

FOI # 13398

August 10, 2012

To:  
Port Authority of NY & NJ  
Freedom of Information Officer  
225 Park Ave South, fl 18  
New York, NY 10003

FOIL Request

FOIL request for records regarding an incident that occurred on July 2, 2012 at approximately 1:30 p.m. at ONE WORLD TRADE, NY, NY in sub-level, B4 Cell 4. An electrician, MICHAEL D'AMODIO, (birthdate ) who was employed by Five Star Electric Corp., was injured when he was struck by a machinery/pulling-wheel pulley that was pulling rope/cables into the room.

(1) Request is being made for written confirmation of the identity of the "General Contractor" for ONE WORLD TRADE, NY, NY on July 2, 2012.

(2) Request is being made for copies: of all Contract(s), Addendum(s), Initial Agreement(s) & Bid(s) between the entity(s), person(s) and company(s) that were in contract and had agreements with FIVE STAR ELECTRIC CORP. pertaining to work at ONE WORLD TRADE, NY, NY that would have been in effect on July 2, 2012.

(3) Request is being made for copies: of all Contract(s), Addendum(s), Initial Agreement(s) & Bid(s) between Port Authority of New York & New Jersey, and Tischman Construction Corp. pertaining to work at ONE WORLD TRADE, NY, NY that would have been in effect on July 2, 2012.

(4) Request is being made for copies: of all Contract(s), Addendum(s), Initial Agreement(s) & Bid(s) between Tischman Construction Corp. and Five Star Electric Corp. pertaining to work at ONE WORLD TRADE, NY, NY that would have been in effect on July 2, 2012.

(5) Request is being made for copies: of all Safety Plan(s), Safety Manual(s), Safety Program Procedure(s), Worksite Safety Plan(s), Safety Meeting Minute(s), and all Plan(s), Contract(s) concerning safety and jobsite safety procedures and protocol pertaining to work at ONE WORLD TRADE, NY, NY that would have been in effect on July 2, 2012.

*\* Copies of records, or portions thereof, onto a computer CD disc would be acceptable.*

Thank you.

David Cardali  
Cardali & Associates, P.C.  
85 Andrew Road  
Manhasset, NY 11030  
Office: (516) 827-8989  
Fax: (516) 708-8698

**THE PORT AUTHORITY OF NY & NJ**

*FOI Administrator*

March 13, 2013

Mr. David Cardali  
Cardali & Associates, P.C.  
85 Andrew Road  
Manhasset, NY 11030

Re: Freedom of Information Reference No. 13398

Dear Mr. Cardali:

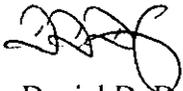
This is a response to your August 10, 2012 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code") for written confirmation of the identity of the general contractor for 1 WTC on 7/2/12, copies of records related to Five Star Electric Corp. and safety pertaining to work 1 WTC that would have been in effect on 7/2/12.

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/13398-WTC.pdf>. Paper copies of the available records are available upon request.

Certain material responsive to your request is exempt from disclosure pursuant to exemption (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

**GENERAL CONTRACTOR AGREEMENT**

**BY AND BETWEEN**

**1 WORLD TRADE CENTER LLC**

**2 WORLD TRADE CENTER LLC**

**4 WORLD TRADE CENTER LLC**

**5 WORLD TRADE CENTER LLC**

**AND**

**TISHMAN CONSTRUCTION CORPORATION**

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**PROJECT**

**WORLD TRADE CENTER  
NEW YORK, NEW YORK**

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**DATED AS OF**

**SEPTEMBER 10, 2003**

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## GENERAL CONTRACTOR AGREEMENT

AGREEMENT (this "Agreement") dated as of September 10, 2003, by and between (1) 1 WORLD TRADE CENTER LLC, a Delaware limited liability company, 2 WORLD TRADE CENTER LLC, a Delaware limited liability company, 4 WORLD TRADE CENTER LLC, a Delaware limited liability company, 5 WORLD TRADE CENTER LLC, a Delaware limited liability company, (collectively, the "Lessee" or the "Lessees"), and (2) TISHMAN CONSTRUCTION CORPORATION, a Delaware corporation, (the "General Contractor").

### WITNESSETH:

WHEREAS, the Lessees lease various components of the World Trade Center complex in Block 58, Lot 1, New York, New York (the "Site") from The Port Authority of New York and New Jersey (the "Port Authority"); and

WHEREAS, the Lessee intends to construct certain improvements on the Site (including possible expansions of the Site), which will include not less than 10,000,000 square feet of useable, commercially viable Class A, above-grade office space (or the amount of space necessary to provide the Lessee with the same amount of Class A, above-grade carpetable office space as existed at the World Trade Center as of September 10, 2001), together with sub-grade, parking, loading, and other ancillary uses and together with tenant improvements required by the Lessee (the "Project"); and

WHEREAS, the Lessee wishes to retain the General Contractor to assist in development of the Project and to cause the construction and completion of the Project; and

WHEREAS, the General Contractor is willing to act in the capacity of a General Contractor, and cause to be provided through its own forces and independent contractors retained by the General Contractor in accordance with the terms of this Agreement, all labor, materials,

equipment, tools and services required for the Project and otherwise perform its obligations hereunder;

NOW, THEREFORE, in consideration of the premises and the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

#### ARTICLE I

##### **(Contract Documents)**

1.1. The "Contract Documents" consist of (i) this Agreement, (ii) all site plans described in Exhibit "A" hereto, (iii) at such time as the same shall have been prepared, all final Lessee-approved plans, drawings and specifications prepared by the architect or architects retained by the Lessee (the "Architect") or the Lessee's consultants with respect to the installation of improvements and finishes in those portions of the building to be occupied by tenants (collectively, "TI Plans & Specifications"), and all amendments, modifications and replacements to the foregoing by the Lessee; provided, however, that any Contract Documents solely relating to any agreed upon Sub-Project GMP shall not be amended, modified, or replaced after the parties shall have agreed upon a Sub-Project GMP except as otherwise provided herein with regard to Scope Changes.

1.2. The General Contractor acknowledges that the items listed in Exhibit "A" are at an early stage of development and will be revised, clarified and supplemented by the Lessee as the Project is developed. To the extent that any such revisions, clarifications, additional drawings, specifications and/or documents constitute a Scope Change (as hereinafter defined), the same shall be subject to the terms and provisions of Article IX.

## ARTICLE II

### **(Scope of the Work)**

2.1. The General Contractor shall act pursuant to and in accordance with the terms, covenants and provisions hereof and shall cause to be performed and provided, through Subcontracts (as hereinafter defined), or its own forces (as hereinafter provided), all labor, materials, equipment, tools and services required for (x) the complete construction of the Project in accordance with the terms of the Contract Documents and (y) the completion of the work contemplated by the TI Plans & Specifications and together with the foregoing, the "Work"), it being understood that the General Contractor's duties shall not include the handling or disposal of PCBs, contaminated waste or asbestos encapsulation, removal, transportation, hauling or disposal (other than with respect to contaminated soil as required under the Contract Documents), all of which, if any, is to be performed by and under the exclusive direction, supervision and control of others; however, the General Contractor will prepare bid packages, solicit bids and assist the Lessee in awarding direct contracts for such work.

