | | | | | | | | |
| Carpenter | | | | | | | | | |
| Carpenter Foreman | | | | | | | | | |
| Mason | | | | | | | | | |
| Mason Foreman | | | | | | | | | |
| Lather | | | | | | | | | |
| Lather Foreman | | | | | | | | | |



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RATE SCHEDULE "B"

EQUIPMENT RENTAL RATE

NOTES

1. Rate Schedule "B" identifies all Subcontractor owned and rented equipment (excluding non powered hand tools) that may be used by Subcontractor in performance of the Work.
2. Rate Schedule "B" shall be calculated in accordance to Exhibit 2A clause 3.4.1.
3. Subcontractor shall, prior to rental of any equipment for changes in the scope, submit a stated value for the equipment being rented.
4. No payment shall be made for equipment which is not operating because it is broken down or undergoing repair, maintenance or overhaul.



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**EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS
RATE SCHEDULE "C"**

LIST OF SUBSUBCONTRACTORS

The following is a detailed list of the subSubcontractors proposed for the Work.

Once Contractor has given its non-objection the subSubcontractors listed below shall not be changed except with Contractor's written approval.

| <u>SubSubcontractor</u> | <u>Description of Work</u> | <u>Union or Trade Affiliation, if any</u> |
|-------------------------|----------------------------|---|
|-------------------------|----------------------------|---|

1.0 Percentage of Work performed by Subcontractor's own forces: ____ (To be completed by Offerer)

2.0 Percentage of Work performed by subSubcontractors: ____ (To be completed by Offerer)



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- 3.0 Contractor reserves the right to request financial information and work experience histories of the proposed subSubcontractors.

END OF EXHIBIT 2



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

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1.0 PAYMENT SCHEDULE

Full compensation to Subcontractor for full and complete performance by Subcontractor of all the Work, compliance with all terms and conditions of this Subcontract, and for Subcontractor's payment of all obligations incurred in, or applicable to, performance of the Work, shall be the sum of the following lump sums and the value of the unit prices set forth below, for adjusting future additions / deletions from the contractual scope.

1.1 Firm Fixed Price

The undersigned, having examined the proposed RFP / Contract documents for the work package referenced above and having visited the job site and examined the conditions affecting the work, hereby proposes and agrees to furnish all labor, materials, equipment, and appliances, and to perform operations necessary to complete the work as required by said proposed RFP / contract documents " Station Construction and Transit Hall Structure to Grade - Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work.

A. Work Package # 20, Furnish, Fabricate and Erect, Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work
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The total price for performing all work is \$ _____ this is (in words) _____ dollars.

The Price is firm and fixed for the duration of the Subcontract and is not subject to escalation for any cause. The price shall be furnished in US dollars and are not subject to change based upon currency fluctuations. Payment for actual quantities at the Unit Price shall constitute full payment for the performance of the Subcontract and covers all cost of whatever nature incurred by the Subcontractor in accomplishing the Work in accordance with the provisions of this Subcontract.

Phoenix Constructors JV and Port Authority of New York and New Jersey has the exclusive right at their discretion to select and choose any single or combination of different proposals from the same or more than one bidder for the award. The bidders must consider and have appropriate allowance in their proposals for coordination and review of connection details at the common boundary lines for adjacent work packages,



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of the Work Package #20, WP#21 & WP# 9 & 9X, In addition to coordination with other WTC site stakeholder, i.e., memorial, towers 1,2,3 & 4, VOEC ...

NOTE ** This pricing format MUST be used**

All prices shall be furnished in US Dollars and are not subject to change based upon world currency fluctuations.

| | Bid Breakdown Summary | | B 1- Line Subway Box | C Transit Hall | D B+C |
|----|---|----------|----------------------------|----------------------|----------|
| | DESCRIPTION | UM | | | Total |
| 1 | Total Weight of Permanent Steel | US Ton | | | |
| 2 | Steel Material | Lump Sum | \$ | \$ | \$ |
| 3 | Steel Fabrication | Lump Sum | \$ | \$ | \$ |
| 4 | Intumescent Fire Resistant Coating | Lump Sum | \$ | \$ | \$ |
| 5 | Shipping and Handling FOB Job Site | Lump Sum | \$ | \$ | \$ |
| 6 | Steel Erection Labor | Lump Sum | \$ | \$ | \$ |
| 7 | Metal Deck and Studs Labor and Material | Lump Sum | \$ | \$ | \$ |
| 8 | Precast Concrete Labor and Material | Lump Sum | \$ | \$ | \$ |
| 9 | Erection Equipment | Lump Sum | \$ | \$ | \$ |
| 10 | Temporary Construction | Lump Sum | \$ | \$ | \$ |



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| | | | | | |
|----|-----------------|----------|----|----|----|
| 11 | Engineering | Lump Sum | \$ | \$ | \$ |
| 12 | Quality Control | Lump Sum | \$ | \$ | \$ |
| 13 | Total Bid Price | Lump Sum | \$ | \$ | \$ |

Instructions:

- i. Insert in line 1 the US tonnage of the permanent steel to be fabricated and erected
- ii. Insert in line 2 thru 13 the US dollar value of the work described
- iii. Insert in line D the sum of columns B and C for each row 1 thru 12
- iv. Insert in row 13 the sum of total of rows 2 thru 12 each column B and C
- v. Insert in cell 13D the sum of total of cells 2D thru 12D. This shall be equal to the sum of total cells 13B thru 13C
- vi. The value in cell 13D must be equal to the Bid amount.

1.1.1 To assist in the analysis of this proposal, the following information is **REQUIRED TO BE COMPLETED** by the Bidders. Failure to comply with this shall be considered Non Responsive RFP.

| FOR ANALYSIS ONLY | | | |
|-------------------|--|----------|-----------------|
| No. | Description | Quantity | Unit of Measure |
| 1A | Permanent Steel – Special Shape Exposed Steel | | LBS |
| 1B | Permanent Steel – Standard Profile Steel and Built up Section. | | LBS |
| 1C | Permanent Steel – 1-Line Steel | | LBS |
| 2 | Temporary Supports System for Steel Erection | | LBS |
| 3 | Metal Deck | | SQ. Ft |
| 4 | Precast Concrete Floor Slab | | SQ. Ft |
| 5 | Left Blank – not Applicable | N/A | N/A |



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| | | | |
|---|--|--|--------|
| 6 | Precast Concrete Wall Units | | SQ. Ft |
| 7 | Precast Concrete Stair Units | | No. |
| 8 | Intumescent Coating | | SQ. Ft |
| 9 | Paint coating excluding area covered by Intumescent coating. | | SQ. Ft |
| | | | |

1. In the case of Item No., 1B and 1C the quantity shall be the number of pounds of structural steel to be fabricated / erected; Line Item No.2 Temporary support system for steel erection; No. 3 square feet of Metal Deck to be installed; Line Item No.4 Total square feet of Precast Concrete Floor Slab Installed; Item No. 5 is left blank as not applicable ; Item No.6 Precast Concrete wall units in square feet; Item No. 7 Precast Concrete Stair units; Item No.8 total square feet of Intumescent Coating applied; No. 9 Total square feet of painted steel excluding steel covered by Intumescent coating.
2. In order to be eligible for the award of the structural steel work of this work package, the bidder must meet the following requirements:
 - A. The bid proposal must include Method Statement for Steel Fabrication including detailed information on all facilities to be used. Steel Erection methodology to include proposed temporary support structure, type and location of crane / lifting devices / sequence of steel erection, transferring load to permanent structure. The method statement to include basic steel erection sequence including milestone dates for compliance with the project schedule.
 - B. The bid proposal must include resumes of the Key Personnel allocated for this project including Project Manager, Shop & field Superintendents, Shop and Field Quality Control Managers, and person in-charge of Steel fabrication at the fabrication facility and Steel erection in the field.
 - C. Specification Sec. 07816 'Epoxy Intumescent Coating System' Page 4 Article 5. Submit at the time of the bid , the properties of the proposed product, on the manufacture's letterhead for each of the items listed below:
 - a). Tensile Strength: ASTM D638.
 - b). Bond Strength: ASTM D1002.
 - c). Compressive Strength: ASTM D695



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- d). Explosion: No delamination, no cracking when tested four bar over pressure test.
- e). Hardness: ASTM D2240
- f). Chemical Resistance: ISO2812-1
- g). Water Absorption: ISO 2812-2
- h). Flame Spread: Class A (Class 1) when tested in accordance with ASTM E84
- i). Smoke Development: Class A (Class 1) when tested with ASTM e84

The undersigned understands and agrees to comply with and be bound by the subcontractors pricing and instructions and other RFP/ contract documents.

The Undersigned acknowledges the receipt of any addendum issued by listing all by number below:

The following Unit rates to be submitted with the RFP. Unit Rates to be inclusive of all material and labor costs. Unit Rates are fixed for the full duration of the contract.

| No. | Description | Unit | Rate | |
|-----|--|--------------|---------|--------------|
| | Shop Drawing and Engineering | Per Man hour | | |
| | Supply of additional Steel Beams Up to 12# / lnft | Per Ton | Furnish | Installation |
| | 13 - 25# / lnft | | | |
| | 26 - 50# / lnft | | | |
| | 51 - 100# / lnft | | | |



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| | | | |
|--|---------|---------|--------------|
| 101 - 150# / Inft | | | |
| 151 - 200# / Inft | | | |
| 200 - 300# / Inft | | | |
| 300 - 398# / Inft | | | |
| Above 398# / Inft | | | |
| Sheer Studs - Furnish | Each | Furnish | Installation |
| Weld-able Lenton Couplers with Rod | Each | Furnish | Installation |
| <u>Columns</u> | Per Ton | Furnish | Installation |
| Up to 100# / Inft | | | |
| 101 - 200# / Inft | | | |
| 201 - 300# Inft | | | |
| 301 - 398# Inft | | | |
| Above 398# / Inft | | | |
| Plating of WF Columns (Plating only, not WF Columns) | Per Ton | Furnish | Installation |
| 1/2" | | | |
| 1" | | | |
| 2" | | | |
| 3" | | | |
| 4" | | | |
| 6" | | | |
| 8" | | | |



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| | | | |
|---|--------------|---------|--------------|
| Plate Girders and Built Up Columns. (50 ksi, 65 ksi) including stiffeners. | Per Ton | Furnish | Installation |
| 1" Plates | | | |
| 2" Plates | | | |
| 3" Plates | | | |
| 4" Plates | | | |
| 5" Plates | | | |
| 6" Plates | | | |
| 8" Plates | | | |
| Shop Fabrication of Steel Including Primer Paint | Per Ton | | |
| Field Fabrication of Steel Including primer Paint | Per Ton | | |
| Shop Applied Intumescent Coating Including Surface Preparation and Base Primer | Per SQ. Ft. | | |
| Field Applied Intumescent Coating Including Surface Preparation and Base Primer | Per SQ. Ft. | | |
| Welding: 1/4 inch Fillet weld | Per Lin. Ft. | | |
| Welding: 5/16 inch Fillet Weld | Per Lin. Ft. | | |
| Welding: 1/2 inch Fillet Weld | Per Lin. Ft. | | |
| Welding : over 1/2 inch Fillet Weld | Per Lin. Ft. | | |
| Welding: 1/2 inch thick plate - Full Pen. | Per Lin. Ft. | | |



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| | | | | |
|--|---|--------------|--|--|
| | Welding: 3/4 inch plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 1 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 2 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 3 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 4 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 5 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 6 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 7 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 8 inch thick plate - Full pen. | Per Lin. Ft. | | |
| | Utility Penetration through Steel Elements including reinforcement and stiffeners. Opening size | Each | | |
| | Opening under 6"x 6" | Each | | |
| | Opening size 6" x 6" | Each | | |
| | Opening size 8" x 8" | Each | | |
| | Opening size 8" x 12" | Each | | |
| | Opening size 12"x 18" | Each | | |
| | Opening size 18" x 24" | Each | | |
| | Opening size 24"x 24" | Each | | |



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| | | | | |
|--|---|------------------|---------|--------------|
| | Opening size 24" x 30" | Each | | |
| | Opening size 30"x 30" | Each | | |
| | Temporary overhead Shielding Protection at active platforms for construction Phasing | Per SQ. Ft. | | |
| | Temporary Barricade/ Protection Walls at Active Platforms | Per SQ. Ft. | Furnish | Installation |
| | Precast Concrete Unit – Typical Floor Planks | Per SQ. FT | Furnish | Installation |
| | Precast Concrete Wall Units | SQ. Ft | | |
| | Precast Concrete Stair Units | Per Riser | | |
| | Unit rate per Crane pick as directed by Phoenix Loads under 5 Ton Loads over 5 Ton MEP Equipment: (8) Power Distribution Centers 6'- 6"W x 8'- 0"H x 8'- 0"D 4,000lbs each (32) Power Distribution Centers 6'-0" x 8'- 0"H x 8'- 0"D 5,000 lbs each (6) 15KV Paralleling Switchgear 11'-0"W x 8'- 0"H x 8'- 0"D 10,000 lbs each (6) 2000KW, 13.8 KV Diesel Generator 21'- 0"L x 11'- 0"H x 8'- 0" D 45,000 lbs each | Each Single Unit | | |



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| | | | |
|--|--|--|--|
| <p>(1) Generator Load Bank 12'- 0"L x 8'- 0"H x 6'- 0"D 19,000 lbs each</p> <p>(5) 2150 KVA Cast Coil Transformers 12'-0"W x 8'- 6"H x 6'-0"D 19,200 lbs each</p> <p>(5)Low Voltage Switchgear 4'-0"W x 8'-0"H x 6'-0"D 3500lbs each</p> <p>(10) Low Voltage Switchgear 5'-0"W x 8'-0"H x 6'-0"D 9,000lbs each</p> <p>(5) 15 KV Primary Switch 4'-0"W x 8'-6"H x 6'-8"D 3000lbs each</p> | | | |
|--|--|--|--|

Proposer:

Company Name: _____

By: (Officer) _____

Address: _____

Date of Proposal: _____ Corporate Seal:

1.2 Supplemental Unit Rates, All-in Rates and Cost/Price Assumptions

No changes are authorized from the approved scope, unless they are approved in writing by the PC (i.e., co-signed amendment), prior to the time of execution.

When changes occur from the anticipated job site, the following unit rates will be used to negotiate changes which shall also be finalized through the PC as firm fixed price.



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All pricing assumptions shall be clearly stated to allow a reviewer to assess the potential cost risks associated with the proposed design, and associated construction efforts.

1.3 **Financial Terms**

1.3.1 See Subcontract.

2.0 **INVOICING INSTRUCTIONS**

- 2.1 Invoices/Requisitions must be submitted by the 3rd day of each month to reflect work through the last Sunday of the previous month. Invoice/Requisitions received after the 3rd day will not be processed until the following month.
- 2.2 Contractual retention, calculated as ten percent of amount invoiced, shall be identified on the face of each progress invoice and withheld from amounts payable.
- 2.3 Subcontractor shall submit separate invoices in original and one copy complete with all supporting documentation (Exhibit 3 Partial Payment and Release, Exhibit 2A, Subcontractor Pricing and Invoicing Instructions, Appendix A, Schedule of Values) to Contractor's Office Address marked:

Phoenix Constructors, JV
115 Broadway
18th Floor
New York, NY 10006
Attn: Javed Qureshi
- 2.4 Subcontractor's invoices shall be clearly marked with this Subcontract Number and the appropriate milestone description of activities and/or work related to the billing.
- 2.5 Subcontractor's invoices shall indicate the time period during which the Work was performed for which the invoice is submitted.
- 2.6 Phoenix Constructors JV shall not be obligated to pay for invoice items not fully supported by approved progress measurements and any other such documentation as may be required. PCJV reserves the right to make provisional payment on an invoice in dispute, pending audit and reconciliation of the total charge.



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- 2.7 Subcontractor shall sign each invoice certifying that all Work covered by the invoice is complete and that the invoice is correct, authentic and the only one issued for the Work described therein.
- 2.8 Any payments made shall not be construed to be an acceptance of defective Work nor relieve Subcontractor of any of its obligations.
- 2.9 Invoices for Cost-Reimbursable Work shall be prepared and submitted as follows:
- 2.9.1 Invoices for Labor shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing workers name, classification, and straight time and overtime hours. Labor categories and rates must correspond to those set forth in Rate Schedule "A" of this Exhibit 2A.
- 2.9.2 Invoices for Subcontractor-Owned Equipment shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing the equipment type, number, size and hours. Equipment descriptions and rates must correspond to those set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110)
- 2.9.3 Invoices for Subcontractor Rented Equipment shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing equipment type, number, size and hours along with a copy of Subcontractor's rental agreement and invoice from supplier. The applicable markup as set forth in this Exhibit 2A shall be set forth separately.
- 2.9.4 Invoices for Materials shall be accompanied by field receiving documentation and a copy of Subcontractor's purchase order and invoice from supplier.

3.0 PRICING FOR CHANGES

Compensation to Subcontractor for changes in the Scope of Work, shall be in accordance with the provisions of Article 8, Change Orders of GC Long Form Subcontract Rev. 0, except to the extent otherwise provided below:

Phoenix Constructors JV may request, and Subcontractor shall provide, proposals for Scope of Work changes (additions and deletions) which are priced, at Phoenix Constructors JV option, by one or a combination of the following methods:



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- a. Negotiated Lump Sums based upon a mutually agreed Scope of Work.
- b. Applicable unit prices set forth in Exhibit B, titled, Contract Unit Rates, if the Work is possible to be fairly classified under the Unit Price items.
- c. Negotiated Unit Prices not established in the Contract.
- d. On a "cost-reimbursement plus a fixed fee" basis, or at the labor and equipment rates as set forth in Rate Schedule "A" and "B".

3.1 Lower Tier Subcontracts

- 3.1.1 All subcontracts and services provided by others for performance of changes or extra work requested by Phoenix Constructors JV, which have not been objected to by PCJV shall be at actual cost to Subcontractor of such subcontracts or services provided by others (not to exceed such subcontract price) plus a mark-up for all overhead and fee of Subcontractor thereon which shall not exceed 10%.
- 3.1.2 Subcontractor's invoices for work performed by any of Subcontractor's "lower tier subcontractors" may include an allowance for the "lower tier subcontractor's" overhead and fee which shall not exceed 10%.
- 3.1.3 In no instance shall the mark-ups or rates for changes provided by lower tier subcontractor to Subcontractor exceed the mark-ups or rates for changes as stipulated in this Article 3.0.

3.2 Materials

- 3.2.1 Compensation to Subcontractor for materials supplied by Subcontractor for incorporation into the permanent facility (excluding consumable, expendable, and small tools) shall be at actual invoiced cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by PCJV, plus a mark-up, for all fee and overhead expense not to exceed 10%.
- 3.2.2 Phoenix Constructors JV reserves the right to provide, at no cost to Subcontractor, materials, equipment, services, supplies or incidentals required to perform the Work. All refunds, trade discounts, rebates on materials, supplies and services, and all monies obtained from the disposal of surplus materials or supplies shall accrue to Owner.



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METAL DECK & PRECAST CONCRETE WORK

SINGLE COMBINED PROPOSAL FOR WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

3.3 Labor

Compensation to Subcontractor for construction labor, related costs and profit shall be in accordance with the rates set forth in Rate Schedule "A" entitled ALL INCLUSIVE LABOR RATES attached and incorporated herein.

3.4 Equipment Rental

3.4.1 Equipment rental rates, as set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110) shall apply for equipment used for extra work requested by Contractor.

Hourly rental for those items of equipment listed in the "Rental Rate 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 of 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.

When utilizing the rental rates appearing in the Blue Book, the Phoenix Constructors JV (or Authority 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 construction aid used on a particular Work package shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of tool, equipment or construction aid, or substitute item of equipment is at the construction site for use by the Phoenix Constructors JV or subcontractors whether under this Contract if any other contract with the Authority. Included within this period will be (i) work days of idleness results from acts or omission of the PCJV, Authority or third persons, breakdowns in the tool, equipment or construction aid or any other cause (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of tool, delivery to the construction site of the same substitute



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tool, equipment or construction aide. The number of workdays in the period for each rate shall be as indicated below:

| | |
|---|--------------|
| Three work days or less | Daily Rate |
| More than three work days but not more than fifteen work days | Weekly Rate |
| More than fifteen work days | Monthly Rate |

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 daily rental | 1/8 of Daily Rental from Blue Book |
| Hourly rate based on weekly rental | 1/40 of Weekly Rental from Blue Book |
| Hourly rate based on monthly rental | 1/176 of Monthly Rental from Blue Book |

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 Phoenix Constructor JV (or Authority Engineer) should determine that the nature, number of pieces or size of the tool, equipment or construction aid used by the Subcontractor 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 Phoenix Constructors JV (or Authority Engineer) to be suitable for the Work, the reasonable rental will not be based upon the tool, equipment or construction aid used by the Subcontractor but will be based on the smallest quantity or smallest or least elaborate tool equipment or construction aid determined by the Phoenix Constructors JV (or Authority Engineer) to have been suitable for the performance of the work.



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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, (b) with respect to Work performed in New Jersey, the taxes on the rental actually paid by the Subcontractor or lower tier subcontractor and (c) notwithstanding the number of hours during which such of tool, equipment or construction aid is utilized, the minimum rental therefore will be for a period of eight hours.