2.2. Nothing contained in this Agreement shall be deemed to require or authorize the General Contractor to perform with its own forces any act which would constitute the rendering of professional services, such as the practice of architecture, engineering or laboratory testing. The reviews, recommendations and advice to be furnished by the General Contractor under this Agreement pertaining to engineering or architectural matters shall not be deemed to be warranties or guaranties or constitute the performance of professional services other than as a general contractor, it being understood that any such recommendation or advice pertaining to engineering or architectural matters shall only be considered as a recommendation by the General Contractor, which is subject to the review and approval of the Lessee and its

professional consultants. The General Contractor warrants that all Work will be performed in a competent manner, will be of good quality and workmanship, free from faults and defects and in accordance with the Contract Documents and that materials installed into the Project shall be new, unless otherwise specified in the Contract Documents. The General Contractor agrees that the Port Authority shall be a third party beneficiary of any and all warranties contained in this Agreement and/or by the Contract Documents.

### ARTICLE III

#### **(General Contractor's Duties; Cost-Plus; Sub-Project GMPs)**

3.1. The General Contractor accepts the relationship of trust and confidence established between it and the Lessee by this Agreement. The General Contractor shall furnish its best efforts and best skill and judgment and shall cooperate with the Architect in the performance of this Agreement and in furthering the interests of the Lessee. The General Contractor shall furnish efficient business administration, coordination and management, and shall use its best efforts and best skill and judgment to cause the Work to be performed in the most expeditious and economical manner consistent with the interests of the Lessee as made known to the General Contractor. The General Contractor shall cooperate with the Architect and the Lessee and their respective consultants and engineers in furthering the interests of the Lessee and the Project.

3.2. With the exception of General Conditions (as hereinafter defined) or other portions of the Work performed by the General Contractor's own forces, all Work shall be performed and materials supplied under subcontracts ("Subcontracts") with independent trade contractors or suppliers ("Subcontractors"). Such Subcontracts shall be in writing and shall be

entered into by the General Contractor, subject to the terms and conditions in this Agreement. Each Contract shall be substantially the form of Exhibit "B" hereto.

3.3. The General Contractor shall construct the Project, including, without limitation, by providing all services, material, and labor (either directly or through Subcontractors) required to construct the Project, including any tenant improvements to be constructed in such space that the Lessee shall require, and the Lessee shall pay the General Contractor the cost of such services and a construction services fee in an amount that is equal to (x) the sum of the Cost of Work plus the Construction Services Fee pursuant to Article X (the basis upon which such price is calculated, the "Cost-Plus Basis"), or (y) with regard to any Sub-Project in connection with which the parties shall have agreed upon a Sub-Project GMP, a price equal to such Sub-Project's Sub-Project GMP, as such terms are defined below.

3.3.1. Except to the extent that the parties shall have agreed upon a Sub-Project GMP for any Sub-Project, all Work shall be paid for on the basis of the Cost of Work plus the applicable Construction Services Fee.

3.3.2. From time to time, as planning and construction for the various buildings and other components of the Project (each such building or other component, a "Sub Project") progresses, the Lessee may provide written notice to the General Contractor (each such notice a "GMP Notice") stating that the Lessee wishes to proceed with the construction of such Sub-Project on a guaranteed maximum price basis, rather than on the basis of Cost of Work plus a Construction Services Fee. Upon receipt of a GMP Notice in respect of any Sub-Project and provided that all trades have been bid and tentatively awarded in connection with such Sub-Project, the General Contractor shall, within 40 days of receipt of such GMP Notice in respect of such Sub-Project, prepare and deliver to the Lessee a proposed guaranteed maximum price for

the construction of such Sub-Project (such proposal to include a budget describing the various line items of such guaranteed maximum price and a proposed construction schedule and date of substantial completion) (a "Sub-Project GMP Proposal") and, upon delivery of such Sub-Project GMP Proposal, the Lessee and the General Contractor shall negotiate in good faith in an effort to agree on a mutually acceptable guaranteed maximum price and related budget and construction schedule for the applicable Sub-Project (any such agreed-upon guaranteed maximum price, budget and schedule, a "Sub-Project GMP"). If a Sub-Project GMP shall have been agreed upon for any Sub-Project, then the General Contractor shall no longer be paid on a Cost-Plus Basis in respect of such Sub-Project. If the parties shall be unable to agree upon a Sub-Project GMP for any Sub-Project for any reason, then, subject to Article XIII, (i) the General Contractor shall continue to be paid on a Cost-Plus Basis in respect of such Sub-Project, and (ii) the Lessee may terminate this Agreement (pursuant to, and without limiting, the Lessee's termination rights set forth in Article XIII) in respect of such Sub-Project and retain another general contractor other than the General Contractor to construct such Sub-Project.

3.3.3. Each Sub-Project GMP Proposal shall include, in addition to the items described above, as applicable, (A) the sum of (i) all Subcontracts and/or approved Change Orders to same, if any; (ii) an estimate of items then uncontracted for, but required, to complete the Work; (iii) an estimate of General Conditions costs, together with any actual General Conditions costs expended; General Conditions costs to be based on the construction schedule and the complexity of the Sub-Project; (iv) an agreed upon contingency; and (v) the Construction Services Fee, and (B) a construction schedule in a form suitable to the Lessee, showing each major trade, critical path and milestone dates.

3.3.4. Each Sub-Project GMP Proposal shall also include (a) a trade breakdown annexed thereto including budgeted amounts for each division of the Work required for the Sub-Project, including General Conditions costs, the Construction Services Fee and any proposed contingency; (b) copies of all written Subcontracts and/or Proposals received from Trade Contractors and vendors for the work covered by the proposed Sub-Project GMP Proposal; and (c) copies of the General Contractor's cost estimates for the work not covered by Contracts, but required to complete the Work. The trade breakdown shall be accompanied by a list of qualifications, allowances or alternates (as applicable) and exclusions. Unless otherwise agreed in any Sub-Project GMP, by accepting any Sub-Project GMP, the Lessee shall be deemed to have acknowledged that those qualifications, allowances or alternates and exclusions shall become a part of and conditions of the Sub-Project GMP provided, however, that the Lessee acknowledges that the cost of alternates are not included in any Sub-Project GMP and if any alternates are exercised, such alternates will be treated as of the Lessee elected a Scope Change increasing a respective Sub-Project GMP.

3.3.5. Unless otherwise agreed in any Sub-Project GMP, each Sub-Project GMP shall be provided for the total cost of the Work for the applicable Sub-Project, and not the cost for each or any division thereof except as otherwise set forth herein. As subsequent Subcontracts, Purchase Orders or other Fixed Contract Prices are obtained and are awarded for each of the separately-priced divisions of the Work required for each Sub-Project as shown in the trade breakdown, the trade breakdown shall be adjusted as follows (subject to Section 3 below):

(a) If the cost of any division as awarded is less than the amount shown on the trade breakdown, the amount indicated in the trade breakdown for such item shall be reduced by an amount equal to the difference between such cost and the amount shown on the

trade breakdown for such item and the contingency shall be increased by the same amount. The applicable Sub-Project GMP shall not be adjusted.

(b) If the cost of any division is greater than the amount shown in the trade breakdown, to the extent that the contingency is sufficient, the amount shown in the trade breakdown for such item shall be increased by an amount equal to the difference between such cost and the amount shown in the trade breakdown for such item and the contingency shall be reduced by the same amount and the applicable Sub-Project GMP shall not be adjusted except for allowances referenced in any Sub-Project GMP Trade Breakdown which shall be part of each Sub-Project GMP Proposal.

(c) If the cost of any division is greater than the amount shown in the trade breakdown and the Contingency is not sufficient, the amount shown in the trade breakdown for such item shall be increased by an amount equal to the difference between such cost and the amount shown in the trade breakdown for such item and the applicable Sub-Project GMP shall not be adjusted.

3.3.6. Unless otherwise agreed in any Sub-Project GMP, certain portions of each Sub-Project GMP shall be specifically allocable to certain divisions of work as follows:

(a) A portion of each Sub-Project GMP equal to five percent (5%) of the sum of Costs of Work, General Conditions and the Contingency, or, alternatively, 5% of the Sub-Project GMP, is specifically allocable to an Lessee's design contingency fund (the "Design Contingency"). The General Contractor shall not be permitted to incur Costs of the Work or General Conditions which are to be paid from funds constituting the Design Contingency or to apply any portion of the Design Contingency to any portion of the Cost of the Work, General Conditions or Construction Services Fee without, in each instance, the express prior written approval of the

Lessee. In the event that upon completion of the Work, all or any portion of the Design Contingency remains unspent and/or unallocated to any items in the budget, then the applicable Sub-Project GMP shall be reduced by such amount (and the same shall not be considered "savings" under Section 3.3.14 hereof) and the Lessee shall have no obligation to pay that portion of the applicable Sub-Project GMP allocable to said remaining portion of the Design Contingency.

3.3.7. Each Sub-Project GMP shall contain a line item defined as Contingency which shall be equal to ten percent 10% of the Sub-Project GMP. This line item shall be used by the General Contractor to pay for costs occasioned by: (a) unpredicted construction conditions not rising to the level of Force Majeure and/or which require re-design, (b) coordination of trade work, (c) increases in the cost of portions of the Work which are only estimated at the time of execution of the Agreement, and (d) other unanticipated construction costs required for the full completion of the Work, (e) cost overruns on General Conditions costs, and (f) costs of premium time provided that such premium time expense is incurred to keep any Sub-Project on schedule (and not used for the purposes of being ahead of schedule). The Contingency is not a fund designed for, nor is it to be used for, increases in the Cost of the Work caused by (a) increases in scope from the Lessee and/or design errors, omissions, modification and changes, (b) or the elimination of any Sub-Project GMP Trade Break-Down set forth in a Sub-Project GMP Proposal (each a "Sub-Project GMP Trade Allowance"), (c) Force Majeure occurrences. The General Contractor acknowledges that it is responsible for prudently supervising the portions of the Work to be performed by Subcontractors and Materialmen and shall use and exercise all prudent efforts to preserve and protect the Lessee's interest in the Contingency. The General Contractor agrees to maintain an accounting of the proposed

disbursements from the subject account for the Lessee's use at Project end and to advise the Lessee in writing of all transfers from the Contingency to any line item in the budget. At the Project end, any unapplied portion of the Contingency shall be deemed to constitute "savings" pursuant to Section 10 hereof.

3.3.8. [Intentionally deleted.]

3.3.9. Unless otherwise agreed in any Sub-Project GMP, each Sub-Project GMP accepted by the Lessee (including, without limitation, General Conditions costs) shall be subject to revision on account of actual additional costs incurred as a result of: (a) Scope Changes, as defined in Article IX of the Agreement and (b) the act or neglect of the Lessee, the Architect, the Port Authority in its capacity as Lessee's landlord or their consultants, employees, agents or Contractors; (c) any material delay, disruption, suspension or stoppage caused, created or directed by the Lessee, the Architect, the Port Authority in its capacity as Lessee's landlord or other consultants provided that such delay, disruption, suspension or stoppage was not caused by the negligence of the General Contractor in the performance of the Work or any other failure of the General Contractor to comply with the terms of the Agreement (for the purpose of this subsection, the term "material" shall be defined as a period of time of at least one day; and (d) material changes directed by the Lessee or the Architect in the manner, sequence or method of performing the Work. In the event of the occurrence of any of the foregoing events, which causes the General Contractor to incur additional out-of-pocket costs, the applicable Sub-Project GMP shall be increased by an amount equal to the actual cost incurred thereby by the General Contractor.

3.3.10. If, after acceptance by the Lessee of a Sub-Project GMP, the Lessee refuses to accept a Trade Contractor recommended by the General Contractor, the

General Contractor shall recommend a substitute, and the applicable Sub-Project GMP shall be increased by the difference in the cost occasioned by substitution, plus the difference in cost on account of additional General Conditions.

3.3.11. If, after submission by the General Contractor of any Sub-Project GMP, the Lessee directs the General Contractor to award a subcontract to a Trade Contractor who is not reasonably acceptable to the General Contractor, then actual costs, direct, indirect or consequential, including General Conditions, incurred by the General Contractor in connection with or arising out of the performance of the subject Trade Contract by the Lessee's Trade Contractor shall be borne by the Lessee, and shall increase the applicable Sub-Project GMP by the amount of such actual costs.

3.3.12. All savings generated in the cost of the General Conditions covered by each Sub-Project GMP, and as same may be adjusted pursuant to Change Orders, shall accrue to the General Contractor.

3.3.13. All savings generated in the Cost of the Work covered by each Sub-Project GMP, and as same may be adjusted pursuant to Change Orders, shall accrue to the parties in accordance with the terms that the parties shall have agreed to in the Sub-Project GMP for each Sub-Project.

3.3.14. Added to each Change Order shall be an amount equal to 13% (or such other percentage as may be mutually agreed upon by the parties in any Sub-Project GMP) of the Change Order to cover the General Contractor's general conditions costs plus, if applicable for such Change Order, any additional Change Order Fee pursuant to Article IX, herein.

3.3.15. In the event of any reduction to the Work subsequent to acceptance of any Sub-Project GMP, the value of the reduction shall not include the Construction Services Fee nor the General Conditions for the eliminated Work, except for and to the extent of a decrease in General Conditions Costs due to such elimination; reduction in bond premiums will, however, be credited where applicable.

3.3.16. All requests for Change Orders shall be acted upon expeditiously by the Lessee and the Architect and in no event later than ten (10) days from the date of the written request for a Change Order or such shorter period specified in the particular Change Order request if ten days could adversely affect the schedule of Work. The General Contractor shall not proceed with any Change Order work until the work covered by the Change Order has been approved in writing by the Lessee.

3.4. During the construction phase of the Project, including each Sub-Project (the "Construction Phase"), the General Contractor shall:

(a) Supervise the performance of the Work by the Subcontractors and coordinate and schedule the Work of all Subcontractors on the Project and/or each Sub-Project, as applicable, with the activities of the Lessee, the Architect, their engineers and consultants, the General Contractor and other subcontractors, and take all reasonably required steps to cause such Subcontractors to complete their respective portions of the Work in accordance with their respective Subcontracts.

(b) Perform, or cause to be performed, the General Conditions work.