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

- 3.4.2 For equipment which is specifically mobilized to the jobsite for extra work, Subcontractor shall separately identify such transportation costs (including: loading, off-loading, assembly and disassembly) when submitting proposals to Phoenix Constructors JV for performing extra work. Transportation costs shall not be applicable to equipment already mobilized on the site.
- 3.4.3 When Subcontractor's equipment does not resemble the equipment having rental rates listed in Rate Schedule "B" for extra work, the rental rate shall be negotiated and agreed upon in writing by Phoenix Constructors JV.
- 3.4.4 Compensation to Subcontractor for equipment used for extra work which is rented from third parties and does not resemble the equipment having rental rates listed in the "Rental Rate Blue Book" must be approved by Phoenix Constructors JV in writing prior to rental and shall be at actual cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by Phoenix Constructors JV plus a mark-up, for all profit and overhead expense of Subcontractor thereon, of not to exceed 10%.

3.5 Time Sheets

- 3.5.1 For all work performed on a cost-reimbursable basis, Subcontractor shall submit daily time sheets for approval by Phoenix Constructors JV. An approved copy of the time sheets, which shall detail all hours worked, materials installed and equipment used, must be submitted in support of Subcontractor's monthly billing.

4.0 Rate Schedules

- 4.1 Rate Schedule "A" - All Inclusive Labor Rates
- 4.2 Rate Schedule "B" - Equipment Rental Rates



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4.3 Rate Schedule "C" - List of SubSubcontractors



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

RATE SCHEDULE "A"

ALL INCLUSIVE LABOR RATES

NOTES

1. VACATION: Includes vacations, statutory holidays, sick and other leave with pay.
2. ALLOWANCES: Includes workers compensation, unemployment insurance, and other taxes and insurance's measured by payroll, established employee benefits such as pension, health and life insurance's, bonus programs (excluding profit sharing), union assessments (if any), training funds, and industry and administration funds.
3. OVERHEAD AND PROFIT: Calculated on the base rate, overhead includes all home office and jobsite supervision above the level of general foreman and other non-manual personnel costs and all temporary, construction facilities shall not exceed 10%.
4. ALL INCLUSIVE RATE: Based on ____ (To be completed in by Offerer) hours per week ____ (To be completed in by Offerer) hours per day, ____ (To be completed in by Offerer) days per week.
5. TRAVEL ALLOWANCE: N/A
6. OVERTIME: The overtime rate per hour shall be limited to the actual cost to Subcontractor of the premium portion only of all applicable wages, craft fringe benefits and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Subcontractor shall submit supporting documents satisfactory in form and content to Contractor for its verification and approval. If only one overtime rate is shown, it shall be applicable for all overtime hours.
7. LABOR RATES entered in the above schedule shall be based on labor agreements, if any, and rates in effect on the Proposal closing date, unless otherwise noted. The quoted labor rates may be adjusted as approved by Contractor to reflect subsequent changes in labor agreements or rates if applicable.
8. No Charges will be accepted by Contractor for labor not listed in Rate Schedule "A".
9. Labor rates for stand-by time when specifically ordered by Contractor shall be at ____% (To be completed in by Offerer) inclusive rates in this Rate Schedule "A" less the profit portion thereof.
10. Subcontractor shall not invoice for field support/supervisory personnel assigned to a change in the Scope of Work if the change does not extend the time such personnel are required on site by the original Scope of Work.



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| Item Description | Unit | Quantity | Rate | Total Price | Material | Labor | Overhead | Profit |
|--|------|----------|------|-------------|----------|-------|----------|--------|
| Iron Worker- Journey Man | | | | | | | | |
| Foreman - Iron Worker. Journey Man | | | | | | | | |
| Crane Operator | | | | | | | | |
| Oiler | | | | | | | | |
| Welder | | | | | | | | |
| Draftsman | | | | | | | | |
| Shop Fabrication labor | | | | | | | | |
| Dock Builder - Journey Men | | | | | | | | |
| Foremen - Dock Builder Journey Men | | | | | | | | |
| Carpenter | | | | | | | | |
| Carpenter Foreman | | | | | | | | |
| Mason | | | | | | | | |
| Mason Foreman | | | | | | | | |
| Lather | | | | | | | | |
| Lather Foreman | | | | | | | | |



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RATE SCHEDULE "B"

EQUIPMENT RENTAL RATE

NOTES

1. Rate Schedule "B" identifies all Subcontractor owned and rented equipment (excluding non powered hand tools) that may be used by Subcontractor in performance of the Work.
2. Rate Schedule "B" shall be calculated in accordance to Exhibit 2A clause 3.4.1.
3. Subcontractor shall, prior to rental of any equipment for changes in the scope, submit a stated value for the equipment being rented.
4. No payment shall be made for equipment which is not operating because it is broken down or undergoing repair, maintenance or overhaul.



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS
RATE SCHEDULE "C"

LIST OF SUBSUBCONTRACTORS

The following is a detailed list of the subSubcontractors proposed for the Work.

Once Contractor has given its non-objection the subSubcontractors listed below shall not be changed except with Contractor's written approval.

| <u>SubSubcontractor</u> | <u>Description of Work</u> | <u>Union or Trade Affiliation, if any</u> |
|-------------------------|----------------------------|---|
|-------------------------|----------------------------|---|

1.0 Percentage of Work performed by Subcontractor's own forces: ____ (To be completed by Offerer)

2.0 Percentage of Work performed by subSubcontractors: ____ (To be completed by Offerer)



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- 3.0 Contractor reserves the right to request financial information and work experience histories of the proposed subSubcontractors.

END OF EXHIBIT 2



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

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1.0 PAYMENT SCHEDULE

Full compensation to Subcontractor for full and complete performance by Subcontractor of all the Work, compliance with all terms and conditions of this Subcontract, and for Subcontractor's payment of all obligations incurred in, or applicable to, performance of the Work, shall be the sum of the following lump sums and the value of the unit prices set forth below, for adjusting future additions / deletions from the contractual scope.

1.1 Firm Fixed Price

The undersigned, having examined the proposed RFP / Contract documents for the work package referenced above and having visited the job site and examined the conditions affecting the work, hereby proposes and agrees to furnish all labor, materials, equipment, and appliances, and to perform operations necessary to complete the work as required by said proposed RFP / contract documents " Station Construction and Transit Hall Structure to Grade - Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work.

A. ALTERNATE OPTION BASE BID PROPOSAL: Work Areas 1+2+3

Work Package # 20, Furnish, Fabricate and Erect, Structural Steel, Intumescent Fire Resistant Coating, Metal Deck & Precast Concrete Work
SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

The total price for performing all work is \$ _____ this is (in words) _____ dollars.

B. Alternate Option - Furnish, Fabricate and Install Precast Concrete Floor and Walls instead of Cast in Place Concrete as indentified and depicted on the Contract drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1, S1413-1 & S1414-1

The total price for performing all work is \$ _____ this is (in words) _____ dollars.



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**ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

The Price is firm and fixed for the duration of the Subcontract and is not subject to escalation for any cause. The price shall be furnished in US dollars and are not subject to change based upon currency fluctuations. Payment for actual quantities at the Unit Price

shall constitute full payment for the performance of the Subcontract and covers all cost of whatever nature incurred by the Subcontractor in accomplishing the Work in accordance with the provisions of this Subcontract.

Phoenix Constructors JV and Port Authority of New York and New Jersey has the exclusive right at their discretion to select and choose any single or combination of different proposals from the same or more than one bidder for the award. The bidders must consider and have appropriate allowance in their proposals for coordination and review of connection details at the common boundary lines for adjacent work packages, of the Work Package #20, WP#21 & WP# 9 & 9X, In addition to coordination with other WTC site stakeholders, i.e., memorial, tower 1,2,3 & 4, VOEC...

NOTE ** This pricing format MUST be used**

All prices shall be furnished in US Dollars and are not subject to change based upon world currency fluctuations.

| | Bid Breakdown Summary | | A | B | C | D |
|---|------------------------------------|----------|--------------|--------------------|--------------|-------|
| | | | Path Station | 1- Line Subway Box | Transit Hall | A+B+C |
| | DESCRIPTION | UM | | | | TOTAL |
| 1 | Total Weight of Permanent Steel | US Ton | | | | |
| 2 | Steel Material | Lump Sum | \$ | \$ | \$ | \$ |
| 3 | Steel Fabrication | Lump Sum | \$ | \$ | \$ | \$ |
| 4 | Intumescent Fire Resistant Coating | Lump Sum | \$ | \$ | \$ | \$ |



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | | | | |
|----|---|----------|----|----|----|----|
| 5 | Shipping and Handling FOB Job Site | Lump Sum | \$ | \$ | \$ | \$ |
| 6 | Steel Erection Labor | Lump Sum | \$ | \$ | \$ | \$ |
| 7 | Metal Deck and Studs Labor and Material | Lump Sum | \$ | \$ | \$ | \$ |
| 8 | Precast Concrete Labor and Material | Lump Sum | \$ | \$ | \$ | \$ |
| 9 | Erection Equipment | Lump Sum | \$ | \$ | \$ | \$ |
| 10 | Temporary Construction | Lump Sum | \$ | \$ | \$ | \$ |
| 11 | Engineering | Lump Sum | \$ | \$ | \$ | \$ |
| 12 | Quality Control | Lump Sum | \$ | \$ | \$ | \$ |
| 13 | Total Bid Price | Lump Sum | \$ | \$ | \$ | \$ |

Instructions:

- i. Insert in line 1 the US tonnage of the permanent steel to be fabricated
- ii. Insert in line 2 thru 13 the US dollar value of the work described
- iii. Insert in line D the sum of columns A+ B+C for each row 1 thru 12
- iv. Insert in row 13 the sum of total of rows 2 thru 12 each column A, B, and C
- v. Insert in cell 13D the sum of total of cells 2D thru 12D. This shall be equal to the sum of total cells 13A thru 13C
- vi. The value in cell 13D must be equal to the Bid amount.



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | |
|---|---|----------|----|
| A | ALTERNATE OPTION <u>Labor and Material</u> Precast Concrete Floor & Walls Instead of Cast in Place Concrete as indentified and depicted on the contract documents. Reference Drawings: S1311-1, S1312-1, S1313-1, S1314-1, S1411-1, S1412-1, S1413-1, S1414-1 | Lump Sum | \$ |
| B | Total Precast Alternate Option | Lump Sum | \$ |

1.1.1 To assist in the analysis of this proposal, the following information is **REQUIRED TO BE COMPLETED** by the Bidders. Failure to comply with this shall be considered Non Responsive RFP.

| FOR ANALYSIS ONLY | | | |
|-------------------|--|----------|-----------------|
| No. | Description | Quantity | Unit of Measure |
| 1A | Permanent Steel – Special Shape Exposed Steel | | LBS. |
| 1B | Permanent Steel – Standard Profile Steel and Built up Section. | | LBS |
| 1C | Permanent Steel – 1-Line Steel | | LBS |
| 2 | Temporary Supports System for Steel Erection | | LBS |
| 3 | Metal Deck | | SQ. Ft |
| 4 | Precast Concrete Floor Slab | | SQ. Ft |
| 5a | Precast Concrete Slab Ducts, Type A1 to A5 | | No. |
| 5b | Precast Concrete Slab Ducts, Type B1 to B5 | | No. |
| 5c | Precast Concrete Slab Ducts, Type C1 to C5 | | No. |
| 5d | Precast Concrete Slab Ducts, Type D1 to | | No. |



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | |
|----|--|--|--------|
| | D5 | | |
| 6 | Precast Concrete Wall Units | | SQ. Ft |
| 7 | Precast Concrete Stair Units | | No. |
| 8 | Intumescent Coating | | SQ. Ft |
| 9 | Paint coating excluding area covered by Intumescent coating. | | SQ. Ft |
| | | | |
| 10 | Alternate Option - Precast Concrete Floor & Walls | | SQ. Ft |

1. In the case of Item No. 1A, 1B and 1C the quantity shall be the number of pounds of structural steel to be fabricated / erected; Line Item No.2 Temporary support system for steel erection; No. 3 square feet of Metal Deck to be installed; Line Item No.4 Total square feet of Precast Concrete Floor Slab Installed; Item No. 5a, 5b & 5c Total number of typical Precast Concrete Slab ducts (Sections identified as 5a, 5b, 5c & 5d) installed; Item No.6 Precast Concrete wall units in square feet; Item No. 7 Precast Concrete Stair units; Item No.8 total square feet of Intumescent Coating applied; No. 9 Total square feet of painted steel excluding steel covered by Intumescent coating. Item No.10 Alternate Option - Precast Concrete floor & Walls
2. In order to be eligible for the award of the structural steel work of this work package, the bidder must meet the following requirements:
 - A. The bid proposal must include Method Statement for Steel Fabrication including detailed information on all facilities to be used. Steel Erection methodology to include proposed temporary support structure, type and location of crane / lifting devices / sequence of steel erection, transferring load to permanent structure. The method statement to include basic steel erection sequence including milestone dates for compliance with the project schedule.
 - B. The bid proposal must include resumes of the Key Personnel allocated for this project including Project Manager, Shop & field Superintendents, Shop and Field Quality Control Managers, and person in-charge of Steel fabrication at the fabrication facility and Steel erection in the field.
 - C. Specification Sec. 07816 'Epoxy Intumescent Coating System' Page 4 Article 5. Submit at the time of the bid , the properties of the proposed product, on the manufacture's letterhead for each of the items listed below:



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

- a). Tensile Strength: ASTM D638.
- b). Bond Strength: ASTM D1002.
- c). Compressive Strength: ASTM D695
- d). Explosion: No delamination, no cracking when tested four bar over pressure test.
- e). Hardness: ASTM D2240
- f). Chemical Resistance: ISO2812-1
- g). Water Absorption: ISO 2812-2
- h). Flame Spread: Class A (Class 1) when tested in accordance with ASTM E84
- i). Smoke Development: Class A (Class 1) when tested with ASTM e84

The undersigned understands and agrees to comply with and be bound by the subcontractors pricing and instructions and other RFP/ contract documents.

The Undersigned acknowledges the receipt of any addendum issued by listing all by number below:

The following Unit rates to be submitted with the RFP. Unit Rates to be inclusive of all material and labor costs. Unit Rates are fixed for the full duration of the contract.

| No. | Description | Unit | Rate | |
|-----|--|--------------|---------|--------------|
| | Shop Drawing and Engineering | Per Man hour | | |
| | Supply of additional Steel Beams Up to 12# / lnft | Per Ton | Furnish | Installation |



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | |
|--|---------|---------|--------------|
| 13 - 25# / lft | | | |
| 26 - 50# / lft | | | |
| 51 - 100# / lft | | | |
| 101 - 150# / lft | | | |
| 151 - 200# / lft | | | |
| 200 - 300# / lft | | | |
| 300 - 398# / lft | | | |
| Above 398# / lft | | | |
| Sheer Studs - Furnish | Each | Furnish | Installation |
| Weld-able Lenton Couplers with Rod | Each | Furnish | Installation |
| <u>Columns</u> | Per Ton | Furnish | Installation |
| Up to 100# / lft | | | |
| 101 - 200# / lft | | | |
| 201 - 300# lft | | | |
| 301 - 398# lft | | | |
| Above 398# / lnt | | | |
| Plating of WF Columns (Plating only, not WF Columns) | Per Ton | Furnish | Installation |
| 1/2" | | | |
| 1" | | | |
| 2" | | | |
| 3" | | | |



STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
 FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
 METAL DECK & PRECAST CONCRETE WORK

ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1
 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | |
|--|--------------|---------|--------------|
| 4" | | | |
| 6" | | | |
| 8" | | | |
| Plate Girders and Built Up Columns. (50 ksi, 65 ksi) including stiffeners. 1" Plates 2" Plates 3" Plates 4" Plates 5" Plates 6" Plates 8" Plates | Per Ton | Furnish | Installation |
| Shop Fabrication of Steel Including Primer Paint | Per Ton | | |
| Field Fabrication of Steel Including primer Paint | Per Ton | | |
| Shop Applied Intumescent Coating Including Surface Preparation and Base Primer | Per SQ. Ft. | | |
| Field Applied Intumescent Coating Including Surface Preparation and Base Primer | Per SQ. Ft. | | |
| Welding: 1/4 inch Fillet weld | Per Lin. Ft. | | |
| Welding: 5/16 inch Fillet Weld | Per Lin. Ft. | | |



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METAL DECK & PRECAST CONCRETE WORK**

**ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | | |
|--|--|---------------------|--|--|
| | Welding: 1/2 inch Fillet Weld | Per Lin. Ft. | | |
| | Welding : over 1/2 inch Fillet Weld | Per Lin. Ft. | | |
| | Welding: 1/2 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 3/4 inch plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 1 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 2 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 3 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 4 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 5 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 6 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 7 inch thick plate - Full Pen. | Per Lin. Ft. | | |
| | Welding: 8 inch thick plate - Full pen. | Per Lin. Ft. | | |
| | Utility Penetration through Steel Elements including reinforcement and stiffeners. Opening size | Each | | |
| | Opening under 6"x 6" | Each | | |
| | Opening size 6" x 6" | Each | | |
| | Opening size 8" x 8" | Each | | |



**STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
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LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.**

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | | |
|--|--|---------------------|---------|--------------|
| | Opening size 8" x 12" | Each | | |
| | Opening size 12"x 18" | Each | | |
| | Opening size 18" x 24" | Each | | |
| | Opening size 24"x 24" | Each | | |
| | Opening size 24" x 30" | Each | | |
| | Opening size 30"x 30" | Each | | |
| | Temporary overhead Shielding Protection at active platforms for construction Phasing | Per SQ. Ft. | | |
| | Temporary Barricade/ Protection Walls at Active Platforms | Per SQ. Ft. | Furnish | Installation |
| | Precast Concrete Unit – Typical Floor Planks | Per SQ. FT | Furnish | Installation |
| | Precast Concrete Units Type A1 to A5 Type B1 to B5 Type C1 to C5 Type D1 to D5 | Each | Furnish | Installation |
| | Precast Concrete Wall Units | SQ. Ft | | |
| | Precast Concrete Stair Units | Per Riser | | |
| | Unit rate per Crane pick as directed by Phoenix Loads under 5 Ton | Each Single Unit | | |



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 LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | | | | |
|--|--|--|--|--|
| | <p>Loads over 5 Ton</p> <p>MEP Equipment:</p> <p>(8) Power Distribution Centers 6'-6"W x 8'-0"H x 8'-0"D 4,000lbs each</p> <p>(32) Power Distribution Centers 6'-0" x 8'-0"H x 8'-0"D 5,000 lbs each</p> <p>(6) 15KV Paralleling Switchgear 11'-0"W x 8'-0"H x 8'-0"D 10,000 lbs each</p> <p>(6) 2000KW, 13.8 KV Diesel Generator 21'-0"L x 11'-0"H x 8'- 0" D 45,000 lbs each</p> <p>(1) Generator Load Bank 12'-0"L x 8'-0"H x 6'-0"D 19,000 lbs each</p> <p>(5) 2150 KVA Cast Coil Transformers 12'-0"W x 8'-6"H x 6'-0"D 19,200 lbs each</p> <p>(5) Low Voltage Switchgear 4'-0"W x 8'-0"H x 6'-0"D 3500lbs each</p> <p>(10) Low Voltage Switchgear 5'-0"W x 8'-0"H x 6'-0"D 9,000lbs each</p> <p>(5) 15 KV Primary Switch 4'-0"W x 8'-6"H x 6'-8"D 3000lbs each</p> | | | |
|--|--|--|--|--|

Proposer:



STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

Company Name: _____

By: (Officer) _____

Address: _____

Date of Proposal: _____ Corporate Seal:

1.2 Supplemental Unit Rates, All-in Rates and Cost/Price Assumptions

No changes are authorized from the approved scope, unless they are approved in writing by the PC (i.e., co-signed amendment), prior to the time of execution.

When changes occur from the anticipated job site, the following unit rates will be used to negotiate changes which shall also be finalized through the PC as firm fixed price.

All pricing assumptions shall be clearly stated to allow a reviewer to assess the potential cost risks associated with the proposed design, and associated construction efforts.

1.3 Financial Terms

1.3.1 See Subcontract.

2.0 INVOICING INSTRUCTIONS

2.1 Invoices/Requisitions must be submitted by the 3rd day of each month to reflect work through the last Sunday of the previous month. Invoice/Requisitions received after the 3rd day will not be processed until the following month.

2.2 Contractual retention, calculated as ten percent of amount invoiced, shall be identified on the face of each progress invoice and withheld from amounts payable.

2.3 Subcontractor shall submit separate invoices in original and one copy complete with all supporting documentation (Exhibit 3 Partial Payment and Release, Exhibit 2A, Subcontractor Pricing and Invoicing Instructions, Appendix A, Schedule of Values) to Contractor's Office Address marked:



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

Phoenix Constructors, JV
115 Broadway
18th Floor
New York, NY 10006
Attn: Javed Qureshi

- 2.4 Subcontractor's invoices shall be clearly marked with this Subcontract Number and the appropriate milestone description of activities and/or work related to the billing.
- 2.5 Subcontractor's invoices shall indicate the time period during which the Work was performed for which the invoice is submitted.
- 2.6 Phoenix Constructors JV shall not be obligated to pay for invoice items not fully supported by approved progress measurements and any other such documentation as may be required. PCJV reserves the right to make provisional payment on an invoice in dispute, pending audit and reconciliation of the total charge.
- 2.7 Subcontractor shall sign each invoice certifying that all Work covered by the invoice is complete and that the invoice is correct, authentic and the only one issued for the Work described therein.
- 2.8 Any payments made shall not be construed to be an acceptance of defective Work nor relieve Subcontractor of any of its obligations.
- 2.9 Invoices for Cost-Reimbursable Work shall be prepared and submitted as follows:
 - 2.9.1 Invoices for Labor shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing workers name, classification, and straight time and overtime hours. Labor categories and rates must correspond to those set forth in Rate Schedule "A" of this Exhibit 2A.
 - 2.9.2 Invoices for Subcontractor-Owned Equipment shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing the equipment type, number, size and hours. Equipment descriptions and rates must correspond to those set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110)



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

2.9.3 Invoices for Subcontractor Rented Equipment shall be accompanied by Phoenix Constructors JV approved daily reports or time sheets listing equipment type, number, size and hours along with a copy of Subcontractor's rental agreement and invoice from supplier. The applicable markup as set forth in this Exhibit 2A shall be set forth separately.