(c) Without assuming the Architect's responsibility for inspection of the Work, or the responsibility of other engineers and consultants performing controlled

inspections of the Work, review the Work done by Subcontractors to determine whether the Work is being performed in accordance with the requirements of the Contract Documents and generally to guard the Lessee against defects and deficiencies in the Work and advise the Lessee and the Architect of any discovered deficiencies. The General Contractor shall be required to take all required actions to assure to the Lessee that the Work performed by the General Contractor and Subcontractors complies with all terms and conditions of the Contract Documents or their respective Subcontracts. If, during the progress of the Work, the General Contractor's supervisory personnel discover work being performed contrary to the Contract Document requirements and/or good construction practices, or have reasonable cause to believe that any Work is not in accordance with the Contract Documents and/or good construction practices, the General Contractor shall promptly notify the Architect and the Lessee. The General Contractor shall be fully responsible for arranging for all necessary inspections and testing of the Work and, to the extent General Contractor determines such Work has not been performed in accordance with the Contract Documents and/or good construction practices, the General Contractor shall be fully responsible for the cost of inspection and testing and for correcting such Work without adjustment of the Cost of Work and/or an applicable Sub-Project GMP, as applicable. To the extent that the Work is in accordance with the Contract Documents and/or good construction practices, each Sub-Project GMP shall be increased to reflect the cost of such inspection and testing. The General Contractor shall require any Subcontractor to stop Work or any portion thereof and require special inspection or testing of any Work and, if required by the Lessee after examination and determination of noncompliance, removal, uncovering, repair and restoration to the standard of the Contract Document requirements without adjustment of the Cost of Work and/or an applicable Sub-Project GMP, as applicable, and without application of the

Contingency to the cost thereof, whether or not such Work be then fabricated, installed or completed, in accordance with the requirements of the respective Subcontract.

(d) Arrange for expediting of long-lead equipment required in connection with the Work and advise the Lessee with respect to potential delays in their purchase and delivery.

(e) Prepare (i) a construction schedule in a form suitable to the Lessee, showing each major trade, critical path and milestone dates and update and deliver same to the Lessee monthly, or as more frequently as reasonably requested by the Lessee and (ii) an anticipated cost report of construction costs for the Project and/or each Sub-Project, as applicable, also on a monthly basis, showing past, present and future expenditures required to complete the Project and/or each Sub-Project, as applicable, and which report shall reflect all claims and pending Change Orders issued during the period covered by such report.

(f) Schedule and conduct job meetings with the Lessee and the Architect when necessary; coordinate meetings with appropriate parties as necessary and prepare and furnish to all attendees minutes of such meetings; such minutes to be issued to all parties prior to the next scheduled meeting.

(g) In conjunction with the Architect and the Lessee identify, require, and arrange to be performed by an independent testing laboratory or other consultant, all subject to the Lessee's prior approval, such tests as shall be determined to be necessary and appropriate except for controlled inspections which shall be performed by others.

(h) Cause to be obtained all necessary construction operation licenses and permits, including, without limitation, with the Lessee's and the Architect's cooperation, a Port Authority TCO, except if and to the extent that the same, under applicable contract, law or

practice, must be or are normally obtained by the Lessee (such as the initial building permit) the Architect or Subcontractors and, in such event, cooperate with the Lessee, the Architect or Subcontractors, as the case may be, in obtaining such licenses and permits.

(i) Keep such accounts and costs records, in addition to those specified in Article XVI, as are required to be maintained by the General Contractor pursuant to the Lessee's or the Lessee's lender's or lenders' (collectively, the "Lenders") requirements (if applicable), such as trade by trade and General Conditions cost records, cost records required in connection with time and material and unit price change order work, man hours, certified payrolls, and monitoring of the workforce for compliance with affirmative action goals (provided such goals are provided by the Lessee prior to awarding the relevant Subcontracts).

(j) Prepare, file, and secure required Port Authority approval for a comprehensive Site Safety Plan with the Port Authority and thereafter review and coordinate the safety program with the Subcontractors. The General Contractor and the Subcontractors shall be responsible for the safety of persons or property at the Project Site and in the immediate vicinity for which the General Contractor would be liable under the New York City Building Code. The General Contractor shall comply with and be responsible for causing all Subcontractors to comply with all federal, state and local safety, health and environmental statutes, rules, regulations and orders and all other requirements of law, including, without limitation, the Construction Safety Act of 1969, the Williams-Steiger Occupational Safety and Health Act and the Administrative Code of the City of New York and the environmental site safety plan entitled "Health and Safety Guidelines for Foundation Construction", dated April 26, 2002 and prepared by Langan Engineering and Environmental Services, Inc. (the "Langan Report"), a copy of which has been delivered to the General Contractor.

(k) Assist and cooperate with the Lessee in any legal actions or proceedings that may arise out of or relate to the Work, including appearances, as reasonably necessary.

(l) Cooperate with the Lessee's insurers (or insurance brokers) and/or safety consultants.

(m) Supervise the performance by Subcontractors of the correction of defective Work, including, without limitation, performance of all guarantees given by Subcontractors, but in no event longer than the expiration of the relevant guarantee/warranty period prior to Lessee's acceptance of the Work, at which point Lessee's maintenance staff will undertake such supervision.

(n) Coordinate the submission by Subcontractors for approval by the Architect and other consultants of all required shop drawings, samples and catalogue cuts; maintain a log of all such submissions; promptly advise the Lessee of any potential problems pertaining to the timeliness of such submissions and approvals; advise the Lessee periodically as to the status of such submissions; advise the Lessee and the Architect of any errors in such submissions that are discovered by the General Contractor (without assuming the Architect's responsibility for reviewing and approving such submissions); and coordinate the various disciplines after the Architect's approval of the respective shop drawings and before installation.

(o) Cause all Subcontractors who are required to maintain and provide, on an on-going and continuous basis, comprehensive "as-built" and coordination drawings of their Work on mylar for the mechanical, electrical and plumbing as-built drawings, together with one copy of the AutoCAD compatible computer files used to prepare the same, to the extent

drawings were prepared on AutoCAD under the terms of their respective Subcontracts, and to deliver same to the Lessee upon final payment to each such Subcontractor.

(p) At all times as part of the General Conditions, cause the Site to be kept free from accumulation of waste material or rubbish caused by the Work. Subcontracts shall include a provision requiring daily carrying of rubbish and debris to designated stockpiling areas and/or receptacles, to the maximum extent possible. Upon substantial completion of the Project, the General Contractor shall cause all waste material and rubbish generated by General Contractor and its Subcontractors to be removed from and about the Site, and, to the extent practicable, all tools, construction equipment, machinery and surplus materials of General Contractor and its Subcontractors.

(q) Review requests for changes by the Architect, submit recommendations to the Lessee regarding same, make independent recommendations regarding changes to the Work to enable expeditious and economical completion of the Work, negotiate change orders, prepare and process written change orders for approval by the Lessee, and thereafter transmit same to the appropriate Subcontractors.

(r) Review Subcontractors' monthly requisitions for progress payments and make recommendations to the Lessee regarding approval of same. The General Contractor's and all Subcontractors' monthly requisitions shall be in a form acceptable to and in full conformance with the Lenders' requirements (if applicable).

(s) If requested, cooperate with the Lessee in the selection and retention of professional and other consultants in connection with the Work.

(t) Consult with the Lessee and the Architect when any Subcontractor requests interpretations of the Contract Documents, promptly give notice to the Lessee and the

Architect of any dispute or claim which may arise during construction of the Project, assist in the timely resolution of any such dispute or claim in accordance with the Lessee's directions and recommendations regarding settlement of such disputes and claims. To the extent that the Lessee issues such directions and/or recommendations and the subject and resolution of such dispute or claim is determined to be both outside the scope of Work to be performed by the General Contractor under this Agreement and outside the scope of Work to be performed by the Subcontractor under its Subcontract and the Contract Documents, then any additional costs incurred by the General Contractor in complying with the Lessee's directions and/or recommendations regarding the resolution of such dispute or claim shall be subject to a Change Order to be issued pursuant to Article IX of this Agreement.

(u) Make recommendations to the Lessee regarding the advisability of pre-purchasing materials to be incorporated into the Work and stored off-site (if approved in advance by the Lessee and the Lenders (if applicable), cooperate with the Lessee in making arrangements for inspection of same, including such arrangements as the Lessee shall deem necessary or desirable for (i) access to such materials for the purpose of segregation, on-going inspection, project identification and removal of the same, (ii) protecting the Lessee's title to such materials, free and clear of all liens, encumbrances and rights of others, and (iii) insuring and protecting the same and not make any payments for materials stored off-site, unless all such arrangements have been approved in writing by the Lessee.

(v) The General Contractor shall assist in conducting final inspections of the Work (without assuming the Architect's responsibility for inspection of the Work) and shall request of the Lessee and the Architect a determination of Substantial Completion of the Work or designated portions thereof and assist in the preparation of a list of incomplete or

unsatisfactory items (the "Punchlist") with the Architect and the Lessee, and thereafter prepare a schedule for completion of such items. The date of "Substantial Completion" of the Work, or designated portions thereof, is the date construction is sufficiently complete in the opinion of the Architect, in accordance with the Contract Documents, so that the Lessee can occupy or utilize the Project and/or each Sub-Project, as applicable, or designated portions thereof for the use for which it was intended. Warranties called for by this Agreement and/or by the Contract Documents shall commence on the date set forth in the applicable Contract Documents.

(w) The General Contractor shall request of the Lessee and the Architect a determination of Final Completion (as hereinafter defined) and provide written notice to the Lessee and the Architect that the Work is completed and ready for final inspection. This will be preceded by the Punchlist inspection by the General Contractor and approval of the corrective work by the Architect and the Lessee.

(x) Cooperate with the Lessee's maintenance or operational personnel during initial start-up and testing of utilities, equipment and systems.

(y) Cooperate and consult with the Lessee and the Architect and their respective consultants and engineers, in closing-out Subcontractors, including processing of appropriate backcharges; review requests for final payment to Subcontractors and make recommendations to the Lessee regarding approval of same; and receive and transmit to the Lessee required cost certifications and/or other documentation required by the Lenders (if applicable), as well as guarantees, affidavits, releases, certificates of compliance (if required), maintenance manuals, liens and other waivers in such form as the Lenders, if applicable, may reasonably require, bonds and other documents required by the Contract Documents and the Subcontracts prior to final payments being made to Subcontractors.

(z) Review and make recommendations with respect to Subcontractors' forms of guarantee, release and requisition for final payment(s).

(aa) Maintain a complete set of drawings, specifications, purchase orders, contracts, shop drawings and related documents at the Site or at the General Contractor's main office, and turn over all as-built drawings prepared by appropriate Subcontractors to the Lessee upon completion of the Work or earlier as directed by the Lessee.

(bb) Assist the Lessee in enforcement of guarantees and warranties of Subcontractors.

(cc) Review Subcontractors' insurance certificate as to the coverage required to be carried by such Subcontractor hereunder in order to determine whether they comply with the Lessee's requirements before submission to the Lessee.

(dd) Cooperate with the Lessee with respect to final acceptance and close-out by the Lenders (if applicable).

(ee) Make recommendations and render assistance regarding labor disputes and jurisdictional disputes.

(ff) Take such action as may be reasonably necessary in an emergency to protect life and property and notify the Lessee of such actions as soon as practicable.

(gg) The General Contractor shall use all reasonable efforts to maintain good relations with labor unions as well as minority and other related interest groups in an effort to maintain peaceful labor relations and a trouble-free job site for the duration of the Project and/or each Sub-Project, as applicable, and advise the Lessee of any anticipated problems in connection therewith.

(hh) Cooperate with the Lessee and construct a management office, to the extent shown on or called for in the Contract Documents and included in the Cost of Work and/or each Sub-Project GMP, as applicable, or in the alternative, include this work in accordance with a Change Order approved by the Lessee.

(ii) The General Contractor shall, as directed by the Lessee, institute and supervise a program for minority participation in the labor force and in the ownership of Subcontractors in accordance with requirements of any tax incentive or other program or programs applicable to the Project and/or each Sub-Project, as applicable, or the requirements of the Port Authority from time to time provided that such program is delivered to General Contractor by the Lessee prior to the awarding of the applicable subcontracts.

(jj) Provide a Cash Flow Schedule for the Work once the major Project and/or Sub-Project requirements, as applicable, have been identified, and adapt same to the Lessee's and the Lenders' Requirements (if applicable), as necessary.

(kk) Provide a detailed trade-by-trade construction time schedule for the Project and/or each Sub-Project, as applicable, in a form suitable to the Lessee, once the major Project and/or Sub-Project requirements, as applicable, have been identified, which schedule shall be updated on a monthly basis or as more frequently as reasonably requested by the Lessee.

3.5. Pre-construction services shall be performed by the General Contractor and paid for by the Lessee pursuant to a separate arrangement between the Lessee and the General Contractor.

## ARTICLE IV

### (Lessee's Responsibilities)

4.1. The Lessee shall provide all construction relevant information regarding its requirements for the Project, including the Lessee's objectives, constraints and criteria including inter alia, the Lenders' retention requirements, terms and other conditions (if applicable), with reasonable promptness.

4.2. The Lessee shall retain the Architect and, either directly or through the Architect, all other professional, engineering and technical consultants required for the design of, preparation of drawings and specifications for and testing and inspection of the Project including, without limitation, controlled inspections. To the extent the context so requires, all references herein to the "Architect" shall be deemed to include such other professional, engineering and technical consultants. The Lessee shall furnish a copy of the Architect's agreement (excluding fees) to the General Contractor along with all modifications thereto. The Lessee shall also furnish for the Site all necessary surveys describing the physical characteristics, subsurface conditions, soil reports, legal limitations and utility locations and a legal description of the metes and bounds of the Site. The General Contractor shall be entitled to rely upon the accuracy and completeness of the plans, specifications, surveys and reports prepared by the Lessee's architects, engineers and consultants; however, the General Contractor shall review all of the foregoing, and promptly notify the Lessee of any errors or conflicts which it discovers.

4.3. The Lessee shall furnish such legal, financial auditing and insurance consulting services as may be necessary for the Project, except, however, for those services that are required for the conduct of the General Contractor's business and/or corporate operations which shall be at the sole cost and obligation of the General Contractor.

4.4. The Lessee shall promptly notify the General Contractor of any fault or defect in the Work or non-compliance with the Contract Documents that it becomes aware of and the General Contractor shall promptly correct or cause the correction of such fault or defect. This does not, however, relieve the General Contractor of its obligation with respect to inspection of the Work, as provided for elsewhere in this Agreement.

4.5. [Intentionally deleted.]

4.6. The Lessee shall designate a representative who shall be fully acquainted with the scope of the Work and the Lessee's requirements and objectives and who has full authority to render decisions promptly, furnish information as expeditiously as possible and to act on behalf of the Lessee and bind the Lessee in connection with all aspects of this Agreement and the Project. Until written notice is given to the contrary, Larry A. Silverstein, Michael Levy, and John J. Klein are hereby designated as the Lessee's representatives, each with full power and authority to act on the Lessee's behalf as aforesaid. Notwithstanding anything to the contrary contained herein, prior to the commencement of construction of any Sub-Project, the Lessee shall appoint a third-party representative who shall be fully acquainted with the scope of the Work and the Lessee's requirements and objectives and who, subject to the Lessee's approval, shall have full authority to render decisions promptly, furnish information as expeditiously as possible and to act on behalf of the Lessee.