2.9.4 Invoices for Materials shall be accompanied by field receiving documentation and a copy of Subcontractor's purchase order and invoice from supplier.

3.0 PRICING FOR CHANGES

Compensation to Subcontractor for changes in the Scope of Work, shall be in accordance with the provisions of Article 8, Change Orders of GC Long Form Subcontract Rev. 0, except to the extent otherwise provided below:

Phoenix Constructors JV may request, and Subcontractor shall provide, proposals for Scope of Work changes (additions and deletions) which are priced, at Phoenix Constructors JV option, by one or a combination of the following methods:

- a. Negotiated Lump Sums based upon a mutually agreed Scope of Work.
- b. Applicable unit prices set forth in Exhibit B, titled, Contract Unit Rates, if the Work is possible to be fairly classified under the Unit Price items.
- c. Negotiated Unit Prices not established in the Contract.
- d. On a "cost-reimbursement plus a fixed fee" basis, or at the labor and equipment rates as set forth in Rate Schedule "A" and "B".

3.1 Lower Tier Subcontracts

3.1.1 All subcontracts and services provided by others for performance of changes or extra work requested by Phoenix Constructors JV, which have not been objected to by PCJV shall be at actual cost to Subcontractor of such subcontracts or services provided by others (not to exceed such subcontract price) plus a mark-up for all overhead and fee of Subcontractor thereon which shall not exceed 10%.



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ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1
LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

3.1.2 Subcontractor's invoices for work performed by any of Subcontractor's "lower tier subcontractors" may include an allowance for the "lower tier subcontractor's" overhead and fee which shall not exceed 10%.

3.1.3 In no instance shall the mark-ups or rates for changes provided by lower tier subcontractor to Subcontractor exceed the mark-ups or rates for changes as stipulated in this Article 3.0.

3.2 Materials

3.2.1 Compensation to Subcontractor for materials supplied by Subcontractor for incorporation into the permanent facility (excluding consumable, expendable, and small tools) shall be at actual invoiced cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by PCJV, plus a mark-up, for all fee and overhead expense not to exceed 10%.

3.2.2 Phoenix Constructors JV reserves the right to provide, at no cost to Subcontractor, materials, equipment, services, supplies or incidentals required to perform the Work. All refunds, trade discounts, rebates on materials, supplies and services, and all monies obtained from the disposal of surplus materials or supplies shall accrue to Owner.

3.3 Labor

Compensation to Subcontractor for construction labor, related costs and profit shall be in accordance with the rates set forth in Rate Schedule "A" entitled ALL INCLUSIVE LABOR RATES attached and incorporated herein.

3.4 Equipment Rental

3.4.1 Equipment rental rates, as set forth in the Rental Rate Blue Book (published by Machinery Information Division, K III Directory Corporation, 1735 Technology Drive, San Jose CA 95110) shall apply for equipment used for extra work requested by Contractor.

Hourly rental for those items of equipment listed in the "Rental Rate 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



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ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1
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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

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 of 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.

When utilizing the rental rates appearing in the Blue Book, the Phoenix Constructors JV (or Authority 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 construction aid used on a particular Work package shall be the daily, weekly or monthly rates from the foregoing publication based on the total number of work days or portions thereof that a particular item of tool, equipment or construction aid, or substitute item of equipment is at the construction site for use by the Phoenix Constructors JV or subcontractors whether under this Contract if any other contract with the Authority. Included within this period will be (i) work days of idleness results from acts or omission of the PCJV, Authority or third persons, breakdowns in the tool, equipment or construction aid or any other cause (ii) work days on which the equipment is removed from the construction site solely to enable the performance of repairs thereon, and (iii) work days intervening between the removal of tool, delivery to the construction site of the same substitute tool, equipment or construction aid. The number of workdays in the period for each rate shall be as indicated below:

| | |
|---|--------------|
| Three work days or less | Daily rate |
| More than three work days but not more than fifteen work days | Weekly rate |
| More than fifteen work days | Monthly rate |

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



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| | |
|-------------------------------------|--|
| Hourly rate based on daily rental | 1/8 of Daily Rental from Blue Book |
| Hourly rate based on weekly rental | 1/40 of Weekly Rental from Blue Book |
| Hourly rate based on monthly rental | 1/176 of Monthly Rental from Blue Book |

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 Phoenix Constructor JV (or Authority Engineer) should determine that the nature, number of pieces or size of the tool, equipment or construction aid used by the Subcontractor 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 Phoenix Constructors JV (or Authority Engineer) to be suitable for the Work, the reasonable rental will not be based upon the tool, equipment or construction aid used by the Subcontractor but will be based on the smallest quantity or smallest or least elaborate tool equipment or construction aid determined by the Phoenix Constructors JV (or Authority 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, (b) with respect to Work performed in New Jersey, the taxes on the rental actually paid by the Subcontractor or lower tier subcontractor and (c) notwithstanding the number of hours during which such of tool, equipment or construction aid is utilized, the minimum rental therefore will be for a period of eight hours.

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

- 3.4.2 For equipment which is specifically mobilized to the jobsite for extra work, Subcontractor shall separately identify such transportation costs (including: loading, off-loading, assembly and disassembly) when submitting proposals to Phoenix Constructors JV for performing extra work. Transportation costs shall not be applicable to equipment already mobilized on the site.



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

3.4.3 When Subcontractor's equipment does not resemble the equipment having rental rates listed in Rate Schedule "B" for extra work, the rental rate shall be negotiated and agreed upon in writing by Phoenix Constructors JV.

3.4.4 Compensation to Subcontractor for equipment used for extra work which is rented from third parties and does not resemble the equipment having rental rates listed in the "Rental Rate Blue Book" must be approved by Phoenix Constructors JV in writing prior to rental and shall be at actual cost to Subcontractor, delivered to project site, as substantiated by invoices certified paid or by such documentation as may be required by Phoenix Constructors JV plus a mark-up, for all profit and overhead expense of Subcontractor thereon, of not to exceed 10%.

3.5 Time Sheets

3.5.1 For all work performed on a cost-reimbursable basis, Subcontractor shall submit daily time sheets for approval by Phoenix Constructors JV. An approved copy of the time sheets, which shall detail all hours worked, materials installed and equipment used, must be submitted in support of Subcontractor's monthly billing.

4.0 Rate Schedules

4.1 Rate Schedule "A" - All Inclusive Labor Rates

4.2 Rate Schedule "B" - Equipment Rental Rates

4.3 Rate Schedule "C" - List of SubSubcontractors



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

RATE SCHEDULE "A"

ALL INCLUSIVE LABOR RATES

NOTES

1. **VACATION:** Includes vacations, statutory holidays, sick and other leave with pay.
2. **ALLOWANCES:** Includes workers compensation, unemployment insurance, and other taxes and insurance's measured by payroll, established employee benefits such as pension, health and life insurance's, bonus programs (excluding profit sharing), union assessments (if any), training funds, and industry and administration funds.
3. **OVERHEAD AND PROFIT:** Calculated on the base rate, overhead includes all home office and jobsite supervision above the level of general foreman and other non-manual personnel costs and all temporary, construction facilities shall not exceed 10%.
4. **ALL INCLUSIVE RATE:** Based on ____ (To be completed in by Offerer) hours per week ____ (To be completed in by Offerer) hours per day, ____ (To be completed in by Offerer) days per week.
5. **TRAVEL ALLOWANCE:** N/A
6. **OVERTIME:** The overtime rate per hour shall be limited to the actual cost to Subcontractor of the premium portion only of all applicable wages, craft fringe benefits and payroll burdens imposed by any governmental authority and measured by the compensation payable to employees. To establish the amount of payment, Subcontractor shall submit supporting documents satisfactory in form and content to Contractor for its verification and approval. If only one overtime rate is shown, it shall be applicable for all overtime hours.
7. **LABOR RATES** entered in the above schedule shall be based on labor agreements, if any, and rates in effect on the Proposal closing date, unless otherwise noted. The quoted labor rates may be adjusted as approved by Contractor to reflect subsequent changes in labor agreements or rates if applicable.
8. No Charges will be accepted by Contractor for labor not listed in Rate Schedule "A".
9. Labor rates for stand-by time when specifically ordered by Contractor shall be at ____% (To be completed in by Offerer) inclusive rates in this Rate Schedule "A" less the profit portion thereof.
10. Subcontractor shall not invoice for field support/supervisory personnel assigned to a change in the Scope of Work if the change does not extend the time such personnel are required on site by the original Scope of Work.



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

| Item Description | Unit | Quantity | Unit Price | Total Price | Material | Labor | Overhead & Profit | Tax |
|--|------|----------|------------|-------------|----------|-------|-------------------|-----|
| Iron Worker- Journey Man | | | | | | | | |
| Foreman - Iron Worker, Journey Man | | | | | | | | |
| Crane Operator | | | | | | | | |
| Oiler | | | | | | | | |
| Welder | | | | | | | | |
| Draftsman | | | | | | | | |
| Shop Fabrication labor | | | | | | | | |
| Dock Builder - Journey Men | | | | | | | | |
| Foremen - Dock Builder Journey Men | | | | | | | | |
| Carpenter | | | | | | | | |
| Carpenter Foreman | | | | | | | | |
| Mason | | | | | | | | |
| Mason Foreman | | | | | | | | |
| Lather | | | | | | | | |
| Lather Foreman | | | | | | | | |



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

RATE SCHEDULE "B"

EQUIPMENT RENTAL RATE

NOTES

1. Rate Schedule "B" identifies all Subcontractor owned and rented equipment (excluding non powered hand tools) that may be used by Subcontractor in performance of the Work.
2. Rate Schedule "B" shall be calculated in accordance to Exhibit 2A clause 3.4.1.
3. Subcontractor shall, prior to rental of any equipment for changes in the scope, submit a stated value for the equipment being rented.
4. No payment shall be made for equipment which is not operating because it is broken down or undergoing repair, maintenance or overhaul.



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ALTERNATE OPTION: SINGLE COMBINED PROPOSAL FOR WORK AREA 1, PATH STATION + WORK AREA 2, 1
LINE SUBWAY BOX + WORK AREA 3, TRANSIT HALL.

EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS
RATE SCHEDULE "C"

LIST OF SUBSUBCONTRACTORS

The following is a detailed list of the subSubcontractors proposed for the Work.

Once Contractor has given its non-objection the subSubcontractors listed below shall not be changed
except with Contractor's written approval.

| <u>SubSubcontractor</u> | <u>Description of Work</u> | <u>Union or Trade Affiliation, if any</u> |
|-------------------------|----------------------------|---|
|-------------------------|----------------------------|---|

1.0 Percentage of Work performed by Subcontractor's own forces: ____ (To be completed by Offerer)

2.0 Percentage of Work performed by subSubcontractors: ____ (To be completed by Offerer)

2A Pricing and Invoicing Instructions.WA 1+2+3 11-21-08.doc



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EXHIBIT 2A SUBCONTRACTOR'S PRICING AND INVOICING INSTRUCTIONS

- 3.0 Contractor reserves the right to request financial information and work experience histories of the proposed subSubcontractors.

END OF EXHIBIT 2



EXHIBIT 30A - CERTIFICATE OF CURRENCY
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 STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE -
 FURNISH, FABRICATE & ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT
 COATING, METAL DECK & PRECAST CONCRETE WORK

**CERTIFICATION REGARDING CURRENCY OF INFORMATION ON PREVIOUSLY
 SUBMITTED REPRESENTATIONS AND CERTIFICATIONS**

The undersigned hereby represents that it and its principles have examined the information contained within its previously submitted "Representations and Certifications" dated _____, attached hereto, and hereby certifies that said information is current, accurate, and complete as of the date this agreement No. W0TC- _____ is entered.

This certification is a material representation of fact upon which reliance is being placed by Phoenix Constructors JV, the Port Authority of New York and New Jersey and the Federal Government. If it is later determined that the undersigned or prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.

The undersigned and prospective lower tier participant shall provide immediate written notice to the Contractor if at any time the undersigned or prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this _____ day of _____, 2007

COMPANY NAME: _____

By: _____
 Signature of Authorized Official

 Printed Name and Title of Authorized Official

Request for Taxpayer Identification Number and Certification

Give form to the
requester. Do not
send to the IRS.

| | | |
|--|---|---|
| Print or type See Specific Instructions on page 2 | Name (as shown on your income tax return) | |
| | Business name, if different from above | |
| | Check appropriate box: <input type="checkbox"/> Individual/ Sole proprietor <input type="checkbox"/> Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Other ▶ | |
| | Address (number, street, and apt. or suite no.) | Requester's name and address (optional) |
| | City, state, and ZIP code | |
| List account number(s) here (optional) | | |

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on Line 1 to avoid backup withholding. For individuals, this is your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the Part I Instructions on page 3. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN* on page 3.

| |
|------------------------|
| Social security number |
| |

or

| |
|--------------------------------|
| Employer identification number |
| |

Note. If the account is in more than one name, see the chart on page 4 for guidelines on whose number to enter.

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me), and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding, and
3. I am a U.S. person (including a U.S. resident alien).

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the Certification, but you must provide your correct TIN. (See the Instructions on page 4.)

| | | |
|------------------|----------------------------|--------|
| Sign Here | Signature of U.S. person ▶ | Date ▶ |
|------------------|----------------------------|--------|

Purpose of Form

A person who is required to file an information return with the IRS, must obtain your correct taxpayer identification number (TIN) to report, for example, income paid to you, real estate transactions, mortgage interest you paid, acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA.

U.S. person. Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN to the person requesting it (the requester) and, when applicable, to:

1. Certify that the TIN you are giving is correct (or you are waiting for a number to be issued),
2. Certify that you are not subject to backup withholding, or
3. Claim exemption from backup withholding if you are a U.S. exempt payee.

In 3 above, if applicable, you are also certifying that as a U.S. person, your allocable share of any partnership income from a U.S. trade or business is not subject to the withholding tax on foreign partners' share of effectively connected income.

Note. If a requester gives you a form other than Form W-9 to request your TIN, you must use the requester's form if it is substantially similar to this Form W-9.

For federal tax purposes, you are considered a person if you are:

- An individual who is a citizen or resident of the United States,
- A partnership, corporation, company, or association created or organized in the United States or under the laws of the United States, or
- Any estate (other than a foreign estate) or trust. See Regulations sections 301.7701-6(a) and 7(a) for additional information.

Special rules for partnerships. Partnerships that conduct a trade or business in the United States are generally required to pay a withholding tax on any foreign partners' share of income from such business. Further, in certain cases where a Form W-9 has not been received, a partnership is required to presume that a partner is a foreign person, and pay the withholding tax. Therefore, if you are a U.S. person that is a partner in a partnership conducting a trade or business in the United States, provide Form W-9 to the partnership to establish your U.S. status and avoid withholding on your share of partnership income.

The person who gives Form W-9 to the partnership for purposes of establishing its U.S. status and avoiding withholding on its allocable share of net income from the partnership conducting a trade or business in the United States is in the following cases:

- The U.S. owner of a disregarded entity and not the entity,

• The U.S. grantor or other owner of a grantor trust and not the trust, and

• The U.S. trust (other than a grantor trust) and not the beneficiaries of the trust.

Foreign person. If you are a foreign person, do not use Form W-9. Instead, use the appropriate Form W-8 (see Publication 515, Withholding of Tax on Nonresident Aliens and Foreign Entities).

Nonresident alien who becomes a resident alien.

Generally, only a nonresident alien individual may use the terms of a tax treaty to reduce or eliminate U.S. tax on certain types of income. However, most tax treaties contain a provision known as a "saving clause." Exceptions specified in the saving clause may permit an exemption from tax to continue for certain types of income even after the recipient has otherwise become a U.S. resident alien for tax purposes.

If you are a U.S. resident alien who is relying on an exception contained in the saving clause of a tax treaty to claim an exemption from U.S. tax on certain types of income, you must attach a statement to Form W-9 that specifies the following five items:

1. The treaty country. Generally, this must be the same treaty under which you claimed exemption from tax as a nonresident alien.
2. The treaty article addressing the income.
3. The article number (or location) in the tax treaty that contains the saving clause and its exceptions.
4. The type and amount of income that qualifies for the exemption from tax.
5. Sufficient facts to justify the exemption from tax under the terms of the treaty article.

Example. Article 20 of the U.S.-China income tax treaty allows an exemption from tax for scholarship income received by a Chinese student temporarily present in the United States. Under U.S. law, this student will become a resident alien for tax purposes if his or her stay in the United States exceeds 5 calendar years. However, paragraph 2 of the first Protocol to the U.S.-China treaty (dated April 30, 1984) allows the provisions of Article 20 to continue to apply even after the Chinese student becomes a resident alien of the United States. A Chinese student who qualifies for this exception (under paragraph 2 of the first protocol) and is relying on this exception to claim an exemption from tax on his or her scholarship or fellowship income would attach to Form W-9 a statement that includes the information described above to support that exemption.

If you are a nonresident alien or a foreign entity not subject to backup withholding, give the requester the appropriate completed Form W-9.

What is backup withholding? Persons making certain payments to you must under certain conditions withhold and pay to the IRS 28% of such payments (after December 31, 2002). This is called "backup withholding." Payments that may be subject to backup withholding include interest, dividends, broker and barter exchange transactions, rents, royalties, nonemployee pay, and certain payments from fishing boat operators. Real estate transactions are not subject to backup withholding.

You will not be subject to backup withholding on payments you receive if you give the requester your correct TIN, make the proper certifications, and report all your taxable interest and dividends on your tax return.

Payments you receive will be subject to backup withholding if:

1. You do not furnish your TIN to the requester,
2. You do not certify your TIN when required (see the Part II instructions on page 4 for details),

3. The IRS tells the requester that you furnished an incorrect TIN,

4. The IRS tells you that you are subject to backup withholding because you did not report all your interest and dividends on your tax return (for reportable interest and dividends only), or

5. You do not certify to the requester that you are not subject to backup withholding under 4 above (for reportable interest and dividend accounts opened after 1983 only).

Certain payees and payments are exempt from backup withholding. See the instructions below and the separate instructions for the Requester of Form W-9.

Also see *Special rules regarding partnerships* on page 1.

Penalties

Failure to furnish TIN. If you fail to furnish your correct TIN to a requester, you are subject to a penalty of \$50 for each such failure unless your failure is due to reasonable cause and not to willful neglect.

Civil penalty for false information with respect to withholding. If you make a false statement with no reasonable basis that results in no backup withholding, you are subject to a \$500 penalty.

Criminal penalty for falsifying information. Willfully falsifying certifications or affirmations may subject you to criminal penalties including fines and/or imprisonment.

Misuse of TINs. If the requester discloses or uses TINs in violation of federal law, the requester may be subject to civil and criminal penalties.

Specific Instructions

Name

If you are an individual, you must generally enter the name shown on your income tax return. However, if you have changed your last name, for instance, due to marriage without informing the Social Security Administration of the name change, enter your first name, the last name shown on your social security card, and your new last name.

If the account is in joint names, list first, and then circle, the name of the person or entity whose number you entered in Part I of the form.

Sole proprietor. Enter your individual name as shown on your income tax return on the "Name" line. You may enter your business, trade, or "doing business as (DBA)" name on the "Business name" line.

Limited liability company (LLC). If you are a single-member LLC (including a foreign LLC with a domestic owner) that is disregarded as an entity separate from its owner under Treasury regulations section 301.7701-3, enter the owner's name on the "Name" line. Enter the LLC's name on the "Business name" line. Check the appropriate box for your filing status (sole proprietor, corporation, etc.), then check the box for "Other" and enter "LLC" in the space provided.

Other entities. Enter your business name as shown on required federal tax documents on the "Name" line. This name should match the name shown on the charter or other legal document creating the entity. You may enter any business, trade, or DBA name on the "Business name" line.

Note. You are requested to check the appropriate box for your status (individual/sole proprietor, corporation, etc.).

Exempt From Backup Withholding

If you are exempt, enter your name as described above and check the appropriate box for your status, then check the "Exempt from backup withholding" box in the line following the business name, sign and date the form.

Generally, individuals (including sole proprietors) are not exempt from backup withholding. Corporations are exempt from backup withholding for certain payments, such as interest and dividends.

Note. If you are exempt from backup withholding, you should still complete this form to avoid possible erroneous backup withholding.

Exempt payees. Backup withholding is not required on any payments made to the following payees:

1. An organization exempt from tax under section 501(a), any IRA, or a custodial account under section 403(b)(7) if the account satisfies the requirements of section 401(f)(2),
 2. The United States or any of its agencies or instrumentalities,
 3. A state, the District of Columbia, a possession of the United States, or any of their political subdivisions or instrumentalities,
 4. A foreign government or any of its political subdivisions, agencies, or instrumentalities, or
 5. An international organization or any of its agencies or instrumentalities.
- Other payees that may be exempt from backup withholding include:
6. A corporation,
 7. A foreign central bank of issue,
 8. A dealer in securities or commodities required to register in the United States, the District of Columbia, or a possession of the United States,
 9. A futures commission merchant registered with the Commodity Futures Trading Commission,
 10. A real estate investment trust,
 11. An entity registered at all times during the tax year under the Investment Company Act of 1940,
 12. A common trust fund operated by a bank under section 584(a),
 13. A financial institution,
 14. A middleman known in the investment community as a nominee or custodian, or
 15. A trust exempt from tax under section 664 or described in section 4947.