4.7. The Lessee shall be responsible for and shall obtain, secure and pay for all necessary rights of access to the Site and for all necessary community board, City Planning Commission, Landmarks Commission, Bureau of Standards and Appeals, and Port Authority approvals required for the construction, use or occupancy of the permanent structures and for demolition or changes in existing facilities or structures and any and all easements or licenses

required in connection with the Project. Notwithstanding the foregoing, the General Contractor shall fully cooperate with and assist the Lessee in obtaining all permits, approvals, sign-offs, and/or other required project documentation.

4.8. General operating procedure on the Project will be such that all communications with the Subcontractors shall be through the General Contractor; provided that the Lessee shall have the right to communicate directly with Subcontractors so long as such communications do not modify the terms of any Subcontract nor interfere with the progress of the Work and the Lessee shall communicate the substance of such communications to the General Contractor.

4.9. The Lessee shall (or the Lessee shall cause the Lessee's separate contractors to) defend, indemnify and hold the General Contractor harmless from and against any and all claims, damages, losses, liabilities, costs and expenses (including reasonable attorneys' fees and disbursements) arising out of or in connection with (a) the acts, errors and omissions of the Architect and its engineers and consultants and the Lessee's other architects, engineers and consultants; (b) the performance of PCB, hazardous waste or asbestos abatement, removal, hauling, transportation or disposal, except with respect to contaminated soil as required under the Contract Documents; and (c) any claim by a Subcontractor of any tier against the General Contractor which is primarily due to the General Contractor complying with a specific direction of the Lessee in contradiction to the Contract Documents; provided that the General Contractor has notified the Lessee prior to complying with such direction that compliance therewith may result in a claim by such Subcontractor. The foregoing indemnity shall survive the termination of this Agreement and the completion of the Work to be performed hereunder.

4.10. The Lessees represent that they are the lessees of various portions of the Site and agree that they shall promptly notify the General Contractor in writing of any relevant change in ownership of their leasehold interest in the Site.

4.11. The Lessee shall require the General Contractor to supply a payment and performance bond in the total amount of each Sub-Project GMP, the cost thereof to be subject to the Lessee's approval. Such bonds shall be in form and substance and issued by insurers reasonably satisfactory to the Lessee and the Lenders (if applicable). The Lessee may participate in the purchase of such bonds. In addition, the Lessee shall require that all of the Subcontractors (except where the parties deem it unnecessary) will also supply payment and performance bonds in the total amount of their Subcontract price, such bonds to name both the General Contractor and the Lessee as dual obligees thereunder, and to be in form and substance and issued by insurers reasonably satisfactory to the Lessee and the Lenders (if applicable). The cost of both the General Contractor's bonds and the Subcontractors' shall be borne by the Lessee, outside of each Sub-Project GMP.

#### ARTICLE V

##### (Schedule of the Work)

5.1. Within five (5) business days after receipt by the General Contractor from the Lessee of a directive to proceed with the Work on the Project and/or any Sub-Project, as applicable, the General Contractor shall cause such Work to be commenced and carried diligently to completion as expeditiously as possible; provided, however, the General Contractor agrees to achieve Substantial Completion of each Sub-Project for which there is an agreed-upon Sub-Project GMP on or before the date agreed upon in such Sub-Project GMP (the "Sub-Project Completion Date"), subject only to extensions of time on account of Force Majeure (as

hereinafter defined), and Change Orders which affect schedule. Upon completion of the Project or a Sub-Project, to the extent applicable, the General Contractor shall prepare a written description of the conditions required in order to obtain a Temporary Permit to Use or Occupy from the Port Authority for the base buildings and General Contractor and Lessee shall cooperate with each other to obtain the approval of such description of conditions from the Port Authority; provided, however, that in no event shall such conditions require General Contractor to do more work than must be completed to satisfy the criteria of the New York City Buildings Department for a zero occupancy temporary certificate of occupancy (upon approval of such conditions by the Port Authority, the same shall hereinafter be referred to as the "Approved TCO Conditions" and the permit to be issued by the Port Authority pursuant to the Approved TCO Conditions being hereinafter referred to as a "Port Authority TCO"). Furthermore, the General Contractor agrees to secure a Port Authority TCO for the Project and/or each Sub-Project GMP, as applicable, subject only to extensions of time on account of Force Majeure and Change Orders or as otherwise expressly provided herein which affect schedule, on or before the date which is agreed upon in each Sub-Project GMP (each a "Milestone Completion Date"), with time being of the essence with respect to both the Sub-Project Completion Date and the Milestone Completion Date; provided, however, that if the General Contractor is unable to secure such Port Authority TCO due to any work being performed at the Project or any Sub-Project, as applicable, by Lessee or any tenants or their contractors, then, provided that General Contractor shall have complied with the Approved TCO Conditions, the General Contractor shall be deemed to have complied with the above schedule. If the Port Authority TCO is not issued (or the Approved TCO Conditions are not satisfied) by the date (the "TCO Damages Date") which is thirty (30) days after the Milestone Completion Date (other than solely as a result of any work being

performed at the Project or any Sub-Project, as applicable), the Lessee shall be entitled to liquidated damages ("Milestone Damages") in an amount and on a basis to be agreed upon in the applicable Sub-Project GMP. If, as of or subsequent to the TCO Damages Date, the General Contractor secures a Port Authority TCO including less than the entire area of Project, then the daily Milestone Damages accruing against the General Contractor hereunder shall be adjusted by multiplying the applicable daily Milestone Damages by a fraction, the numerator of which is an amount equal to the area included in such Port Authority TCO, and the denominator of which is the entire area for the Project. By way of illustration:

$$\text{Daily Milestone Damages} \times \frac{\text{Area Included in a TCO}}{\text{Total Area}} = \text{Adjusted Daily Milestone Damages}$$

The Lessee and the General Contractor acknowledge and agree that it would be extremely difficult and impracticable under the presently known and anticipated facts and circumstances to ascertain and fix the actual damages the Lessee would incur should the General Contractor fail to obtain the Port Authority TCO (or satisfy the Approved TCO Conditions) on or before the Milestone Completion Date and, accordingly, the General Contractor and the Lessee have agreed that the Lessee's sole and exclusive remedies for such failure to so obtain the Port Authority TCO (or satisfy the Approved TCO Conditions) by the Milestone Completion Date only shall be to recover from the General Contractor the Milestone Damages as set forth above, but (except as otherwise provided in Section 17.4 hereof) in no event shall the foregoing in any way limit the Lessee's rights and remedies or claim for damages with respect to any other breach or default by the General Contractor hereunder. Any Milestone Damages accruing against the General Contractor hereunder shall be payable on demand or, at the Lessee's sole and exclusive option, be subject to offset by the Lessee against any sums then due and payable to the General Contractor hereunder. Each Sub-Project GMP shall provide an amount that shall be the General

Contractor's maximum liability hereunder with respect to Milestone Damages, and, if agreed upon by the parties, shall also set forth any agreed upon milestone incentives.

## ARTICLE VI

### **(Cost of the Work)**

6.1. The term "Cost of the Work" shall mean all costs necessarily and directly incurred by the General Contractor in the proper performance of the Work. The General Contractor shall endeavor to minimize costs consistent with this Agreement, sound business practice and the Lessee's instructions.

6.2. The Cost of the Work shall include the following:

6.2.1. Salaries and costs of the benefits of the General Contractor's Project staff (whether stationed at the field office or home office and, in the latter case, on an hourly basis and only for such time as services are performed directly in connection with the Project) including, without limitation, the Project Executive, Project Manager, Assistant Project Manager(s), General Superintendent, Project Superintendent, Assistant Superintendent(s), Safety Director, Scheduling Manager, Site Safety Manager, Mechanical Engineer, Electrical Engineer, Timekeeper, Project Accountant, Affirmative Action Officer, EEO Specialist, Permit Expediter, secretarial and clerical personnel, and employees on the road in expediting the application, processing and approval of permits, licenses or certificates or the production, coordination or transportation of materials or equipment for the Project and other classes of personnel approved by the Lessee (collectively "Field Staff"). For purposes of this Agreement, if any such personnel devote at least forty (40) hours to the Project during the payroll week, the Cost of the Work will include an amount equal to the weekly salary paid to such personnel (except if the payroll week includes Benefit Days as defined below, in which case only a pro rata portion of such weekly

salary based on days actually worked shall be included therein). If any such personnel devotes less than forty (40) hours to the Project during the payroll week, the Cost of the Work will include an amount equal to one-fortieth (1/40) of the weekly salary paid to such personnel multiplied by the number of hours worked on the Project. Fringe and employment benefits and statutory charges (collectively, "Benefits") shall be charged at actual cost provided that the General Contractor supplies to the Lessee evidence reasonably satisfactory to the Lessee that the General Contractor's actual costs with respect to the Benefits have increased. Benefits shall include vacation days, holidays, sick and personal days, authorized time off (collectively referred to as "Benefit Days"), employee insurance (including health care, life and disability insurance) and employee incentives (including bonuses, retirement plan, tuition reimbursement and training courses). The General Contractor's personnel above the level of Assistant Superintendent or Assistant Project Manager and their salaries shall be subject to the Lessee's prior approval and may be from time to time modified with the prior approval of the Lessee, which approval of such modifications shall not be unreasonably withheld. The General Contractor shall not remove any Field Staff without the consent of the Lessee, which shall not be unreasonably withheld, unless such individual(s) cease to be in the employ of the General Contractor, or become unable to perform based on illness or other circumstance, in which case the General Contractor will nominate a suitable replacement(s) for the Lessee's consideration and approval.

6.2.2. Wages paid for laborers, operators, foremen, teamsters, shop stewards, mechanics, and other similar union members employed by the General Contractor in performance of the Work in accordance with applicable collective bargaining agreements, including all required fringes, benefits and contributions as may be payable with respect thereto.

6.2.3. Payroll taxes (FICA, FUDA and SUDA), which taxes will be charged at actual cost, for employees of the General Contractor who are included in the Cost of the Work under Section 6.2.1.

6.2.4. All travel expenses incurred directly in connection with the Project authorized in advance by the Lessee and incurred in the discharge of duties connected to the Work excluding travel to and from the Project. Reasonable transportation, subsistence and hotel expenses for representatives of the General Contractor incurred in discharge of duties away from the Project authorized in advance by the Lessee and incurred directly in connection with the Work.

6.2.5. Cost incurred by the General Contractor for materials, supplies and equipment incorporated in the Work, including costs of transportation thereof.

6.2.6. Cost of sales and use taxes (subject to any applicable exemptions) incurred in connection with the Work, and/or any required payments in lieu of taxes.

6.2.7. Cost, including, reasonable and necessary transportation, operation and maintenance, of all materials; supplies; consumables; temporary utilities (such as heat, light, power and water); temporary protection of persons and property; winter protection; temporary elevator service and hoisting; and other temporary facilities which are utilized or consumed in the performance of or in connection with the Work, except that the General Contractor will endeavor to include the foregoing items, to the maximum extent possible, with the appropriate trade subcontractors. All purchased tools and equipment used but not fully consumed shall be turned over to the Lessee upon completion of the Project.

6.2.8. Cost of purchase or rentals for all tools, furnishings, machinery, equipment, facilities, structures and automobiles including installation, maintenance, fuel,

insurance, parking/storage lubricants, repairs, replacements, dismantling, removal, unloading, transportation, delivery and return costs thereof. Cost of automobile allowance actually paid to the Project Executive, Project Manager and Project Superintendent in accordance with General Contractor's standard policy as disclosed to and approved in advance by the Lessee.

6.2.9. Cost of premiums for insurance which the General Contractor is required by the Lessee to purchase and maintain including, without limitation, advance deposit premiums therefor when billed, such insurance to be in form and issued by insurers reasonably satisfactory to the Lessee and the Lenders (if applicable).

6.2.10. Permit fees, royalties (at rates subject to the Lessee's prior approval) and license fees required in the performance of the Work.

6.2.11. Losses and expenses incurred due to casualty, including, but not limited to, reasonable attorneys' fees and disbursements not compensated by insurance and sustained by the General Contractor in connection with the Work, but not including losses, expenses, or attorneys' fees resulting from the risks intended to be covered by the General Contractor's insurance required under Article XI. Reimbursable losses and expenses hereunder shall include settlements made with the consent of the Lessee.

6.2.12. All actual out-of-pocket Project Field Office costs and expenses directly related to the Work and in connection with telephone service; toll and long distance calls; permits; telegrams; postage; overnight courier; telecopier charges; messenger service; stationery; photographs; blueprinting; reproduction costs; surveys; watchmen services; establishment operation and maintenance of the Project field office such as supplies, consumables (e.g., paper products, drinking water), office equipment, job site remote or

standalone computer terminal(s), furnishings; and other incidental expenses in carrying out the Work.

6.2.13. Costs reasonably and necessarily incurred to third parties with the prior approval of the Lessee in connection with the removal of all waste and debris.

6.2.14. Costs reasonably and necessarily incurred due to an emergency, not compensated by insurance, affecting the safety of persons and property and not arising out of the General Contractor's negligence or default under this Agreement and which shall increase each Sub-Project GMP.

6.2.15. Labor relations costs incurred solely with respect to the Work, if and to the extent approved in advance by the Lessee, provided such costs are not the result of the General Contractor's breach of any collective bargaining agreement.

6.2.16. Costs approved by the Lessee in advance and incurred by the General Contractor in connection with the storage and warehousing of materials purchased and received for the Work in advance of their need.

6.2.17. Costs incurred in connection with surveys (on a per floor basis, if required), testing, inspection, research and related reports required in connection with the Work.

6.2.18. Costs incurred by the General Contractor for protection and repair of adjoining property and not otherwise recoverable from insurance or back-charges to the appropriate subcontractors and/or vendors.

6.2.19. Costs incurred by the General Contractor in compliance with any and all governmental laws, rules, codes or regulations applicable to the Work such as safety, health, occupational, environmental laws, rules, codes and regulations and requirements of insurance carriers.

6.2.20. Costs incurred by the General Contractor in connection with, (a) the enforcement of the guarantees and warranties given by Subcontractors, and (b) the administrative and legal enforcement of the applicable terms of the Subcontracts, subject to the Lessee's prior approval, not to be unreasonably withheld. The costs to be reimbursed hereunder shall include all reasonable and necessary legal costs and expenses.