The chart below shows types of payments that may be exempt from backup withholding. The chart applies to the exempt recipients listed above, 1 through 15.

| IF the payment is for . . . | THEN the payment is exempt for . . . |
|--|--|
| Interest and dividend payments | All exempt recipients except for 9 |
| Broker transactions | Exempt recipients 1 through 13. Also, a person registered under the Investment Advisers Act of 1940 who regularly acts as a broker |
| Barter exchange transactions and patronage dividends | Exempt recipients 1 through 5 |
| Payments over \$600 required to be reported and direct sales over \$5,000 ¹ | Generally, exempt recipients 1 through 7 ² |

¹ See Form 1099-MISC, Miscellaneous Income, and its instructions.

² However, the following payments made to a corporation (including gross proceeds paid to an attorney under section 6045(f), even if the attorney is a corporation) and reportable on Form 1099-MISC are not exempt from backup withholding: medical and health care payments, attorneys' fees; and payments for services paid by a federal executive agency.

Part I. Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. If you are a resident alien and you do not have and are not eligible to get an SSN, your TIN is your IRS Individual taxpayer identification number (ITIN). Enter it in the social security number box. If you do not have an ITIN, see *How to get a TIN* below.

If you are a sole proprietor and you have an EIN, you may enter either your SSN or EIN. However, the IRS prefers that you use your SSN.

If you are a single-owner LLC that is disregarded as an entity separate from its owner (see *Limited liability company (LLC)* on page 2), enter your SSN (or EIN, if you have one). If the LLC is a corporation, partnership, etc., enter the entity's EIN.

Note. See the chart on page 4 for further clarification of name and TIN combinations.

How to get a TIN. If you do not have a TIN, apply for one immediately. To apply for an SSN, get Form SS-5, Application for a Social Security Card, from your local Social Security Administration office or get this form online at www.socialsecurity.gov. You may also get this form by calling 1-800-772-1213. Use Form W-7, Application for IRS Individual Taxpayer Identification Number, to apply for an ITIN, or Form SS-4, Application for Employer Identification Number, to apply for an EIN. You can apply for an EIN online by accessing the IRS website at www.irs.gov/businesses and clicking on Employer ID Numbers under Related Topics. You can get Forms W-7 and SS-4 from the IRS by visiting www.irs.gov or by calling 1-800-TAX-FORM (1-800-829-3676).

If you are asked to complete Form W-9 but do not have a TIN, write "Applied For" in the space for the TIN, sign and date the form, and give it to the requester. For interest and dividend payments, and certain payments made with respect to readily tradable instruments, generally you will have 60 days to get a TIN and give it to the requester before you are subject to backup withholding on payments. The 60-day rule does not apply to other types of payments. You will be subject to backup withholding on all such payments until you provide your TIN to the requester.

Note. Writing "Applied For" means that you have already applied for a TIN or that you intend to apply for one soon. *Caution: A disregarded domestic entity that has a foreign owner must use the appropriate Form W-8.*

Part II. Certification

To establish to the withholding agent that you are a U.S. person, or resident alien, sign Form W-9. You may be requested to sign by the withholding agent even if items 1, 4, and 5 below indicate otherwise.

For a joint account, only the person whose TIN is shown in Part I should sign (when required). Exempt recipients, see *Exempt From Backup Withholding* on page 2.

Signature requirements. Complete the certification as indicated in 1 through 5 below.

1. Interest, dividend, and barter exchange accounts opened before 1984 and broker accounts considered active during 1983. You must give your correct TIN, but you do not have to sign the certification.

2. Interest, dividend, broker, and barter exchange accounts opened after 1983 and broker accounts considered inactive during 1983. You must sign the certification or backup withholding will apply. If you are subject to backup withholding and you are merely providing your correct TIN to the requester, you must cross out item 2 in the certification before signing the form.

3. Real estate transactions. You must sign the certification. You may cross out item 2 of the certification.

4. Other payments. You must give your correct TIN, but you do not have to sign the certification unless you have been notified that you have previously given an incorrect TIN. "Other payments" include payments made in the course of the requester's trade or business for rents, royalties, goods (other than bills for merchandise), medical and health care services (including payments to corporations), payments to a nonemployee for services, payments to certain fishing boat crew members and fishermen, and gross proceeds paid to attorneys (including payments to corporations).

5. Mortgage interest paid by you, acquisition or abandonment of secured property, cancellation of debt, qualified tuition program payments (under section 529), IRA, Coverdell ESA, Archer MSA or HSA contributions or distributions, and pension distributions. You must give your correct TIN, but you do not have to sign the certification.

What Name and Number To Give the Requester

| For this type of account: | Give name and SSN of: |
|---|---|
| 1. Individual | The individual |
| 2. Two or more individuals (joint account) | The actual owner of the account or, if combined funds, the first individual on the account ¹ |
| 3. Custodian account of a minor (Uniform Gift to Minors Act) | The minor ² |
| 4. a. The usual revocable savings trust (grantor is also trustee) | The grantor-trustee ¹ |
| b. So-called trust account that is not a legal or valid trust under state law | The actual owner ¹ |
| 5. Sole proprietorship or single-owner LLC | The owner ³ |
| For this type of account: | Give name and EIN of: |
| 6. Sole proprietorship or single-owner LLC | The owner ³ |
| 7. A valid trust, estate, or pension trust | Legal entity ⁴ |
| 8. Corporate or LLC electing corporate status on Form 8832 | The corporation |
| 9. Association, club, religious, charitable, educational, or other tax-exempt organization | The organization |
| 10. Partnership or multi-member LLC | The partnership |
| 11. A broker or registered nominee | The broker or nominee |
| 12. Account with the Department of Agriculture in the name of a public entity (such as a state or local government, school district, or prison) that receives agricultural program payments | The public entity |

¹ List first and circle the name of the person whose number you furnish. If only one person on a joint account has an SSN, that person's number must be furnished.

² Circle the minor's name and furnish the minor's SSN.

³ You must show your individual name and you may also enter your business or "DBA" name on the second name line. You may use either your SSN or EIN (if you have one). If you are a sole proprietor, IRS encourages you to use your SSN.

⁴ List first and circle the name of the legal trust, estate, or pension trust. (Do not furnish the TIN of the personal representative or trustee unless the legal entity itself is not designated in the account title.) Also see *Special rules regarding partnerships* on page 1.

Note. If no name is circled when more than one name is listed, the number will be considered to be that of the first name listed.

Privacy Act Notice

Section 6109 of the Internal Revenue Code requires you to provide your correct TIN to persons who must file information returns with the IRS to report interest, dividends, and certain other income paid to you, mortgage interest you paid, the acquisition or abandonment of secured property, cancellation of debt, or contributions you made to an IRA, or Archer MSA or HSA. The IRS uses the numbers for identification purposes and to help verify the accuracy of your tax return. The IRS may also provide this information to the Department of Justice for civil and criminal litigation, and to cities, states, the District of Columbia, and U.S. possessions to carry out their tax laws. We may also disclose this information to other countries under a tax treaty, to federal and state agencies to enforce federal nontax criminal laws, or to federal law enforcement and intelligence agencies to combat terrorism.

You must provide your TIN whether or not you are required to file a tax return. Payers must generally withhold 28% of taxable interest, dividend, and certain other payments to a payee who does not give a TIN to a payer. Certain penalties may also apply.



EXHIBIT 30A - REPRESENTATIONS AND CERTIFICATIONS
Please Make Copies and Complete for Yourselves and All Lower Tier Subcontractors

The Proposer identified below certifies to the following facts. The full text of the representations and certifications made below (and referenced to the text of each statement) is available in the Federal Acquisition Regulations (FAR) or can be supplied by Phoenix Constructors JV.

Check each block that applies:

- | | | |
|-----|---|------------|
| | | REFERENCE |
| 1. | The Proposer certifies, to the best of its knowledge and belief, that the Proposer and/or any of its principals: <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any federal agency; and | 49 CFR 29 |
| | For contracts expected to equal or exceed \$25,000, the Proposer further certifies, to the best of its knowledge and belief, that the Proposer and/or any of its principals <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT presently debarred, suspended, proposed for debarment, or declared ineligible for award of contracts by any federal agency as represented in the signed Exhibit #3 | EXHIBIT #3 |
| 2. | The Proposer certifies it <input type="checkbox"/> HAS <input type="checkbox"/> HAS NOT been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a federal, state, or local government contract or subcontract; violation of federal or state antitrust statutes relating to the submission of offers; or commission of embezzlement, theft, bribery, falsification or destruction of records, making false statements, tax evasion, or receiving stolen property, and <input type="checkbox"/> ARE <input type="checkbox"/> ARE NOT presently indicted for, or otherwise criminally or civilly charged by a government entity with, commission of any of these offenses. The Proposer further represents it is in complete compliance with the terms of Exhibit #1. | EXHIBIT #1 |
| 3. | The Proposer <input type="checkbox"/> IS <input type="checkbox"/> IS NOT a women-owned business certified by the Authority. The Proposer <input type="checkbox"/> IS <input type="checkbox"/> IS NOT a minority-owned business certified by the Authority. | 13 CFR 124 |
| 4. | <input type="checkbox"/> Proposer has an accounting system approved by an agency of the Federal Government. Date accounting period ends: _____ | |
| 5. | <input type="checkbox"/> Proposer has approved forward pricing rates. | |
| 6. | <input type="checkbox"/> Proposer has an approved Disclosure Statement. Date: _____ Proposer's Administrative Contracting Officer (ACO): Name: _____ Address: _____ Phone Number: _____ | |
| 7. | <input type="checkbox"/> Proposer maintains a corporate quality assurance program and executes all projects/orders in accordance with this program. | |
| 8. | <input type="checkbox"/> ISO 9001 Certified. | |
| 9. | <input type="checkbox"/> Signer is authorized to represent the business making this offer (Proposer) in all matters related to pricing, terms and conditions, conduct of business, and buyer-seller relationships between Proposer and the Buyer. | |
| 10. | <input type="checkbox"/> Prices offered have been arrived at independently, without consultation, communication, agreement, or condition that relates to the proposal by any other Proposer or competitor. The Proposer has not, and will not, disclose offered prices to any other Proposer or competitor prior to award of a resulting Contract or Purchase Order, or cancellation of this solicitation. The Proposer has not attempted to induce any other person or firm to submit, or not submit, an offer in response to this solicitation. Proposer warrants that the prices offered do not exceed those currently offered to any other customer for the same or similar quantities of the same or similar goods or services. The Proposer further represents it is in complete compliance with the terms of Exhibit #2. | EXHIBIT #2 |
| 11. | <input type="checkbox"/> For all Contracts expected to equal or exceed \$100,000 in value, the Proposer is required to complete and sign Exhibit 4, Certificate Regarding Lobbying Pursuant to 31 U.S.C. 1352, and if applicable, Exhibit 4, Standard Form (SF) LLL - Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352. | EXHIBIT #4 |
| 12. | <input type="checkbox"/> No person or company, other than Proposer's employee(s) or affiliate firms, has/have been paid to solicit or obtain this Contract or Purchase Order nor has any agreement been made to pay a person or company a commission, fee, or any form of compensation contingent upon award of this solicitation. | |
| 13. | Proposer provides <input type="checkbox"/> Goods <input type="checkbox"/> Services Employer/Tax I.D. No.: _____ - _____ - _____ | |
| 14. | Complete one of the following responses: <input type="checkbox"/> Proposer is not subject to backup withholding per Sec. 3406(a)(i)(c) Internal Revenue Code. <input type="checkbox"/> Proposer is subject to backup withholding; social security number(s) is: _____ - _____ - _____ | |
| | Proposer is: <input type="checkbox"/> An Individual <input type="checkbox"/> A Joint Venture <input type="checkbox"/> A Nonprofit Corporation <input type="checkbox"/> A Partnership <input type="checkbox"/> A Foreign Citizen <input type="checkbox"/> A State or Local Government Agency <input type="checkbox"/> U.S. Government Agency <input type="checkbox"/> A Corporation Incorporated in the State of _____ | |



EXHIBIT 30A - REPRESENTATIONS AND CERTIFICATIONS
 Please Make Copies and Complete for Yourself and All Lower Tier Subcontractors

CERTIFICATE REGARDING DEBARMENT

This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Proposer is required to verify that none of the entities comprising the Proposer, their principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Proposer is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the Proposer certifies as follows:

The certification in this clause is a material representation of fact relied upon by Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The Proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any Contract that may arise from this offer. The Proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

| | |
|----------------------------------|--------------|
| Company LEGAL Name: _____ | |
| Dun & Bradstreet Number: _____ | |
| Ordering Address: _____ | |
| P.O. Box: _____ | City: _____ |
| State: _____ | Zip: _____ |
| Phone: _____ | Fax: _____ |
| Company Principal: _____ | Title: _____ |

| | |
|--------------------------------|--------------|
| Parent Company Name: _____ | |
| Dun & Bradstreet Number: _____ | |
| Ordering Address: _____ | |
| P.O. Box: _____ | City: _____ |
| State: _____ | Zip: _____ |
| Phone: _____ | Fax: _____ |
| Company Principal: _____ | Title: _____ |

I certify that the information provided on this form and the attachments/exhibits there to is accurate and true to the best of my knowledge, and any changed conditions shall be reported promptly to Phoenix Constructors JV.

These certification statements concern matters within the jurisdiction of an agency of the United States. Making a false, fictitious, or fraudulent certification may render Proposer subject to prosecution Section 1001, Title 18, United States Code(U.S.C.). The Buyer may withhold an award based on any negative responses to the certifications above and/or Proposers' failure to adequately describe the conditions of the response. Proposer agrees that the certifications and conditions provided herein are a material and binding part of, and are hereby incorporated by reference into, any resulting contract unless specifically excluded in the Contract or Purchase Order.

| | |
|--------------|---------|
| Printed Name | Company |
| Signature | Date |

EXHIBIT #1

CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, SUSPENSION, DEBARMENT, DISQUALIFICATION, PREQUALIFICATION DENIAL OR TERMINATION, ETC; DISCLOSURE OF OTHER REQUIRED INFORMATION.

By proposing on this Contract, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that the proposer and each parent and/or affiliate of the proposer has not (a) been indicted or convicted in any jurisdiction; (b) been suspended, debarred, found not responsible or otherwise disqualified from entering into contracts with any governmental agency or been denied a government contract for failure to meet prequalification standards; (c) had a contract terminated by any governmental agency for breach of contract or for any cause related directly or indirectly to an indictment or conviction; (d) changed its name and/or Employer Identification Number (taxpayer identification number) following its having been indicted, convicted, suspended, debarred or otherwise disqualified, or had a contract terminated as more fully provided in (a), (b) and (c) above; (e) ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal; (f) been denied a contract by any governmental agency for failure to provide the required security, including proposal, payment or performance bonds or any alternative security deemed acceptable by the agency letting the contract; (g) failed to file any required tax returns or failed to pay any applicable federal, state or local taxes; (h) had a lien imposed upon its property based on taxes owed and fines and penalties assessed by any agency of the federal, state or local government; (i) been, and is not currently, the subject of a criminal investigation by any federal, state or local prosecuting or investigative agency and/or a civil anti-trust investigation by any federal, state or local prosecuting or investigative agency including an inspector general of a governmental agency of public authority; (j) had any sanctions imposed as a result of a judicial or administrative proceeding with respect to any professional license held or with respect to any violation of a federal, state or local environmental law, rule or regulation; and (k) shared space, staff or equipment with any business entity.

Under certain circumstances the successful Proposer may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent monitor to be selected by the Authority. Said monitor shall be charged with, among other things, auditing the actions of the successful Proposer to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to do business with the Authority.

The foregoing certification as to "(a)" through "(k)" shall be deemed to have been made by the proposer as follows: if the proposer is a corporation, such certification shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each director and officer, as well as, to the best of the certifier's knowledge and belief, each stockholder with an ownership interest in excess of 10%; if the proposer is a partnership, such certification shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each partner. Moreover, the foregoing certification, if made by a corporate proposer, shall be deemed to have been authorized by the Board of Directors of the proposer, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the proposer cannot make the foregoing certification, the proposer shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefore. If the proposer is uncertain as to whether or not it can make the foregoing certification, it shall so indicate in a signed statement furnished with its proposal, setting forth an explanation for its uncertainty.

Notwithstanding that the certification may be an accurate representation of the proposer's status with respect to the enumerated circumstances provided for in this clause as requiring disclosure at the time that the proposal is submitted, the proposer agrees to immediately notify the Authority in writing of any change in circumstances during the period of irrevocability, or any extension thereof.

The foregoing certification or signed statement shall be deemed to have been made by the proposer with full knowledge that it would become a part of the records of the Authority and that the Authority will rely on its truth and accuracy in awarding this Contract. In the event that the Authority determines at any time prior or subsequent to the award of the Contract that the proposer has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement pursuant to this clause which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstances provided for in this clause as requiring disclosure, the Authority may determine that the proposer is not a responsible proposer with respect to its proposal on this Contract or with respect to future proposals and may, in addition to exercising any other rights or remedies available to it, exercise any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of Authority". In addition, proposers are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.) Proposers are also advised that the inability to make such certification will not in and of itself disqualify a proposer, and that in each instance the Authority will evaluate the reasons therefore provided by the proposer.

As used in this clause, the following terms shall mean:

- *Affiliate* – An entity in which the parent of the proposer owns more than fifty percent of the voting stock, or an entity in which a group of principal owners which owns more than fifty percent of the proposer also owns more than fifty percent of the voting stock.

- Agency or Governmental Agency – Any federal, state, city or other local agency, including departments, offices, quasi-public agencies, public authorities and corporations, boards or education and higher education, public development corporations, local development corporations and others.
- Employer Identification Number – The tax identification number assigned to firms by the federal government for tax purposes.
- Investigation – Any inquiries made by any federal, state or local criminal prosecuting or investigative agency, including an inspector general or a governmental agency or public authority, and any inquiries concerning civil anti-trust investigations made by any federal, state or local governmental agency. Except for inquiries concerning civil anti-trust investigations, the term does not include inquiries made by any civil governmental agency concerning compliance with any regulation, the nature of which does not carry criminal penalties, nor does it include any background investigations for employment, or federal, state and local inquiries into tax returns.
- Officer - Any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the proposer by whatever titles known.
- Parent – An individual, partnership, joint venture or corporation which owns more than 50% of the voting stock of the proposer.
- Space Sharing – Space shall be considered to be shared when any part of the floor space utilized by the submitting business at any of its sites is also utilized on a regular or intermittent basis for any purpose by any other business or not-for-profit organization, and where there is no lease or sublease in effect between the submitting business and any other business or not-for-profit organization that is sharing space with the submitting business.
- Staff Sharing – Staff shall be considered to be shared when any individual provides the services of an employee, whether paid or unpaid, to the proposer and also, on either a regular or irregular basis, provides the services of an employee, paid or unpaid, to one or more other business(es) and/or not-for-profit organization(s), if such services are provided during any part of the same hours the individual is providing services to the proposer or if such services are provided on an alternating or interchangeable basis between the proposer and the other business(es) or not-for-profit organization(s). “The services of an employee” should be understood to include services of any type or level, including managerial or supervisory. This type of sharing may include, but is not limited to, individuals who provide the following services: telephone answering, receptionist, delivery, custodial and driving.

- Equipment Sharing – Equipment shall be considered to be shared whenever the proposer shares the ownership and/or the use of any equipment with any other business or not-for-profit organization. Such equipment may include, but is not limited to, telephones or telephone systems, photocopiers, computers, motor vehicles, and construction equipment. Equipment shall not be considered to be shared under the following circumstances: when, although the equipment is owned by another business or not-for-profit organization, the proposer has entered into a formal lease for the use of the equipment and exercises exclusive use of the equipment; or when the proposer owns equipment that it has formally leased to another business or not-for-profit organization, and for the duration of such lease the proposer has relinquished all right to the use of such leased equipment.

EXHIBIT #2

**NON-COLLUSIVE PROPOSING AND CODE OF ETHICS CERTIFICATION;
CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION,
PERCENTAGE, BROKERAGE, CONTINGENT FEE OR OTHER FEE.**

By proposing on this Contract, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that: (a) the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement; for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor; (b) the prices quoted in its proposal have not been and will not be knowingly disclosed, directly or indirectly, by the proposer prior to the official opening of such proposal to any other proposer or to any competitor; (c) no attempt has been made and none will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition; (d) this organization has not made any offers or agreements, or given or agreed to give anything of value (see definition of "anything of value" appearing in the clause of the Form of Contract entitled "No Gifts, Gratuities, Offers of Employment, etc.") or taken any other action with respect to any Authority employee or former employee or immediate family member of either which would constitute a breach of ethical standards under the Code of Ethics and Financial Disclosure dated as of April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Questions by Proposers"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code; (e) no person or selling agency, other than a bona fide employee or a bona fide established commercial or selling agency maintained by the proposer for the purpose of securing business, has been employed or retained by the proposer to solicit or secure this Contract on the understanding that a commission, percentage, brokerage, contingent or other fee would be paid to such person or selling agency; the proposer has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or from a public official or employee, political candidate, party or party official, or any private sector employee (including a person who directs or works for a private sector enterprise in any capacity), in order to obtain, retain, or direct business or to secure any other improper advantage in connection with this Contract.

The foregoing certification as to "(a)", "(b)", "(c)", "(d)" and "(e)" shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each parent, affiliate, director and officer of the proposer, as well as, to the best of certifier's knowledge and belief, each stockholder of the proposer with an ownership interest in excess of 10%; if the proposer is a partnership, such certification shall be deemed to have been made not only with respect to the proposer itself, but also with respect to each partner.

Moreover, the foregoing certification, if made by a corporate proposer, shall be deemed to have been authorized by the Board of Directors of the proposer, and such authorization shall be deemed to include the signing and submission of the proposal and the inclusion therein of such certification as the act and deed of the corporation.

In any case where the proposer cannot make the foregoing certification, the proposer shall so state and shall furnish with the signed proposal a signed statement which sets forth in detail the reasons therefore. If the proposer is uncertain as to whether or not it can make the foregoing certification, it shall so indicate in a signed statement furnished with its proposal, setting forth in such statement, an explanation for its uncertainty.

Notwithstanding that the proposer may be able to make the foregoing certification at the time the proposal is submitted, the proposer shall immediately notify the Authority in writing during the period of irrevocability or proposals on this Contract or any extension of such period, or any change of circumstances which might under this clause make it unable to make the foregoing certification or required disclosure.

The foregoing certification or signed statement shall be deemed to have been made by the proposer with full knowledge that it would become a part of the records of the Authority and that the Authority will rely on its truth and accuracy in awarding this Contract. In the event that the Authority determines at any time prior or subsequent to the award of the Contract that the proposer has falsely certified as to any material item in the foregoing certification; willfully or fraudulently submitted any signed statement which is false in any material respect; or has not completely and accurately represented its status with respect to the circumstance with respect to any item in the foregoing certification required to be disclosed, the Authority may determine that the proposer is not a responsible proposer with respect to its proposal on this Contract or with respect to future bids on Authority contracts and may, in addition exercising any of the rights or remedies set forth in the clause of the Form of Contract entitled "Rights and Remedies of Authority". In addition, proposers are advised that knowingly providing a false certification or statement pursuant hereto may be the basis for prosecution for offering a false instrument for filing (see e.g., New York Penal Law, Section 175.30 et seq.) Proposers are also advised that the inability to make such certification will not in and of itself disqualify a proposer, and that in each instance the Authority will evaluate the reasons therefore provided by the proposer.

Under certain circumstances the successful Proposer may be required as a condition of this contract award to enter into a Monitoring Agreement under which it will be required to take certain specified actions, including compensating an independent monitor to be selected by the Authority. Said monitor shall be charged with, among other things, auditing the actions of the successful Proposer to determine whether its business practices and relationships indicate a level of integrity sufficient to permit it to do business with the Authority.

EXHIBIT #3

CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION – LOWER TIER COVERED TRANSACTIONS PURSUANT TO FTA CIRCULAR 2015.1

1. The prospective lower tier participant, _____, certifies, by submission of this bid or proposal, that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency.
2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.
3. The prospective lower tier participant shall provide immediate written notice to the Authority (and the Contractor, if applicable) if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

Executed this _____ day of _____, 2007

By:

Signature of Authorized Official

Official Name and Title of Authorized Official

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION –
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms “covered transaction”, “debarred”, “suspended”, “ineligible”, “lower tier covered transaction”, “participant”, “persons”, “principal”, “proposal”, and “voluntarily excluded”, as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the “Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tier Covered Transaction”, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Non-Procurement List issued by U.S. General Service Administration.

8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the federal government, the Authority may pursue available remedies including suspension and/or debarment.

EXHIBIT #4

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. § 1352

The undersigned _____
(name of authorized officer)

certifies, to the best of my knowledge and belief that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.
2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.
3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S.C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 for each such expenditure or failure.

Note: Pursuant to 31, U.S.C. § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification of disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each expenditure or failure.

The Contractor, certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31, U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this _____ day of _____, 2007

By:

Signature of Authorized Official

Official Name and Title of Authorized Official

STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

1. Type of Federal Action:

- a. contract
- b. grant
- c. cooperative agreement
- d. loan
- e. loan guarantee
- f. loan assistance

2. Status of Federal Action:

- a. bid/offer/application
- b. initial award
- c. post award

3. Report Type:

- a. initial filing
- b. material change

For Material Change Only:

year quarter

date of last report

4. Name and Address of Reporting Entity:

- Prime Subawardee
- Tier _____, if known:
- Congressional District, _____ if known:

5. If Reporting Entity in No.4 is a Subawardee, Enter Name and Address of Prime:

Congressional District, _____ if known:

6. Federal Department/Agency:

7. Federal Program Name/Description:
CFDA Number, if applicable:

8. Federal Action Number, if known:

9. Award Amount, if known:

\$

10. a. Name and Address of Lobbying Registrant
(if individual, last name, first name, MI):

b. Individuals Performing Services (including
address if different from No. 10a)
(last name, first name, MI):

11. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

Signature: _____

Print Name: _____

Title: _____

Date: _____

Telephone No. _____

INSTRUCTIONS FOR COMPLETION OF DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code. Of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award of loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If know, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal Agency). Include prefixes, e.g., "RFP-DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title and telephone number.

According to the Paperwork Reduction Act, as amended no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB NO. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington D.C., 20503



**EXHIBIT 30B
SUBCONTRACTOR SURVEY AND
RESOURCE QUESTIONNAIRE**

**SUBCONTRACTOR SURVEY AND RESOURCE QUESTIONNAIRE FOR WORLD
TRADE CENTER TRANSPORTATION HUB PROJECT**

Phoenix Constructors JV has been awarded the World Trade Center Transportation Hub Project. Phoenix Constructors JV will contract with third parties for the construction of this Project. The purpose of this Questionnaire is to determine your interest in participating in this Project, and to evaluate your capabilities.

This Questionnaire is used to establish general information on your company's overall capabilities and background.

If you are interested in participating in this work, please answer all questions in the attached Questionnaire and return it to the address below. Please also submit copies of any brochures or other bound material that supports your responses.

Your information will be reviewed by Phoenix Constructors JV and will undergo a screening process by the Port Authority of New York and New Jersey (PANYNJ). Final approval of your company rests solely with the PANYNJ. After approval, your company information will be stored in the Phoenix Constructors JV Subcontractor-Vendor database. Please be informed that continued background screening will be an ongoing process of all firms throughout the term of the WTC project and that your company will be required to certify to the currency of information immediately prior to any award of work.

Issuance of this Questionnaire and your submittal of a response do not constitute a commitment on the part of Phoenix Constructors JV to request you to bid/proposal on this Project.

Please return original Questionnaires marked "Pre-Qualification Package" to:

Phoenix Constructors JV
115 Broadway, 18th Floor
New York, NY 10006
Tel: 212-616-5800
Fax: 212-566-2350



**EXHIBIT 30B
SUBCONTRACTOR SURVEY AND
RESOURCE QUESTIONNAIRE**

PART I: SUBCONTRACTOR SURVEY QUESTIONNAIRE

| | | | | | |
|--|-------------|-----------------|--|--|--|
| PLEASE COMPLETE AND RETURN THE FOLLOWING QUESTIONNAIRE. THIS INFORMATION WILL ASSIST US IN ACCURATELY IDENTIFYING THE TYPE OF WORK YOU PERFORM. ALL INFORMATION SUBMITTED WILL BE CONSIDERED CONFIDENTIAL AND HANDLED ACCORDINGLY. | | | | | |
| GENERAL | | | | | |
| NAME OF BUSINESS | | STREET ADDRESS | | CITY, STATE, ZIP CODE | |
| PREVIOUS BUSINESS NAMES | | TELEPHONE | FAX | CONTACT IN HOME OFFICE (including Title) | |
| SEND INQUIRIES TO: (Name and Address) | | | EMPLOYER IDENTIFICATION NUMBER (EIN) or TAX ID NUMBER: | | |
| OTHER OFFICES: ATTACH LIST OF SALES OFFICES, REPRESENTATIVES, AGENTS OR CONTACTS THAT MAY ACT FOR YOUR COMPANY, INCLUDING NAMES, ADDRESSES AND TELEPHONE NUMBERS | | | | | |
| LICENSE | | | | | |
| NUMBER | | STATE | | TYPE OF WORK LICENSED FOR | |
| | | | | | |
| ORGANIZATION | | | | | |
| SOLE PROPRIETORSHIP | PARTNERSHIP | CORPORATION | DATE FOUNDED | UNDER PRESENT MGMT. SINCE: | NET WORTH |
| NAMES OF CLIENT(S) | | | | SB/SDB/WOB | <input type="checkbox"/> YES <input type="checkbox"/> NO |
| NAMES AND TITLES OF OFFICERS | | | | SIC CODE | |
| ANNUAL DOLLAR VOLUME WITH PHOENIX CONSTRUCTORS JV FOR THE LAST 3 YEARS (Provide value per year in the boxes provided below - Box 1 should be most recent) TOTAL: Most Recent Year Worked with Phoenix: | | | | | |
| 1. | | 2. | | 3. | |
| PREFERRED JOB COST RANGE | | | | | |
| MINIMUM | | | MAXIMUM | | |
| BANKING REFERENCES | | | | | |
| BONDING REFERENCES | | | | BONDING LIMIT | |
| ATTACH ANNUAL REPORT AND/OR FINANCIAL STATEMENT | | | | | |
| PROPOSAL INTEREST | | | | | |
| TYPE OF WORK | | | | | |
| STATES AND/OR COUNTRIES | | | | | |
| TYPES OF WORK USUALLY SUBCONTRACTED TO OTHERS | | | | | |
| LABOR RELATIONS (SHOP & FIELD) | | | | | |
| <input type="checkbox"/> UNION CONTRACTOR | | | <input type="checkbox"/> NON-UNION CONTRACTOR | | |
| TRADES WITH WHOM YOU HAVE AGREEMENTS | | EXPIRATION DATE | | TRADES WITH WHOM YOU HAVE AGREEMENTS | |
| 1. | | 3. | | 5. | |
| 2. | | 4. | | 6. | |
| PRODUCTS | | | | | |
| LIST MANUFACTURERS FOR WHOM YOU ARE A LICENSED DISTRIBUTOR | | | | | |
| 1. | | 3. | | 5. | |
| 2. | | 4. | | 6. | |
| COMPLETE IF APPLICABLE | | | | | |
| LOCATION OF FABRICATION SHOPS | | | | | |
| NAMES AND ADDRESSES OF OUTSIDE DETAILERS USED | | | | | |
| INDICATE APPROVAL FOR CODE WORK (API, ASME, NEMA, ANSI, ETC.) | | | | | |
| WORK HISTORY | | | | | |
| USING FORM W1TC 430.F0145B, PLEASE PROVIDE A BRIEF RESUME OF IMPORTANT JOBS COMPLETED BY YOUR FIRM WITHIN THE LAST THREE YEARS. ALSO ATTACH BROCHURE IF AVAILABLE. PRIOR JOBS WITH OUR FIRM MUST BE LISTED. | | | | | |
| COMMENTS: | | | | RETURN QUESTIONNAIRE TO: | |
| | | | | | |
| QUESTIONNAIRE COMPLETED BY | | TITLE | | DATE | |



**EXHIBIT 30B
SUBCONTRACTOR SURVEY AND
RESOURCE QUESTIONNAIRE**

PART II: RESUME OF WORK PERFORMED

| Owner and/or Client (Include Name of Representative and Telephone Number) | Value of Contract | Prime or Subcontract (List General Contractor, Contract and Telephone Number) | Type of Work Performed | Location of Job | Year Completed |
|--|----------------------|---|---------------------------|-----------------|-------------------|
| | | | | | |



**EXHIBIT 30B
SUBCONTRACTOR SURVEY AND
RESOURCE QUESTIONNAIRE**

PART III: PRINCIPAL INFORMATION

Please provide the following information for the ten most senior principals of your company.

| Name | Title | Date of Birth | Social Security # |
|------|-------|---------------|-------------------|
| | | | |
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PART IV: BUSINESS AND FINANCIAL QUALIFICATIONS

A. FINANCIAL STATUS

- 1. Please attach to this questionnaire copies of your Company's financial reports or Balance Sheets and Profit and Loss Statements for the last two years.

B. EMPLOYEES

- Total Company: _____

C. CATEGORY OF WORK (Activities Company wishes to be considered)

Major Activities (specify)

- 1. _____
- 2. _____
- 3. _____

D. QUALIFICATIONS AND LICENSES FOR ACTIVITIES

| <u>MAJOR ACTIVITY</u> | <u>QUALIFICATIONS</u> | <u>LICENSES</u> |
|--------------------------------|---|---|
| _____ | _____ | _____ |
| _____ | _____ | _____ |
| Indicate Activity as per IV C. | Indicate by which Association company is recognized | Indicate License and name of issuing institute. |

E. JOINT VENTURE

If Company is operating in Joint Venture

Specify: - Name of Joint Venture: _____

- Permanent / Ad Hoc (circle appropriate)

F. MANPOWER RESOURCES

Please indicate your proposed approach in respect to manpower resources

- a) By own Manpower Yes No
- b) Subcontract part of Work to others. Yes No



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Which portion of Work do you intend to subcontract to others?

Indicate names of potential subcontractors:

1) _____
2) _____
3) _____

Please indicate if you intend to perform the Work in Joint Venture with another Company. Indicate name of potential companies.

Yes No

1) _____
2) _____

Please indicate if you intend to perform the Work as a subcontractor for a main contractor. Indicate name of potential main contractor(s).

Yes No

1) _____
2) _____

G. PERFORMANCE GUARANTEE

In the event that the successful contractor is a subsidiary of another company, we will require a full performance guarantee from that parent or holding company for work performed by the successful bidder. Please submit, if applicable, name and address of the parent or holding company willing to provide such performance guarantee.



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PART V: QUALITY ASSURANCE MEASURES

A. QUALITY ASSURANCE

- 1) Indicate Quality Standard as applied by You
 ASTM ISO 9001: 2000 Other _____
- 2) Is your Quality System fully documented and available in writing? Yes No
- 3) Is Your Quality System subject to independent 3rd party assessment? Yes No
i) If approved, please indicate name of 3rd Party and include a copy of the Approval certificate and Scope of Approval). _____
ii) If not independently approved, please include a copy of the Quality Manual
- 4) Is a Quality Control Manual Implemented? Yes No



EXHIBIT 30B
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PART VI: U.S. CONTRACTOR AND SUBCONTRACTOR HEALTH, SAFETY AND
ENVIRONMENTAL (HSE) PRE-QUALIFICATION QUESTIONNAIRE

Please provide all requested information. In general, your firm's HSE performance for the last three years will be considered in this pre-qualification evaluation with emphasis given to the most recent year's performance. Phoenix will use the following primary evaluation metrics to assess a contractor's safety record:

- Experience Modification ("EMR");
 - Provide a copy of a letter from your insurance broker or company showing your EMR (See Section 1, I)
- OSHA Inspection History;
 - Provide a copy of your OSHA Logs for the last 3 yrs. (See Section 2, I)
 - Provide printout of the your OSHA public database inspection record for the last 3 yrs (See Section 2, I)
- Total Recordable Incident Rate ("TRIR");
- Lost Workday Case Incident Rate ("LWCIR"); and
- Work related fatalities

Failure to provide accurate information or additional requested information supporting/evidencing the data provided below may result in the categorization of the Subcontractor as non-responsive. Please provide all requested information.

Company Name: _____

Primary Services Performed: _____

1. EMR: EXPERIENCE MODIFICATION RATE

I] MANDATORY SUBMITTAL:

Provide a COPY OF THE LETTER FROM YOUR INSURANCE BROKER OR INSURANCE COMPANY or WCB evidencing the rate for the last 3 years.

II] List your firm's interstate or intrastate (if applicable) Experience Modification Rate (EMR) for the three most recent years, as evidenced in Workman's Compensation Insurance premiums:

| | | |
|-------------|-------------|-------------|
| Year: _____ | Year: _____ | Year: _____ |
| Rate: _____ | Rate: _____ | Rate: _____ |

Are these rates: InTER-state/national average or InTRA-state/provincial

Please check this box if your company has less than the minimum number of employees required by law to carry workers' compensation insurance or if your company does not have an EMR. (If checked, please provide a letter from your Insurance Company or WCB stating this)

Is your company self-insured for Workers Compensation claims? Yes No



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III) For the Subcontractor to be considered qualified, their EMR rate established by the National Council on Compensation Insurance (NCCI) or state rating bureau (if applicable) should be no greater than 1.2; or a WCB surcharge no more 20% above the industry average. A rating greater than 1.2 will place the Subcontractor in a probationary status, and allowance will be subject solely to Phoenix's review. Higher rates may require a corrective action plan for your firm to be a qualified bidder. If the rating provided exceeds 1.2 please provide a written explanation below (such explanation is mandatory):

2. OSHA: OCCUPATIONAL SAFETY AND HEALTH ADMINISTRATION / FATALITIES

I) **MANDATORY SUBMITTALS:** Attach to this questionnaire:

(1) a **PRINTOUT OF YOUR OSHA LOGS FOR THE LAST 3 YRS**, and

(2) a **PRINTOUT OF YOUR OSHA PUBLIC DATABASE INSPECTION RECORD FOR THE LAST 3 YRS**

II) Fill in the following information for the last three available years. (In the U.S. use your last three annual OSHA 200 or 300 Logs. Non-U.S. firms, please see OSHA definitions at the conclusion of this questionnaire.)

A. Number of Total (OSHA/BLS) Recordable Cases:

Year: _____ Year: _____ Year: _____
No: _____ No: _____ No: _____

B. Number of Restricted Work Activity Cases:

Year: _____ Year: _____ Year: _____
No: _____ No: _____ No: _____

C. Number of Lost Workday Cases:

Year: _____ Year: _____ Year: _____
No: _____ No: _____ No: _____



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D. Number of Fatalities:

Year: _____ Year: _____ Year: _____
No: _____ No: _____ No: _____

E. Employee hours worked (do not include any non-work time, even though paid):

Year: _____ Year: _____ Year: _____
Hours: _____ Hours: _____ Hours: _____

III) If the Contractor has had an OSHA citation within the last 3 years that was classified with a severity **greater than serious or experienced any fatalities** please provide a written explanation, explaining the relevant circumstances and any corrective actions that have been taken (such explanation is necessary). Allowance will be subject solely to Phoenix's review and approval. Phoenix may require a satisfactory corrective action plan for your firm to be a qualified bidder.

3. TRIR: TOTAL RECORDABLE INCIDENT RATE:

List your firm's (OSHA/BLS) Total Recordable Incident Rate (TRIR) for the three most recent years. To be qualified without corrective action, that resultant number should be no greater than 7.5. Provide a legible copy of your OSHA Logs for the last 3 years (or equivalent) with your submittal. A rating greater than 7.5 will place the Subcontractor in a probationary status, and require a satisfactory explanation from the Subcontractor. Allowance will be subject solely to Phoenix's review and approval. Higher rates may require a corrective action plan for your firm to be a qualified bidder.

Year: _____ Year: _____ Year: _____
Rate: _____ Rate: _____ Rate: _____

Note: Calculate your TRIR by counting without duplication all recordable injuries and illnesses. Use the information entered on your OSHA 200 or 300 Form (Line 2A, above), multiply this number by 200,000, and divide the result by your firm's total work hours for that calendar year. (i.e. for 2001, take the value entered in Item 2- A (2001), multiply by 200,000, divide this total by the 2001 employee work hours entered in Item 3 above).

If the rating provided exceeds 7.5 please provide a written explanation below (such explanation is mandatory):



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4. **LWCIR: LOST WORKDAY CASE INCIDENT RATE:**

List your firm's Lost Workday Case Incident Rate (LWCIR) for the three most recent years, as evidenced by your OSHA Log or equivalent document (if non-U.S.) To be qualified without corrective action, that resultant number should be no greater than 4.0. Provide a legible copy of your most recent OSHA Log with your submittal. A rating greater than 4.0 will place the Subcontractor in a probationary status, and require a satisfactory explanation from the Subcontractor. Allowance will be subject solely to Phoenix's review and approval. Higher rates may require a corrective action plan for your firm to be a qualified bidder.

Year: _____ Year: _____ Year: _____
Rate: _____ Rate: _____ Rate: _____

Note: Calculate your LWCIR in the same manner as the TRIR, except use the values reported in 2C, above, rather than 2A.

If the rating provided exceeds 4.0 please provide a written explanation below (such explanation is mandatory):

5. Please list any OSHA health, safety or environmental citations or notices of violation, reportable spill events, sanitation code violations, or other governmental indications of an HSE incident¹ received by your company during the previous three years. Please attach a copy of each or a summary describing the incident and how it was resolved.

¹ HSE incident means an accident or some other unplanned event that causes or had potential to cause an injury, illness, environmental or property damage, or loss of production.



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6. Is the information collected from the OSHA logs/OH&S notices, HSE incident reports, and near miss reports communicated to the following? If yes, how often?

| | Yes | No | Monthly | Quarterly | Annually |
|----------------------------------|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Field Superintendent or Dept Mgr | <input type="checkbox"/> |
| Vice President | <input type="checkbox"/> |
| President or CEO | <input type="checkbox"/> |
| Other _____ | <input type="checkbox"/> |

7. How are individual HSE incidents and associated costs recorded? How often are they reported?

| | Yes | No | Monthly | Quarterly | Annually |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| Incidents totaled for entire company | <input type="checkbox"/> |
| Incidents totaled by project | <input type="checkbox"/> |
| Incidents subtotaled by superintendent or dept manager | <input type="checkbox"/> |
| Incidents subtotaled by foreman/supervisor | <input type="checkbox"/> |
| Costs totaled for entire company | <input type="checkbox"/> |
| Costs totaled by project | <input type="checkbox"/> |
| Costs subtotaled by superintendent | <input type="checkbox"/> |
| Costs subtotaled by foreman/supervisor | <input type="checkbox"/> |

8. Do you have a written HSE program? Yes No

If yes, please attach a copy or a summary of your program, including any HSE, safety, or environmental policy or mission statements you may have.

9. Does your firm have a Sustainability Program, Policy, or Report? Yes No
If yes, please attach a brief summary.

10. Do you have an orientation program for new hires? Yes No

11. Do you have a program for newly hired or promoted foreman and supervisors? Yes No

12. Please indicate below the elements included in your overall HSE program, new hire training/orientation, and new supervisor/foreman training

| | HSE Program | New Hire Training | Supervisor Training |
|----------------------------|--------------------------|--------------------------|--------------------------|
| A. Corporate HSE Policy | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| B. HSE Workplace Committee | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



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- | | | | |
|--|--------------------------|--------------------------|--------------------------|
| C. HSE Inspections and Audits | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| D. Personal Protective Equipment | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| E. Hazard Assessment and Communication | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| F. Task Assignment Training | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| G. Respiratory Protection | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| H. Fall Protection | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| I. Scaffolding & Ladders | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| J. Perimeter Guarding | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| K. Housekeeping | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| L. Fire Protection/Prevention | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| M. First Aid Procedures/Facilities | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| N. Emergency Procedures | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| O. Toxic Substances/Hazard Communication | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| P. Trenching & Excavation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Q. Signs, Barricades, & Flagging | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| R. Electrical Safety | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| S. Rigging & Crane Safety | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| T. Safe Work Practices | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| U. Safety Supervision | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| V. Toolbox/Workplace HSE Meetings | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| W. Incident Investigation/Reporting | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| X. Confined Spaces | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Y. Abrasive Blasting Safety | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| Z. Substance Abuse | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| AA. Vehicle Safety | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| BB. Use of Compressed Gas Cylinders | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| CC. Welding/Cutting | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| DD. Medical Evaluation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| EE. Blood-borne Pathogens | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| FF. Employee Discipline | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| GG. High-pressure Water Cleaning | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| HH. Hot Taps | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| II. Noise/Hearing Conservation | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| JJ. Heat/Cold Stress | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| KK. Incentives/Awards for HSE Achievements | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| LL. Spill Prevention/Response | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| MM. Dust Suppression | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| NN. Wastewater/Storm Water Management | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |



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- OO. Hazardous Waste & Solid Waste Management
- PP. Equipment Emissions
- QQ. Wetlands/Sensitive Habitats
- RR. Other _____

13. Do you hold workplace HSE meetings for supervisors? Yes No

If yes, how often?

- Daily
- Weekly
- Bi-Weekly
- Monthly
- As Needed

14. Do you hold employee "toolbox" HSE meetings? Yes No

If yes, how often?

- Daily
- Weekly
- Bi-Weekly
- Monthly
- As Needed

15. Do you conduct pre-task HSE planning meetings with employees? Yes No

If yes, briefly describe the program format and/or attach a copy.

16. Do you conduct workplace HSE inspections? Yes No

If yes, who conducts this inspection? _____ and how often?

- Daily
- Weekly
- Bi-Weekly
- Monthly
- As Needed

17. Please identify the most senior executive/manager directly responsible for HSE program management and implementation at your company:

Name: _____

Title: _____

Reports to: _____

Comments:



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| | |
|----------------------------|-------------------------|
| Prepared by (Printed Name) | Prepared by (Signature) |
| Title | Date |

U.S. Bureau of Labor Statistics/OSHA Recordkeeping Summary

Note- this is a summary, prepared to assist the Contractor/Subcontractor in making Recordkeeping determinations to complete this form. For a more detailed explanation of the regulations the Contractor/Subcontractor is advised to review U.S. OSHA Regulation 29CFR1904, available on www.osha.gov.

Basic recordkeeping concepts and guidelines are included with instructions on the back of U.S. OSHA Form No. 200. The following summarizes the major recordkeeping concepts and provides additional information to aid in keeping records accurately.

General concepts of recordability

1. An injury or illness is considered work related if it results from an event of exposure in the work environment. The work environment is primarily composed of: (1) The employer's premises, and (2) other locations where employees are engaged in work-related activities or are present as a condition of their employment. When an employee is off the employer's premises, work relationship must be established, when on the premises, this relationship is presumed. The employer's premises encompass the total establishment. This includes not only the primary facility, but also such areas as company storage facilities, cafeterias, and rest rooms. In addition to physical locations, equipment or materials used in the course of an employee's work are also considered part of the employee's work environment.

2. Work relationship is not presumed when injury results as:

- a. Member of general public
- b. Eating, drinking one's own food
- c. Personal tasks outside working hours
- d. Personal grooming or self-medication
- e. Motor vehicle accident in parking lot
- f. Cold or flu
- g. Non-work related mental illness

3. All work-related fatalities are recordable.

4. All recognized or diagnosed work-related illnesses are recordable.

5. All work-related injuries requiring medical treatment or involving loss of consciousness, restriction of work or motion, or transfer to another job are recordable.

Analysis of Injuries

Recordable and nonrecordable injuries. Each case is distinguished by the treatment provided by a physician or licensed healthcare professional; i.e., if the injury was such that medical treatment was provided or should have been provided, it is

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recordable; if only first aid was required, it is not recordable. However, medical treatment is only one of several criteria for determining recordability. Regardless of treatment, if the injury involved loss of consciousness, restriction of work or motion, or transfer to another job, the injury is recordable.

Injuries & Illnesses. An injury or illness is an abnormal condition or disorder. Injuries include cases such as, but not limited to, a cut, fracture, sprain, or amputation. Illnesses include both acute and chronic illnesses, such as, but not limited to, a skin disease, respiratory disorder, or poisoning. (Note: Injuries and illnesses are recordable only if they are new, work-related cases that meet one or more of the OSHA Part 1904 Recording criteria.)

(RECORDABLE) Medical treatment. The following procedures are generally considered medical treatment, injuries for which this type of treatment was provided or should have been provided are almost always recordable if the injury is work related:

- Treatment of **INFECTION**
- Hearing loss of 25 dBA from baseline
- Treatment of **SECOND OR THIRD DEGREE BURN(S)**
- Application of **SUTURES (stitches)**
- Removal of **FOREIGN BODIES EMBEDDED IN EYE**
- Removal of **FOREIGN BODIES FROM WOUND**; if procedure is **COMPLICATED** because of depth of embedment, size, or location
- Use of **PRESCRIPTION MEDICATIONS**
- Significant diagnosed injury – fracture; punctured eardrum; cancer; chronic irreversible disease
- **CUTTING AWAY DEAD SKIN** (surgical debridement)
- **POSITIVE X-RAY DIAGNOSIS** (fractures, broken bones, etc.)
- **ADMISSION TO A HOSPITAL** or equivalent medical facility **FOR TREATMENT.**



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Medical Treatment **DOES NOT** include (a) visits to a physician or other licensed healthcare professional solely for observation or counseling; (b) diagnostic procedures such as x-rays and blood tests, including the administration of prescription medications used solely for diagnostic purposes (e.g., eye drops to dilate pupils); or (c) any treatment contained on the list of first-aid treatments.

(RECORDABLE) General Guidelines for recording Lost Workday Cases:

1. Count days lost from work as prescribed by the physician or licensed healthcare professional
2. Count calendar days
3. DO NOT count day of injury

(RECORDABLE) General Guidelines for recording Restricted Cases:

1. Cannot work a full shift
2. Cannot perform all of his/her routine job functions (Routine = any duty regularly performed at least once per week)

First aid treatment. The following procedures are generally considered first aid treatment (e.g., one-time treatment and subsequent observation of minor injuries) and should not be recorded if the work-related injury does not involve loss of consciousness, restriction of work or motion, or transfer to another job. First Aid means only the following treatments (any treatment not included in this list is not considered First Aid for recordkeeping purposes):

- * Using a non-prescription medication at non-prescription strength
- * Administering tetanus immunizations
- * Cleaning, flushing or soaking wounds on the surface of the skin
- * Using wound coverages such as bandages, Band-Aids, gauze pads, etc.; or using butterfly bandages or Steri-Strips
- * Using hot or cold therapy
- * Using any non-rigid means of support, such as elastic bandages, wraps, non-rigid back belts, etc.
- * Using temporary immobilization devices while transporting an accident victim
- * Drilling of a fingernail or toenail to relieve pressure, or draining fluid from a blister
- * Using eye patches
- * Removing foreign bodies from the eye using only irrigation or a cotton swab
- * Removing splinters or foreign material from areas other than the eye by irrigation, tweezers, cotton swabs or other simple means
- * Using finger guards
- * Using massages
- * Drinking fluids for relief of heat stress

The following procedure, by itself, is not considered medical treatment:

- * Administration of TETANUS SHOT(S) or BOOSTER(S). However, these shots are often given in conjunction with more serious injuries; consequently, injuries requiring these shots may be recordable for other reasons.

Reminder: Work-related injuries requiring only first aid treatment and that do not involve any of the conditions in Item 4 above, are not recordable.



Attachments

Attachments – Port Authority Package No. 20 – Station Construction and Transit Hall Requirements: Letter dated October 17, 2008

Attachment B - “Available Documents”, pages 1 through 3 dated 10/17/2008

Attachment C - “Time for Completion and Damages for Delay”, pages 1 through 7 dated 10/17/2008

Attachment D – “Hours of Work”, pages 1 through 10 dated 10/17/2008

Attachment E – “Permit” page 1 of 1 dated October 17, 2008 and attached letter (2 pages) dated July 17, 2008

Attachment F – “Special Requirements” - (Site Access and Staging Restrictions, Work Train and Transfer Yard, Record Documents) pages 1 through 8 dated 10/17/2008

Attachment S – “Confidential and Privileged Drawings” and Specifications

Work Package # 20 – Volume 8 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 9 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 10 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 11 Drawing List – pages 1 thru 4 dated 10/17/2008

Work Package # 20 – Volume 12 Drawing List – pages 1 thru 4 dated 10/17/2008

Work Package # 20 – Volume 13 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Specifications Confidential & Privileged– pages 1 thru 7 dated 10/17/2008

Work Package # 7 – Volume 16 Drawing List – pages 1 thru 3 dated 10/17/2008



RFP/CONTRACT NO.: W0TC-GC1-2-KN0188-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 96, ATTACHMENTS

Attachment A – “Unrestricted Drawings” and Specifications

- Work Package # 20 – Volume 1 Drawing List – pages 1 thru 4 dated 10/17/2008
- Work Package # 20 – Volume 2 Drawing List – pages 1 thru 5 dated 10/17/2008
- Work Package # 20 – Volume 3 Drawing List – pages 1 thru 4 dated 10/17/2008
- Work Package # 20 – Volume 4 Drawing List – pages 1 thru 5 dated 10/17/2008
- Work Package # 20 – Volume 5 Drawing List – pages 1 thru 4 dated 10/17/2008
- Work Package # 20 – Volume 6 Drawing List – pages 1 thru 4 dated 10/17/2008
- Work Package # 20 – Volume 7 Drawing List – pages 1 thru 5 dated 10/17/2008
- Work Package # 20 – Specifications – pages 1 thru 7 dated 10/17/2008
- Work Package # 1k – Volume 14 Drawing List – pages 1 of 1 dated 10/17/2008
- Work Package # 1K – Specifications – page 1 of 1 dated 10/17/2008
- Work Package # 7 – Volume 15 Drawing List – pages 1 thru 2 dated 10/17/2008
- Work Package # 7 – Specifications – pages 1 thru 3 dated 10/17/2008
- Work Package # 20 – Volume 17 Drawing List – pages 1 thru 3 dated 10/17/2008



RFP/CONTRACT NO.: W0TC-GC1-2-KN0188-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 98, ATTACHMENTS

SPECIFICATIONS

Spec. No. Title Date Pages

Refer to Exhibit 96, Attachment "S", for Confidential and Privileged Specifications

Work Package # 20 – Specifications Confidential & Privileged– pages 1 thru 7 dated 10/17/2008

Division 1 General Requirements

| | | |
|-------|---------------------------------|--------------|
| 01352 | Sustainable Design Requirements | C 08/15/2008 |
| 01522 | PATH Hall Roof Temporary Works | C 08/18/2008 |

Division 2 Site Work

| | | |
|-------|---|--------------|
| 02050 | Demolition and Disposal | C 11/16/2007 |
| 02051 | Partial Removals at Building Exterior | C 09/27/2007 |
| 02052 | Pre-Construction Condition survey of Existing Structures | 10/13/2008 |
| 02073 | Cutting Patching and Removal | C 10/16/2007 |
| 02076 | Selective Demolition for Interior | C 09/27/2007 |
| 02078 | Interior Removals | C 01/04/2008 |
| 02145 | Dewatering | C 11/13/2007 |
| 02164 | Prestressed Soil and Rock Anchors | C 03/21/2008 |
| 02221 | Excavation, Backfilling and Filling | C 12/10/2007 |
| 02224 | Rock Excavation | C 01/14/2008 |
| 02228 | Instrumentation for Settlement and Ground Water Observation | C 06/13/2008 |
| 02229 | Instrumentation | C 06/13/2008 |
| 02331 | Geo-textile | C 11/15/2007 |
| 02331 | Flowable Fill | C 12/26/2007 |
| 02366 | Steel Sheet Piling | A 07/15/1993 |
| 02378 | Mini-Caisson Piles | C 06/13/2008 |
| 02391 | Protective Coating For Steel Piling | N 05/31/2001 |
| 02711 | Sub-drainage System | C 10/16/2007 |
| 02720 | Manholes and Drainage Structures | C 11/15/2007 |
| 02722 | Storm Drainage System (Infiltration/Exfiltration Testing Not Required) | C 10/16/2007 |
| 02896 | Environmental Requirements for handling And Disposal of Soil Materials | C 09/25/1996 |

Division 3 Concrete

| | | |
|-------|-------------------|------------|
| 03100 | Concrete Formwork | 07/23/2008 |
|-------|-------------------|------------|



RFP/CONTRACT NO.: W0TC-GC1-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 98, ATTACHMENTS

| | | |
|-------|--|--------------|
| 03200 | Concrete Reinforcement | C 01/22/2008 |
| 03301 | Portland Cement Concrete, Long Form | A 07/13/2008 |
| 03303 | Placement of Portland Cement Concrete | A 01/12/2006 |
| 03350 | Concrete Toppings | C12/27/2007 |
| 03361 | Shortcrete | C12/26/2007 |
| 03420 | Precast Prestressed Concrete for Building Construction | C 09/30/2008 |
| 03450 | Architectural Precast Concrete | C12/26/2007 |
| 03451 | Precast Concrete Stairs | C 09/27/2007 |
| 03602 | Grouting (Non Shrink) | C 02/13/2008 |

Division 4 Masonry

| | | |
|-------|---|--------------|
| 04061 | Masonry Mortar – Unpigmented | C 09/27/2007 |
| 04070 | Masonry Grout | C 10/25/2007 |
| 04170 | Joint Reinforcement & Steel Reinforcement | C 09/27/2007 |
| 04220 | Concrete Masonry Units | C 03/28/2008 |

Division 5 Metals

| | | |
|-------|--|--------------|
| 05120 | Structural Steel | C 09/04/2008 |
| 05311 | Steel Deck | C 12/26/2007 |
| 05400 | Cold-Formed Metal Framing and Sheathing System | C 12/26/2007 |
| 05506 | Miscellaneous Metals | C 03/28/2008 |
| 05507 | Miscellaneous Steel Embeds | C 12/26/2007 |
| 05510 | Metal Stairs | C 11/05/2007 |
| 05523 | Steel Pipe and Tube Railings | C 05/07/2008 |
| 05530 | Grating | C 11/05/2007 |
| 05541 | Structural Castings | C 09/04/2008 |
| 05750 | Ornamental Metal Panels and Enclosures | C 05/14/2008 |
| 05810 | Prefabricated Expansion Joint Assemblies | C 01/25/2008 |
| 05831 | Disc Bearing | C 05/30/2008 |
| 05832 | High Load Multi- Rotational Spherical Bearings | 08/14/2008 |

Division 6 Wood And Plastics

| | | |
|-------|--|--------------|
| 06100 | Rough Carpentry | C 01/28/2008 |
| 06105 | Rough Carpentry for Temp Protection | C 02/13/2008 |
| 06411 | Plastic Laminated Clad Casework | C 09/27/2007 |
| 06416 | Plastic Laminated Clad Wood Counter Tops | C 10/25/2007 |
| 06611 | Fiberglass Reinforced Plastic | C 05/20/2008 |
| 06652 | Polyethylene Platform Edge Strip | C 03/28/2008 |

Division 7 Thermal And Moisture Protection



RFP/CONTRACT NO.: W0TC-GC1-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 98, ATTACHMENTS

| | | |
|-------|--|--------------|
| 7116 | Self-Adhered Sheet Membrane Water Proofing | C 01/02/2008 |
| 07175 | HDPE Waterproofing | C 01/15/2008 |
| 07190 | Vapour Barrier | C 01/11/2008 |
| 07205 | Mineral Fiber Insulation | C 01/16/2008 |
| 07207 | Extruded Foam Insulation | C 04/04/2008 |
| 07250 | Spray-Applied Fire Resistive Material | C 01/24/2008 |
| 07270 | Fireproofing | C 09/27/2007 |
| 07721 | Roof Hatches and Heat/Smoke Vents | C 01/14/2008 |
| 07816 | Epoxy Intumescent Coating System | C 12/26/2007 |
| 07921 | Interior Sealants – Non Moving | C 01/25/2008 |

Division 8 Doors and Windows

| | | |
|------------------|--|-------------------------|
| 08111 | Steel Door and Frames | C 03/28/2008 |
| 08112 | Stainless Steel Doors and Frames | C 03/28/2008 |
| 08130 | Speciality Doors (C&P) | C 12/26/2007 |
| 08305 | Access Doors and Frames | C 01/14/2008 |
| 08335 | Overhead Coiling Doors and Grilles | C 04/23/2008 |
| 08346 | Floor Hatches | C 05/14/2008 |
| 08390 | Watertight Doors and Frames | C 02/04/2008 |
| 08450 | Interior Glass Storefronts | C 08/01/2008 |
| 08480 | Balanced Entrance Doors | C 05/13/2008 |
| 08715 | Finish Hardware (C&P) | C 07/11/2008 |
| 08801 | Structural Glass Floor | C 05/14/2008 |
| 08802 | Interior Glass Railings | 10/13/2008 |
| 08803 | Glass Hoistway Enclosures | C 05/13/2008 |
| 08812 | Miscellaneous Glass and Glazing (C&P) | C 02/04/2008 |

Division 9 Finishes

| | | |
|-------|---|--------------|
| 09205 | Metal Furring and Lathing | C 09/27/2007 |
| 09206 | Metal Furring and Lathing – Ceiling Support Systems | C 01/25/2008 |
| 09215 | Veneer Plaster Ceilings | C 07/30/2008 |
| 09220 | Portland Cement Plaster | C 11/05/2007 |
| 09250 | Gypsum Drywall | C 05/14/2008 |
| 09253 | Gypsum Drywall Interior Ceiling and Soffits | C 07/30/2008 |
| 09270 | Drywall Shaft Systems | C 09/27/2007 |
| 09310 | Ceramic Tiles | C 05/14/2008 |
| 09315 | Detectable Warning Tiles | C 03/28/2008 |
| 09441 | Epoxy Matrix Terrazzo | C 02/04/2008 |
| 09511 | Acoustical Panel Ceilings | C 04/11/2008 |
| 09521 | Acoustical Metal Panels | C 06/04/2008 |
| 09545 | Acoustical Metal Ceilings | C 06/04/2008 |
| 09570 | Wood wall Panels | C 03/28/2008 |



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FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL; INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 98, ATTACHMENTS

| | | |
|-------|------------------------------------|--------------|
| 09600 | Interior Stonework | 10/08/2008 |
| 09650 | Resilient Flooring | C 01/14/2008 |
| 09685 | Carpet Tiles | C 01/16/2008 |
| 09705 | Resinous Flooring | C 01/14/2008 |
| 09706 | Seamless Flooring | C 02/04/2008 |
| 09782 | Concrete Floor Sealer | C 01/16/2008 |
| 09800 | Acoustic Treatment | C 02/04/2008 |
| 09840 | High Temperature Noise Foil Panels | C 09/03/2008 |
| 09910 | Painting | C 06/04/2007 |

Division 10 Specialties

| | | |
|-------|---|--------------|
| 10144 | Photoluminescent Marking and Signage | C 12/26/2007 |
| 10161 | Stainless Steel Toilet Partitions – Employees | C 05/02/2008 |
| 10162 | Stainless Steel Toilet Partitions – Public | C 05/02/2008 |
| 10261 | Plastic Wall Protection | C 09/27/2007 |
| 10270 | Access Flooring System | C 01/28/2008 |
| 10400 | Graphics and Wayfinding Devices | C 05/2/2008 |
| 10505 | Metal Locker and Locker Room Benches | C 12/26/2007 |
| 19523 | Fire Extinguisher, Custom Modular Cabinets And Accessories | C 05/13/2008 |
| 10606 | Wire Mesh Partitions | C 05/13/2008 |
| 10811 | Toilet Accessories - Employees | C 03/28/2008 |
| 10812 | Toilet Accessories - Public | C 5/13/2008 |

Division 11 Equipment

| | | |
|-------|---|--------------|
| 11011 | Aerial Work Platforms | C 01/06/2008 |
| 11195 | Pre-Engineered Dog Kennels | C 11/05/2007 |
| 11451 | Pantry Equipment | C 09/27/2007 |
| 12640 | Integrated Work Units | C 04/11/2008 |
| 12680 | Entrance Flooring Systems | C 03/28/2008 |
| 13035 | Sound Control Rooms | C 01/28/2008 |
| 14338 | Monorails with Electric Motor Powered Hoists | C 10/15/2008 |
| 14555 | Vertical Reciprocating Conveyors | C 10/15/2008 |

Refer to Exhibit 96, Attachment "A", for Unrestricted Specification

Work Package # 20 – Specifications – pages 1 thru 7 dated 10/17/2008

Work Package # 1K – Specifications – page 1 of 1 dated 10/17/2008

Work Package # 7 – Specifications – pages 1 thru 3 dated 10/17/2008



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STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 98, ATTACHMENTS

Division 1 General Requirements

| | | |
|-------|---------------------------------|--------------|
| 01352 | Sustainable Design Requirements | C 08/15/2008 |
| 01522 | PATH Hall Roof Temporary Works | C 08/18/2008 |

Division 2 Site Work

| | | |
|-------|---|--------------|
| 02050 | Demolition and Disposal | C 11/16/2007 |
| 02051 | Partial Removals at Building Exterior | C 09/27/2007 |
| 02052 | Pre-Construction Condition survey of Existing Structures | 10/13/2008 |
| 02073 | Cutting Patching and Removal | C 10/16/2007 |
| 02076 | Selective Demolition for Interior | C 09/27/2007 |
| 02078 | Interior Removals | C 01/04/2008 |
| 02145 | Dewatering | C 11/13/2007 |
| 02164 | Prestressed Soil and Rock Anchors | C 03/21/2008 |
| 02221 | Excavation, Backfilling and Filling | C 12/10/2007 |
| 02224 | Rock Excavation | C 01/14/2008 |
| 02228 | Instrumentation for Settlement and Ground Water Observation | C 06/13/2008 |
| 02229 | Instrumentation | C 06/13/2008 |
| 02331 | Geo-textile | C 11/15/2007 |
| 02331 | Flowable Fill | C 12/26/2007 |
| 02366 | Steel Sheet Piling | A 07/15/1993 |
| 02378 | Mini-Caisson Piles | C 06/13/2008 |
| 02391 | Protective Coating For Steel Piling | N 05/31/2001 |
| 02711 | Sub-drainage System | C 10/16/2007 |
| 02720 | Manholes and Drainage Structures | C 11/15/2007 |
| 02722 | Storm Drainage System (Infiltration/Exfiltration Testing Not Required) | C 10/16/2007 |
| 02896 | Environmental Requirements for handling And Disposal of Soil Materials | C 09/25/1996 |

Division 3 Concrete

| | | |
|-------|--|--------------|
| 03100 | Concrete Formwork | 07/23/2008 |
| 03200 | Concrete Reinforcement | C 01/22/2008 |
| 03301 | Portland Cement Concrete, Long Form | A 07/13/2008 |
| 03303 | Placement of Portland Cement Concrete | A 01/12/2006 |
| 03350 | Concrete Toppings | C 12/27/2007 |
| 03361 | Shotcrete | C 12/26/2007 |
| 03420 | Precast Prestressed Concrete for Building Construction | C 09/30/2008 |
| 03450 | Architectural Precast Concrete | C 12/26/2007 |
| 03451 | Precast Concrete Stairs | C 09/27/2007 |



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METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 98, ATTACHMENTS

| | | |
|-------|-----------------------|--------------|
| 03602 | Grouting (Non Shrink) | C 02/13/2008 |
|-------|-----------------------|--------------|

Division 4 Masonry

| | | |
|-------|---|--------------|
| 04061 | Masonry Mortar – Unpigmented | C 09/27/2007 |
| 04070 | Masonry Grout | C 10/25/2007 |
| 04170 | Joint Reinforcement & Steel Reinforcement | C 09/27/2007 |
| 04220 | Concrete Masonry Units | C 03/28/2008 |

Division 5 Metals

| | | |
|-------|--|--------------|
| 05120 | Structural Steel | C 09/04/2008 |
| 05311 | Steel Deck | C 12/26/2007 |
| 05400 | Cold-Formed Metal Framing and Sheathing System | C 12/26/2007 |
| 05506 | Miscellaneous Metals | C 03/28/2008 |
| 05507 | Miscellaneous Steel Embeds | C 12/26/2007 |
| 05510 | Metal Stairs | C 11/05/2007 |
| 05523 | Steel Pipe and Tube Railings | C 05/07/2008 |
| 05530 | Grating | C 11/05/2007 |
| 05541 | Structural Castings | C 09/04/2008 |
| 05750 | Ornamental Metal Panels and Enclosures | C 05/14/2008 |
| 05810 | Prefabricated Expansion Joint Assemblies | C 01/25/2008 |
| 05831 | Disc Bearing | C 05/30/2008 |
| 05832 | High Load Multi- Rotational Spherical Bearings | 08/14/2008 |

Division 6 Wood And Plastics

| | | |
|-------|--|--------------|
| 06100 | Rough Carpentry | C 01/28/2008 |
| 06105 | Rough Carpentry for Temp Protection | C 02/13/2008 |
| 06411 | Plastic Laminated Clad Casework | C 09/27/2007 |
| 06416 | Plastic Laminated Clad Wood Counter Tops | C 10/25/2007 |
| 06611 | Fiberglass Reinforced Plastic | C 05/20/2008 |
| 06652 | Polyethylene Platform Edge Strip | C 03/28/2008 |

Division 7 Thermal And Moisture Protection

| | | |
|-------|--|--------------|
| 7117 | Self-Adhered Sheet Membrane Water Proofing | C 01/02/2008 |
| 07175 | HDPE Waterproofing | C 01/15/2008 |
| 07190 | Vapour Barrier | C 01/11/2008 |
| 07205 | Mineral Fiber Insulation | C 01/16/2008 |
| 07207 | Extruded Foam Insulation | C 04/04/2008 |
| 07250 | Spray-Applied Fire Resistive Material | C 01/24/2008 |
| 07270 | Fireproofing | C 09/27/2007 |
| 07721 | Roof Hatches and Heat/Smoke Vents | C 01/14/2008 |



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METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 98, ATTACHMENTS

| | | |
|-------|----------------------------------|--------------|
| 07816 | Epoxy Intumescent Coating System | C 12/26/2007 |
| 07921 | Interior Sealants – Non Moving | C 01/25/2008 |

Division 8 Doors and Windows

| | | |
|-------|------------------------------------|--------------|
| 08111 | Steel Door and Frames | C 03/28/2008 |
| 08112 | Stainless Steel Doors and Frames | C 03/28/2008 |
| 08305 | Access Doors and Frames | C 01/14/2008 |
| 08335 | Overhead Coiling Doors and Grilles | C 04/23/2008 |
| 08346 | Floor Hatches | C 05/14/2008 |
| 08390 | Watertight Doors and Frames | C 02/04/2008 |
| 08450 | Interior Glass Storefronts | C 08/01/2008 |
| 08480 | Balanced Entrance Doors | C 05/13/2008 |
| 08801 | Structural Glass Floor | C 05/14/2008 |
| 08802 | Interior Glass Railings | 10/13/2008 |
| 08803 | Glass Hoistway Enclosures | C 05/13/2008 |

Division 9 Finishes

| | | |
|-------|---|--------------|
| 09205 | Metal Furring and Lathing | C 09/27/2007 |
| 09206 | Metal Furring and Lathing – Ceiling Support Systems | C 01/25/2008 |
| 09215 | Veneer Plaster Ceilings | C 07/30/2008 |
| 09220 | Portland Cement Plaster | C 11/05/2007 |
| 09250 | Gypsum Drywall | C 05/14/2008 |
| 09253 | Gypsum Drywall Interior Ceiling and Soffits | C 07/30/2008 |
| 09270 | Drywall Shaft Systems | C 09/27/2007 |
| 09310 | Ceramic Tiles | C 05/14/2008 |
| 09315 | Detectable Warning Tiles | C 03/28/2008 |
| 09441 | Epoxy Matrix Terrazzo | C 02/04/2008 |
| 09511 | Acoustical Panel Ceilings | C 04/11/2008 |
| 09521 | Acoustical Metal Panels | C 06/04/2008 |
| 09545 | Acoustical Metal Ceilings | C 06/04/2008 |
| 09570 | Wood wall Panels | C 03/28/2008 |
| 09600 | Interior Stonework | 10/08/2008 |
| 09650 | Resilient Flooring | C 01/14/2008 |
| 09685 | Carpet Tiles | C 01/16/2008 |
| 09705 | Resinous Flooring | C 01/14/2008 |
| 09706 | Seamless Flooring | C 02/04/2008 |
| 09782 | Concrete Floor Sealer | C 01/16/2008 |
| 09600 | Acoustic Treatment | C 02/04/2008 |
| 09840 | High Temperature Noise Foil Panels | C 09/03/2008 |
| 09910 | Painting | C 06/04/2007 |

Division 10 Specialties



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EXHIBIT 98, ATTACHMENTS

| | | |
|-------|---|--------------|
| 10144 | Photoluminescent Marking and Signage | C 12/26/2007 |
| 10161 | Stainless Steel Toilet Partitions – Employees | C 05/02/2008 |
| 10162 | Stainless Steel Toilet Partitions – Public | C 05/02/2008 |
| 10261 | Plastic Wall Protection | C 09/27/2007 |
| 10270 | Access Flooring System | C 01/28/2008 |
| 10400 | Graphics and Wayfinding Devices | C 05/2/2008 |
| 10505 | Metal Locker and Locker Room Benches | C 12/26/2007 |
| 19523 | Fire Extinguisher, Custom Modular Cabinets And Accessories | C 05/13/2008 |
| 10606 | Wire Mesh Partitions | C 05/13/2008 |
| 10811 | Toilet Accessories - Employees | C 03/28/2008 |
| 10812 | Toilet Accessories - Public | C 5/13/2008 |

Division 11 Equipment

| | | |
|-------|---|--------------|
| 11011 | Aerial Work Platforms | C 01/06/2008 |
| 11195 | Pre-Engineered Dog Kennels | C 11/05/2007 |
| 11451 | Pantry Equipment | C 09/27/2007 |
| 12640 | Integrated Work Units | C 04/11/2008 |
| 12680 | Entrance Flooring Systems | C 03/28/2008 |
| 13035 | Sound Control Rooms | C 01/28/2008 |
| 14338 | Monorails with Electric Motor Powered Hoists | C 10/15/2008 |
| 14555 | Vertical Reciprocating Conveyors | C 10/15/2008 |



RFP/CONTRACT NO.: W07C-GC1-2-KN0186-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 99, ATTACHMENTS

DRAWINGS

NOTE: Drawings highlighted RED, are the only drawings issued with 1st Step RFP.

| <u>Drawing No.</u> | <u>Title</u> | <u>Date</u> | <u>Revision</u> |
|--------------------|--------------|-------------|-----------------|
|--------------------|--------------|-------------|-----------------|

Refer to Exhibit 96, Attachment "S", for Confidential and Privileged Drawings.

Attachment S – "Confidential and Privileged Drawings" and Specifications

Work Package # 20 – Volume 8 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 9 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 10 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 11 Drawing List – pages 1 thru 4 dated 10/17/2008

Work Package # 20 – Volume 12 Drawing List – pages 1 thru 4 dated 10/17/2008

Work Package # 20 – Volume 13 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Specifications Confidential & Privileged – pages 1 thru 7
dated 10/17/2008

Work Package # 7 – Volume 16 Drawing List – pages 1 thru 3 dated 10/17/2008

Refer to Exhibit 96, Attachment "A", for Unrestricted Drawings.

Attachment A – "Unrestricted Drawings" and Specifications

Work Package # 20 – Volume 1 Drawing List – pages 1 thru 4 dated 10/17/2008

Work Package # 20 – Volume 2 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 3 Drawing List – pages 1 thru 4 dated 10/17/2008

Work Package # 20 – Volume 4 Drawing List – pages 1 thru 5 dated 10/17/2008

Work Package # 20 – Volume 5 Drawing List – pages 1 thru 4 dated 10/17/2008

Work Package # 20 – Volume 6 Drawing List – pages 1 thru 4 dated 10/17/2008



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FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
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EXHIBIT 99, ATTACHMENTS

- Work Package # 20 – Volume 7 Drawing List – pages 1 thru 5 dated 10/17/2008
- Work Package # 20 – Specifications – pages 1 thru 7 dated 10/17/2008
- Work Package # 1k – Volume 14 Drawing List – pages 1 of 1 dated 10/17/2008
- Work Package # 1K – Specifications – page 1 of 1 dated 10/17/2008
- Work Package # 7 – Volume 15 Drawing List – pages 1 thru 2 dated 10/17/2008
- Work Package # 7 – Specifications – pages 1 thru 3 dated 10/17/2008
- Work Package # 20 – Volume 17 Drawing List – pages 1 thru 3 dated 10/17/2008

NOTE: Drawings highlighted RED, are the only drawings issued with 1st Step RFP.

Milestone Drawings

| | | | |
|----------|--|------------|--------|
| MS-001 | Central Plant Level – EL. 229'-6" | 10/17/2008 | Rev. 0 |
| MS002 | Invert – Car Parking level – EL. 242'/237' | 10/17/2008 | Rev. 0 |
| MS 003 | Platform/Bus Parking Level – EL. 250'/254' | 10/17/2008 | Rev. 0 |
| MS 004 | Mezzanine Level – EL. 266' | 10/17/2008 | Rev. 0 |
| MS 005 | Transit Hall – EL. 274' | 10/17/2008 | Rev. 0 |
| MS 006 | Day St./West St. Concourse Level – EL. 284'/285' | 10/17/2008 | Rev. 0 |
| MS 007 | Upper Transit Hall Level – EL. 296' | 10/17/2008 | Rev. 0 |
| MS 008 | Plaza Deck Level – EL. 306' | 10/17/2008 | Rev. 0 |
| MS 009 | Ground Level Plan – EL. 326' | 10/17/2008 | Rev. 0 |
| MS 010 | Above Ground MEP Level – EL. 386' | 10/17/2008 | Rev. 0 |
| MS011 | Above Ground MEP Level – EL. 404' | 10/17/2008 | Rev. 0 |
| SASR-001 | Appendix "A" | 10/17/2008 | Rev. 0 |

West Side Structural Modifications Drawings: # Cover Sheet, G2001, S7101, S7102, S7112, S7597, S7599, S7700, S7701, S7702, S7703, S7704, S7705, S7706, S7707, S7708, S7709, S7710, S7711, S7712, S7713, S7714, S7715, S7716, S7716-1, S7716-2, S7717, S7718, S7721, S7722, S7723, S7724, S7725, S7726, S7727, S7728, S7729, S7730, S7735, S7736, S7737, S7738, S7740, S7745, S7745-1, S7746, S7746-1, S7747, S7748, S7748-1, S7748-2, S7748-3, S7749, S7750, S7751, S7752, S7753, S7754, S7755, S7760, S7762, S7763, S7764, S7765, S7771, S7773, S7774, S7775, S7776, S7777, S7778, S7779, S7780, S7781, S7782, S7783, S7784, S7785, S7786,



RFP/CONTRACT NO.: W07C-GC1-2-KN0188-020
STATION CONSTRUCTION AND TRANSIT HALL STRUCTURE TO GRADE
FURNISH, FABRICATE AND ERECT STRUCTURAL STEEL, INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
EXHIBIT 99, ATTACHMENTS

S7787, S7788, S7789, S7790, S7791, S7792, S7793, S7794, S7795, S7796, S7797,
S7798, S7799, S7800, S7801, S7802, S7803, S7804, S7805, S7806, S7807, S7811,
S7812, S7813, S7814, S7815, S7830, S7832, S7833, S7833-1, S7834, S7834-1,
S7835, S7836, S7837, S7838, S7839, S7839-1, S7839-2, S7839-3, S7840, S7840-1, S7841,
S7842, S7843, S7844, S7845, S7846, S7847, S7848, S7849, S7850, S7852, S7853, S7863,
S7864, S7865, S7866, S7867, S7868, S7869, S7870, S7871, S7871-1, S7872, S7913, S7914,
S7915, S7916, S7917, S7918, S7919, S7920, S7921, S7921-1, S7922, S7923, S7924, S7925,
S7926. Drawings noted as Progress Submission 10/15/2008 released for Purchase of
Material Only.



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STATION CONSTRUCTION AND TRANSIT
HALL STRUCTURE TO GRADE - FURNISH,
FABRICATE & ERECT STRUCTURAL STEEL,
INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
ADDENDUM # 006

**REQUEST FOR PROPOSAL
NO: W0TC-GC1-2-KN00186-020
ADDENDUM # 006**

INQUIRY TITLE: 2nd Step RFP Issued to Short Listed Offerors.
INQUIRY NUMBER: N/A
DATE INQUIRY ISSUED:
ADDENDUM NUMBER: 006
ADDENDUM DATE: December 19, 2008
CLOSING DATE: 1st Step RFP: December 15, 2008
CLOSING DATE: 2nd Step RFP: February 9, 2009

The Request for Proposal referenced above is hereby changed, as noted below and Bidder's proposals shall reflect all changes noted herein. All items set forth in this addendum shall be as though set forth in the said Request for Proposal and shall be subject to all terms and conditions contained therein.

1. "Proposal Invitation Letter – Step 2 of the RFP" dated December 19, 2008 issued to the short-listed offerors as a Contract Document.
2. RFI # 2,820-020PRECON -001 Date Answered: 12/15/2008 issued to the short-listed offerors as a Contract Document.
3. RFI # 2,821-020PRECON -0002 Date Answered: 11/26/2008 issued to the short-listed offerors as a Contract Document.
4. Attachment A, C and S Rev. 1 Date 11/17/2008 issued as Contract Document.
5. Complete, conformed set of drawings for Work Package #20, #1K and #7 inclusively issued to the short-listed offerors as a Contract Document for the 2nd Step of the RFP to be used for preparing the Technical and Commercial Proposals. (Drawings previously issued for the 1st Step of the RFP are not to be used for the 2nd Step of the RFP and are to be returned to Phoenix or destroyed in accordance with PANYNJ's Non- Disclosure Agreement (NDA) and Handbook for Protecting Security Information, included in Exhibit 15E of the RFP Documents (on CD) issued on November 21, 2008.
5. Prime Offerors Must Use enclosed RFP Submittal Labels to identify their sealed Technical and Commercial Proposals.



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INTUMESCENT FIRE RESISTANT COATING,
METAL DECK & PRECAST CONCRETE WORK
ADDENDUM # 006

6. All Bid Proposals must have one (1) original and three (3) copies of the Technical Proposal and one (1) original and three (3) copies of the Commercial Proposal for each option submitted: Option A, Option B and Option C. The original and copies of the *Technical and Commercial Proposals* are to be identified with the labels provided and submitted in sealed packages in accordance with the Instructions to Offerors.

7. The second Mandatory Pre-Bid Meeting and Site Walk-Through will be held on January 14, 2009 and January 15, 2009. Due to security requirements on the WTC Site, Offerors are required to provide the names of the people who will be attending the site walk-through to Phoenix Constructors JV (Javed Qureshi) no later than January 7, 2009. Offerors are reminded that they are limited to a total of six (6) participants on the site walk-through and that each participant is required to have the proper personal protective equipment (*hard hats, safety glasses, boots, and safety vests*). Participants on the site walk-through must present a government issued ID (such as a driver license) and a business card before being allowed on site.

- NO OTHER CHANGES -



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ADDENDUM # 005

**REQUEST FOR PROPOSAL
NO: W0TC-GC1-2-KN00186-020
ADDENDUM # 005**

INQUIRY TITLE: Answers to bidders questions and Non-Disclosure Agreements (NDA) clarifications
INQUIRY NUMBER: N/A
DATE INQUIRY ISSUED December 5, 2008
ADDENDUM NUMBER: 005
ADDENDUM DATE: December 9, 2008
CLOSING DATE: 1st Step RFP: December 15, 2008
CLOSING DATE: 2nd Step RFP: February 9, 2009

The Request for Proposal referenced above is hereby changed, as noted below and Bidders proposals shall reflect all changes noted herein. All items set forth in this addendum shall be as though set forth in the said Request for Proposal and shall be subject to all terms and conditions contained therein.

1. Question: "We received drawings for this project and after checking all I have noticed one that is missing. Can you please check on this for me and advise if this drawing is to be used or not? S8702 Spherical and Disc Bearing on West Wall."

Answer: The Drawing "S8702 Spherical and Disc Bearing on West Wall" was on the list of drawings that was listed in the 1st Step RFP, but PANYNJ did not include this drawing in the Revision '0' drawings dated October 15, 2008. This drawing is part of the Addendum # 1 drawings dated November 17, 2008 that were issued by PANYNJ to PCJV and will be issued to the selected bidders with the 2nd Step RFP on December 19, 2008.

2. Question: "Please confirm the number of originals and copies of the pre qual submittal which is due to Phoenix on 12/15/08. Reading the Instructions, it appears that only one original is required."

Answer: One original and three copies of the pre-qualification documents are required to be submitted to PCJV on 12/15/08.

CLARIFICATION

3. Prime bidders were issued 5 sets of drawings for their information and use. The



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ADDENDUM # 005

Confidential & Privileged (C&P) Drawings and/or Specifications are to be viewed only by the person to whom the drawings are assigned or by others who have signed and returned the PANYNJ's "Non-Disclosure Agreement" (NDA). Any C&P drawings shared with any person other than the person to whom the C&P drawings are assigned must sign a separate "Non-Disclosure Agreement" (NDA) and submit a copy of the NDA to Phoenix Constructors JV with the bid proposal. All bidders are fully responsible for complying with the PANYNJ's NDA and Handbook for Protecting Security Information, included as Exhibit 15E of the RFP documents (on CD).

- NO OTHER CHANGES -



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ADDENDUM # 004

**REQUEST FOR PROPOSAL
NO: W0TC-GC1-2-KN00186-020
ADDENDUM # 004**

INQUIRY TITLE: Responses to Bidder's Questions Raised At The Pre-Bid Meeting
December 3, 2008

INQUIRY NUMBER: N/A

DATE INQUIRY ISSUED December 3, 2008

ADDENDUM NUMBER: 004

ADDENDUM DATE: December 5, 2008

New CLOSING DATE: 1st Step RFP: December 15, 2008

CLOSING DATE: 2nd Step RFP: February 9, 2009

The Request for Proposal referenced above is hereby changed, as noted below and Bidder's proposals shall reflect all changes noted herein. All items set forth in this addendum shall be as though set forth in the said Request for Proposal and shall be subject to all terms and conditions contained therein.

Please be advised that the Port Authority of New York and New Jersey and Phoenix Constructors, JV have agreed to exclude Koch Skanska from participating in any capacity in this solicitation.

- NO OTHER CHANGES -



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ADDENDUM # 003

**REQUEST FOR PROPOSAL
NO: W0TC-GC1-2-KN0186-020
ADDENDUM # 003**

INQUIRY TITLE: Responses to Bidder's Questions Raised At The Pre-Bid Meeting
December 3, 2008

INQUIRY NUMBER: N/A
DATE INQUIRY ISSUED December 3, 2008
ADDENDUM NUMBER: 003
ADDENDUM DATE: December 4, 2008
New CLOSING DATE: 1st Step RFP: December 15, 2008
CLOSING DATE: 2nd Step RFP: February 9, 2009

The Request for Proposal referenced above is hereby changed, as noted below and Bidder's proposals shall reflect all changes noted herein. All items set forth in this addendum shall be as though set forth in the said Request for Proposal and shall be subject to all terms and conditions contained therein.

Response to Bidders' Questions

1. Are the prime bidders limited to those which have been named on the Prime Bidders List? If others are interested in being Prime Bidders, are they allowed?

Answer: Proposers are advised that although a list of "Prime" Bidder names was read aloud during the mandatory pre-bid conference conducted on 12/3/08, any firm that attended the conference may submit a prequalification proposal as a Prime Bidder. The reading of "Prime" Bidders was solely meant to aid subcontractor/supplier attendees in the audience in identifying firms that have previously expressed interest to perform as "Primes."

2. Can a Prime Bidder participate as a Prime Bidder and/or a Subcontractor on more than one team if desired?

Answer: A Prime Bidder may only be prime on one team, but may be a subcontractor on any number of teams.

3. Will there be Liquidated Damages (LDs) in the contract.

Answer: LDs will be developed further during Step 2 of the RFP. Currently the amount for LDs, if any, is not known.



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4. Will more time be allowed for the response to Step 1 of the RFP (submission of pre-qualification packages)?

Answer: Yes. The new due date for proposals for RFP Step 1 is December 15, 2008. Other than the dates bolded below, all other dates remain the same.

Milestones for the RFP:

- RFP 1st Step Issued: 11/21/08
- 1st Step Mandatory Pre-bid Meeting: 12/03/08
- 1st Step Pre-Qualification Package Due: 12/15/08
- PCJV & PANYNJ Short-Listing of Bidders: 12/18/08
- RFP 2nd Step Issued: 12/19/08
- 2nd Step Mandatory Pre-bid Meeting: 1/14/09-1/15/09
- 2nd Step Proposal Due: 2/09/09
- Open Proposals: 2/10/09
- Final Meetings with Bidders: 2/20/09 – 2/23/09
- Clarifications / BAFOs from Bidders: 2/24/09 – 3/4/09
- Award Recommendation: 3/13/09
- Anticipated Contract Award: 3/17/09

5. Does the “Buy America” requirement apply to all material supplied under this contract.

Answer: There is no “Buy America” requirement for this contract; however, Phoenix and its subcontractors have to abide by Department of Transportation Federal Transit Administration “Fly America” requirements, i.e. “The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag carrier is available...” In addition, The Port Authority’s Master Agreement with the FTA as it relates to Cargo Preference and the Use of US Cargo Vessels stipulates that Phoenix and its subcontractors agree “To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage...involved...to the extent such vessels are available at fair and reasonable rates...”

6. What constitutes a “Team”?

Answer: At a minimum, the Prime Contractor(s) and the entities performing the major elements of the work constitute a “Team”. All members of the “Team” must be



identified by name and the information required for pre-qualification per the RFP Step 1 shall be submitted for each entity constituting the Team. The major components of the work are:

1. Steel Supply
2. Steel Fabrication
3. Steel Detailing
4. Steel Erection

Proposers must name at least one company in each component category, and they may name multiple companies in each component category. Proposers may, but are not required to, identify lower tier entities they intend to engage in the work. The Port Authority and Phoenix Constructors will evaluate Step 1 Bidders based on the information submitted. Should a proposer wish to alter the composition of its Team after the RFP Step 1 submittal has been made, PCJV and the Port Authority will, on a case by case basis, review the altered Team, and in our sole discretion, may accept or reject such alteration.

7. Do MBE or WBE firms need to be included with the prequalification submission and what exactly are the requirements?

Answer: No, MBE/WBE information is not required at the time of the prequalification submission. The Port Authority's contract with PCJV includes a goal that 17% of the total contract dollars be allocated for MBE and WBE firms. Proposing teams are thus directed to make a good faith effort in achieving a 17% percentage for this steel procurement. The 17% goal may be achieved through a number of ways. For example, firms forming a joint venture may include an MBE or WBE firm with a 17% joint venture interest; or, firms may form a joint venture with an MBE or WBE firm for a less than 17% interest, and subcontract the remainder of the 17% to an erector, fabricator, detailer, concrete firm, etc. Alternatively, proposing firms may subcontract the entire 17% to an erector, fabricator, detailer, concrete firm, etc.

Even if the entire 17% is met via a joint venture, teams are encouraged to seek further opportunities for MWBE participation.

Pre- and Post- Meeting Questions

8. Why is Koch Skanska allowed to bid? Isn't that a conflict of interest?

Answer: The matter is under consideration and will be responded to by close of business tomorrow.



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9. Can a copy of the presentation slides be issued to the attendees?

Answer: Not at this time. The presentation slides do not add any additional information necessary to propose. Please propose based on the RFP and Addenda.

10. Can a copy of the meeting sign-in sheets be issued to the attendees?

Answer: Yes. (Attached?)

11. What scoring system will be used for evaluating the proposals? Will it be quantitative?

Answer: An adjectival scoring methodology will be used for each of the criteria found in Instructions to Bidders Articles 2.1 through 2.11 as follows:

- **Excellent** - A comprehensive and thorough proposal of exceptional merit with one or more significant strengths. No deficiency or significant weakness exists.
- **Very Good** - A proposal having no deficiency and which demonstrates over-all competence. One or more significant strengths have been found, and strengths outbalance any weaknesses that exist.
- **Good** - A proposal having no deficiency and which shows a reasonably sound response. There may be strengths or weaknesses, or both. As a whole, weaknesses not offset by strengths do not significantly detract from the offeror's response.
- **Fair** - A proposal having no deficiency and which has one or more weaknesses. Weaknesses outbalance any strengths.
- **Poor** - A proposal that has one or more deficiencies or significant weaknesses that demonstrate a lack of overall competence or would require a major proposal revision to correct.

12. Is it possible to include in the Bidder's proposal any intumescent coating system that has not been certified?

Answer: No - Refer to Specification 07816-7 Part 2 - Products, 2.01A "Acceptable Manufacturers and Products."



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13. Who will be responsible for intumescent coating finishing? Will intumescent painting works start before the sample is approved?

Answer: The successful bidder will be responsible; the intumescent finishing is part of your scope of work. The intumescent painting will start after the sample is approved.

14. May non-prime companies identified as special shape steel structure suppliers also supply other items?

Answer: Yes, if qualified.

15. Must associated companies/subcontractors present bonding capacity certificate, or just Prime Contractor?

Answer: All team members as defined in #6 above must present bonding capacity certificate.

Enclosure:

- NO OTHER CHANGES -



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ADDENDUM # 002

**REQUEST FOR PROPOSAL
NO: W0TC-GC1-2-KN00186-020
ADDENDUM # 002**

INQUIRY TITLE: Response to bidder's questions & 1st Pre-Bid Meeting Clarification & Location Change and 2nd Step RFP Pre-bid Meeting date changed.

INQUIRY NUMBER: N/A
DATE INQUIRY ISSUED: November 26, 2008
ADDENDUM NUMBER: 002
ADDENDUM DATE: December 1, 2008
CLOSING DATE: 1st Step RFP: December 9, 2008
CLOSING DATE: 2nd Step RFP: February 9, 2009

The Request for Proposal referenced above is hereby changed, as noted below and Bidder's proposals shall reflect all changes noted herein. All items set forth in this addendum shall be as though set forth in the said Request for Proposal and shall be subject to all terms and conditions contained therein.

Response to Bidders questions Issued

- 1. Question:** Are the documents available on CD
Answer: Due to "Confidential and Privileged" designation, the drawings are not available on CD.
- 2. Question:** If Prime Offeror intends to perform all work themselves and only submits pre-qualification information for themselves during the 1st Step of the RFP, what would happen if, as they further review the drawings and determine that they cannot fabricate a portion of the steel, they need to add a subcontractor during the 2nd Step of the RFP or after award (if they were successful offerors)? Would they be allowed to add a subcontractor after the 1st Step of the RFP and could subcontractor pre-qualification information be submitted at a later time if such a situation arises?
Answer: Prime Offeror is required to identify all of their team members as per Addendum #001. We request that you form your team now and submit with the pre-qualifications per the RFP.
- 3. Question:** Can an Offeror be a part of more than one team's proposal? Offeror may submit a proposal themselves and also wants to be a part of another team.
Answer: Yes. Prime Offeror's Scope of Work includes "Furnish, Fabricate and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck and Pre-cast Concrete Work"; Prime Offeror is allowed to submit only one proposal for Option A (Work Area 1 – Path Station), and one proposal for Option B+C



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ADDENDUM # 002

(Work Areas 2+3 – 1 Line Subway Box + Transit Hall) and an Alternate Option
A+B+C (Work Areas 1+2+3).

All trade subcontract proposals to be submitted to Prime Offerors at their
discretion to include trade subcontractor's proposal in their "Prime Bid Proposal".
If you are not a Prime Offeror you can submit your proposals to more than one
Prime Offeror.

The location of the 1st MANDATORY Pre-Bid Meeting has been changed to **41
Broad Street, New York, NY 10004** (entrance is at Street Level next to the entrance
to the Claremont Preparatory School). The date and time for the meeting remains as
Wednesday, 12/3/2008, 1:00PM EST

**The Pre-Bid Meeting for the 2nd Step of the RFP has been changed from
December 16 - 17, 2008 to January 14 - 15, 2009**

The Bid Close Date for the above referenced Request for Proposal remains the
same as stated above.

Enclosure:

- NO OTHER CHANGES -



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ADDENDUM # 001

**REQUEST FOR PROPOSAL
NO: W0TC-GC1-2-KN00186-020
ADDENDUM # 001**

INQUIRY TITLE: Response to bidder's questions & 1st Pre-Bid Meeting Clarification & Location Change.

INQUIRY NUMBER: N/A

DATE INQUIRY ISSUED 11/24/2008

ADDENDUM NUMBER: 001

ADDENDUM DATE: November 25, 2008

CLOSING DATE: 1st Step RFP: December 9, 2008

CLOSING DATE: 2nd Step RFP: February 9, 2009

The Request for Proposal referenced above is hereby changed, as noted below and Bidder's proposals shall reflect all changes noted herein. All items set forth in this addendum shall be as though set forth in the said Request for Proposal and shall be subject to all terms and conditions contained therein.

Response to Bidders questions issued

- 1. Question:** In the Instruction to Offerors pages 6 & 7, section 2.3 Prequalification Forms, 2.4 Financial Statements, 2.5 bonding Capacity, 2.7 Similar Type of Work, the document states typically that the "members of your team/JV" must submit the required information. I am reading the document that only the "team" of prime bidders must submit, and if a single prime is a bidder, then the prime must submit the relevant information of the prime and not for all the subcontractors and material supplier to the single prime. Please confirm that word "team" related only to the team of companies that make up the prime bidder and do not include all of the various subcontractors and suppliers.

Answer: The members of the "Team" means, the Prime Subcontractor and his subcontractors / team members / Joint Venture partners, including but not limited to Special Shape Exposed Steel Fabricator(s), Standard Profile Steel Fabricator(s), Steel Erector(s), Intumescent Fire Resistant Coating Applicator(s), Intumescent Fire Resistant Coating Manufacturer and Supplier, Precast Concrete Fabricator(s), Precast Concrete Erector(s), Temporary Support Steel Designer(s). EACH team member is required to submit the required pre-qualification information.

- 2. Mandatory Pre-bid Meeting dated December 3, 2008 Clarification:**

As stated in the Instruction to Offerors, it is mandatory for the Prime Offeror to attend the 1st Step RFP Pre-bid Meeting on December 3, 2008. It is strongly



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ADDENDUM # 001

recommended that all other potential "team" members, including any foreign fabricators and suppliers, attend the meeting in order to understand the RFP requirements and project standards that are expected. The meeting will also provide the opportunity for potential "team" members to meet with the Prime Offerors for exchange of ideas and solicitation.

3. The location of the 1st MANDATORY Pre-Bid Meeting has been changed to **41 Broad Street, New York, NY 10004** (entrance is at Street Level next to the entrance to the Claremont Preparatory School). The date and time for the meeting remains as **Wednesday, 12/3/2008, 1:00PM EST.**

The Bid Close Date for the above referenced Request for Proposal remains the same as stated above.

Enclosure:

- NO OTHER CHANGES -



Phoenix Constructors
115 Broadway, 18th Floor
New York, NY 10006
212.616.5800 Tel.
212.566.2350 Fax

Darrell E. Waters
Project Director

March 27, 2009

Mr. Larry P. Davis, President
DCM Erectors, Inc.
110 East 42nd Street, Suite 1704
New York, NY 10017

Phoenix Constructors, JV Letter No. W0TC-08100-WP20PRECON-00006

Subj: World Trade Center Transportation Hub – Work Package No. 20 – Station construction and transit Hall Structure to Grade: Furnish, Fabricate, and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck and Precast Concrete Work - W0TC-GC1-2-KN0186-020 – Letter of Intent to Contract

Dear Mr. Davis:

Pursuant to the Port Authority of New York and New Jersey Board of Commissioners' Press Release (Press Release Number: 40-2009) dated March 26, 2009, announcing the award of the contract to furnish, fabricate, and erect the structural steel for the Transportation Hub project to DCM Erectors, the Port Authority and Phoenix Constructors, JV express their intent to enter into a subcontract agreement with DCM Erectors, Inc. for the subject scope of work (Option 'C' – Furnish, Fabricate, and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck and Precast Concrete Work Applicable to Works Areas 1 + 2 + 3 (PATH Station + 1 Line Subway Box + Transit Hall)), pending final resolution of the following issues and DCM's agreement to the following conditions (Not all inclusive):

- Negotiation of Final Subcontract Terms and Conditions (Technical and Commercial)
- Resolution of All Outstanding Bonding Issues

Please indicate your acceptance of this Letter of Intent by signing in the space provided below.

Thank you for your time and consideration.

Very truly yours,
PHOENIX CONSTRUCTORS JV

Darrell E. Waters
Project Director

cc: Phoenix – Steering Committee, W. DeCamp, G. Winsper, W. Saukin, J. Qureshi, S. Kremmidas
Port Authority – C. Ward, D. Tweedy, S. Plate, L. Foster, M. Pagliettini

DCM Erectors

Phoenix Constructors, JV



REVISED

Phoenix Constructors
115 Broadway, 18th Floor
New York, NY 10006
212.616.5800 Tel.
212.566.2350 Fax

Darrell E. Waters
Project Director

March 27, 2009

Mr. Larry P. Davis, President
DCM Erectors, Inc.
110 East 42nd Street, Suite 1704
New York, NY 10017

W0TC-09300-WP20PRECON-00002

Phoenix Constructors, JV Letter No. ~~W0TC-08100-WP20PRECON-00006~~

Subj: World Trade Center Transportation Hub – Work Package No. 20 – Station construction and transit Hall Structure to Grade: Furnish, Fabricate, and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck and Precast Concrete Work - W0TC-GC1-2-KN0186-020 – Letter of Intent to Contract

Dear Mr. Davis:

Pursuant to the Port Authority of New York and New Jersey Board of Commissioners' Press Release (Press Release Number: 40-2009) dated March 26, 2009, announcing the award of the contract to furnish, fabricate, and erect the structural steel for the Transportation Hub project to DCM Erectors, the Port Authority and Phoenix Constructors, JV express their intent to enter into a subcontract agreement with DCM Erectors, Inc. for the subject scope of work (Option 'C' – Furnish, Fabricate, and Erect Structural Steel, Intumescent Fire Resistant Coating, Metal Deck and Precast Concrete Work Applicable to Works Areas 1 + 2 + 3 (PATH Station + 1 Line Subway Box + Transit Hall)), pending final resolution of the following issues and DCM's agreement to the following conditions (Not all inclusive):

- Negotiation of Final Subcontract Terms and Conditions (Technical and Commercial)
- Resolution of All Outstanding Bonding Issues

Please indicate your acceptance of this Letter of Intent by signing in the space provided below.

Thank you for your time and consideration.

Very truly yours,
PHOENIX CONSTRUCTORS JV

Darrell E. Waters
Project Director

cc: Phoenix – Steering Committee, W. DeCamp, G. Winsper, W. Saukin, J. Qureshi, S. Kremmidas
Port Authority – C. Ward, D. Tweedy, S. Plate, L. Foster, M. Pagliettini

DCM Erectors

Phoenix Constructors, JV

Port Authority of NY & NJ

115 Broadway
6th Floor
New York, NY 10006

CORRESPONDENCE RECEIVED

DOCUMENT NO: 20PC-09-00013

Record Entered By: DF

PROJECT: WP 20 - Pre-Construction / Pre-Award **JOB #:** WP 20 - Pre-Construction /
Pre-Award

TO: DCM Erectors, Inc Larry P. Davis **RECEIVED ON:** 3/30/09

FROM: Phoenix Constructors /JV Darrell Waters **RESPONDER (BIC):**

SUBJECT: Letter of Intent to Contract **PANYNJ STATUS:** OPN

SOURCE DOCUMENT INFORMATION:

TYPE: ISS **DATED:** 3/27/09

DESCRIPTION: WOTC-09300-WP20PRECON-00002-Letter of Intent to Contract

CHANGE MANAGEMENT INFORMATION: **PPIN #:** _____ **PIN #:** _____ **PACC #:** _____ **RELATED COST:** \$0.00

NOTES:

ASSIGNED BY: S. PLATE M. PAGLIETTINI Q. BRATHWAITE **RESPONSE DUE**
S. LEONE S. LENAHAN FOSTER L. **TO SENDER BY:** _____

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| WOTC | | | | LEAD | CMD | |
|--------------------|----------------------|--------------|---------------------------|------------|--------------|----------------------|
| Askew P. | Dejak E. | Lombardi N. | Pagliettini M. <i>FYI</i> | Silva C. | Giambra J. | Behnke R. <i>FYI</i> |
| Bach J. | DeVito R. <i>FYI</i> | Lynch J. | Perez R. | Spencer L. | Kamocsai J. | Benkert T. |
| Bah A. | Faldu B. | Maasarani M. | Petrides R. | Schwed J. | Levine A. | Coyne R. |
| Bonacci C. | Foster L. | Macksoud O. | Plate S. | Wong B. | Lizzo J. | Foley B. <i>FYI</i> |
| Bovino B. | Gallo F. <i>FYI</i> | Mathews K. | Pruno R. | Voltura N. | Marino A. | Hanson J. |
| Brathwaite Q. | Goodson M. | McShane D. | Puza D. | | Pollard K. | Palmer E. |
| Caspe H. | Grassi T. | Mitchelle K. | Ranalli N. | | Sandiford R. | Scarcella T. |
| Carmona A. | Iacoviello L. | Murphy J. | Ranieri V. | | | |
| Chan C. | Khan K. | Murray J. | Reiss A. | | | |
| Chen K. <i>FYI</i> | Kraft M. | Murray R. | Schollmeyer S. | | | |
| Clarke L. | Lee C. | Okwuagwu V. | Sheenan M. | | | |
| Delvalle E. | Lenahan S. | Orlando E. | Simonelli D. | | | |
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| Transmittal Number | TRL000159 |  |
| Transmitted Date | 27-Mar-2009 | |
| Prepared By | Blanche Harvey | |

| TRANSMITTAL | |
|---------------------------|--|
| Transmittal Title | LETTER OF INTENT TO CONTRACT |
| Project Title | |
| Work Package | WP20PRECON - Station Construction and Transit Hall - Structure to Grade |
| Instructions/ Information | PLEASE BE ADVISED THAT THE ORIGINAL LETTER WHICH WAS SENT TO THE EXTERANL DISTRIBUTION LIST (AS PER PROCUREMENT DEPARTMENT) HAS AN INCORRECT PROLIANCE CODE (W0TC.**08100**-WP20PRECON-00006). |

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| W0TC-09300-WP20PRECON-00002 | LETTER OF INTENT TO CONTRACT | -R00 | 27-Mar-2009 | Needs Approval |

| RECIPIENTS | | | | |
|---|----------------|-----------------|--------|----------|
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