6.2.21. [Intentionally deleted.]

6.2.22. Other costs incurred with the Lessee's prior written approval.

6.3. The Cost of the Work shall be credited with all rebates, trade discounts, credits on taxes or credits realized on cash deposits or insurance premiums. Any tools, supplies or equipment left at the Project at the completion of the Work shall be transferred to the Lessee. The General Contractor shall take such steps as are reasonably necessary and appropriate to obtain such discounts, rebates and credits; provided, however, the General Contractor shall not be required to utilize its own funds to secure such discounts, rebates and credits.

## ARTICLE VII

### **(Costs Not to be Reimbursed)**

7.1. The Cost of the Work as defined in Article VI shall not include the following costs, which are covered by the General Contractor's Construction Services Fee (hereinafter defined), and are not reimbursable or includable in the Cost of the Work:

7.1.1. General operating expenses of the General Contractor's home office and branch offices, other than the job site Project office, including, but not limited to, overhead and general expenses such as corporate franchise and income taxes except to the extent provided under Section 6.2 or otherwise agreed to by the Lessee in writing.

7.1.2. Expenses relating to the General Contractor's home office executive, accounting (including data processing), estimating, legal, contract administration, scheduling, purchasing (except for the expenses of one staff person up to August 1, 2003) and design development staff, except to the extent provided under Section 6.2 or otherwise agreed to by the Lessee in writing.

7.1.3. Losses and expenses covered by the General Contractor's insurance provided under Article XI.

7.1.4. Costs of the Work in excess of each Sub-Project GMP, as applicable, as set forth elsewhere in this Agreement.

7.1.5. Salaries and other compensation of the General Contractor's employees and agents at the General Contractor's home office whose time is devoted to the general conduct of the General Contractor's business.

7.1.6. Costs arising out of violations of law by the General Contractor or any Subcontractor in connection with field operations at the Project, which may be charged to the Contingency.

## ARTICLE VIII

### (General Contractor's Fees)

8.1. Subject to adjustment in accordance with Section 9.2, the "Construction Services Fee" shall equal the product of (x) the Cost of Work and (y) 2.5%.

8.2. (a) The Construction Services Fee shall be paid to the General Contractor monthly, commencing with the actual start of the Construction Phase (as defined in

paragraph 3.4, herein), on a gross percentage of completion basis, as certified to the Lessee by the Architect, without offset or holdback for retention, except as expressly provided below.

(b) Any portion of the actual savings payable to the General Contractor pursuant to Subsection 3.3.14 shall become due and payable in a lump sum at the final close-out of the applicable Sub-Project.

(c) Notwithstanding the foregoing, the final 5% of the Construction Services Fee to be paid to the General Contractor shall not be payable until Final Completion of the Project and/or each Sub-Project, as applicable (as certified by the Architect). "Final Completion" shall mean full completion of the Work (including all punch-list items) in full compliance with the Contract Documents and the issuance of the Port Authority TCO for all portions of the Project and/or each Sub-Project, as applicable, covered by this Agreement.]

#### ARTICLE IX

##### (Changes in the Work)

9.1. The Lessee or, with the Lessee's approval, the Architect may, from time to time, by written instructions or drawings, order changes in the Work (a "Change Order"). In no event shall a Change Order extend any Sub-Project Completion Date unless such extension is expressly set forth in the Change Order and the same is executed by the Lessee.

9.2. In the event of a change or changes in the plans or the specifications for the Work by the Lessee or the Architect resulting in an increase in any Sub-Project GMP, the General Contractor shall be entitled to the following additional fee (the "Change Order Fee"):

(a) If the scope of work required by the Change Order materially adds to that which is provided for in a Sub-Project GMP or changes the planned use of a space within the Project and/or Sub-Project, as applicable, (a "Scope Change") and such change requires the

General Contractor to expend substantial additional efforts, then the General Contractor shall be entitled to a Change Order Fee equal to two and one-half percent (2.5%) of the cost of the Change Order, excluding the cost of any General Conditions attributable to the Change Order (i.e., the Change Order Fee will be calculated solely on the trade(s) cost of the Change Order).

(b) If the Change Order involves work required to remediate or mitigate a changed field condition, error or omission on account of the design or other circumstance which does not constitute a Scope Change (as set forth in 9.2(a), above), then the General Contractor shall be entitled to a Change Order Fee equal to 2.5% of the cost of the Change Order, excluding the cost of any General Conditions attributable to the Change Order (i.e., the Change Order Fee will be calculated solely on the trade(s) cost of the Change Order).

(c) If the Change Order involves work required due to incomplete initial buy-out not due to the General Contractor's fault, the General Contractor will be entitled to a Change Order Fee equal to 2.5% of the cost of the Change Order, excluding the cost of any General Conditions attributable to the Change Order (i.e., the Change Order Fee will be calculated solely on the trade(s) cost of the Change Order).

(d) [Intentionally deleted.]

(e) In addition to the Change Order Fee payable with respect to any Change Order, the General Contractor shall be entitled to an additional payment in an amount equal to 13% of the amount of the Change Order on account of General Conditions.

9.3. [Intentionally deleted.]

9.4. Processing and approval of Change Orders on account of the retail space shall be in accordance with the terms of this Agreement.

## ARTICLE X

### (Payments)

10.1. The General Contractor shall submit requisitions for payment in conformance to the Architect's and the Lender's requirements (if applicable), however, generally in accordance with the following:

10.1.1. On or before the thirtieth (30th) day of each month, the General Contractor shall submit to the Architect and the Lessee a requisition for payment ("Requisition"), in a form approved by the Lessee, the Architect and the Lenders (if applicable), for Work performed during the period commencing on the first (1st) day of that month and ending on the thirtieth (30th) day of the same month, covering and including:

(a) the Cost of the Work incurred by the General Contractor during the month other than payments due to Subcontractors;

(b) Payments due to the Subcontractors based upon the percentage of Work completed in accordance with the Contract Documents during the month; and

(c) the monthly installment of the Construction Services Fee in accordance with Article VIII hereof.

10.1.2. Each Requisition shall contain a schedule setting forth all Subcontractors requesting payment, and shall be accompanied by a waiver (and, as to the Requisition requesting final payment, a general release of the Lessee) by the General Contractor, in a form satisfactory to the Lessee and the Lenders (if applicable) of any lien or right to file a lien against the Work and the real estate comprising the Site for any services or Work performed or materials furnished by the General Contractor up to and including the date for which

payments have been made, together with similar waivers (and general releases, if applicable) from the Subcontractors listed in said schedule.

10.1.3. As soon as practicable after the award of any Subcontract, the General Contractor shall require the Subcontractor to prepare a trade payment breakdown of the Work to be performed under such Subcontract, in a form suitable to the requirements of the Lessee, the Architect and the Lenders (if applicable), which may include separate costs for the residential and non-residential portions of the Project, and submit same to the Lessee for the Lessee's approval, which approval shall not be reasonably withheld.

10.1.4. The General Contractor shall require each Subcontractor's Requisition to show:

(a) The amount paid to the Subcontractor prior to the date of the Subcontractor's Requisition.

(b) The amount being requested pursuant to the Subcontractor's Requisition.

(c) The balance payable under the Subcontract after payment is made pursuant to the Subcontractor's then-current Requisition for payment.

(d) Any additions to and subtractions from the original contract price under the Subcontract.

(e) A sworn statement as to all portions of the Work being performed by the Subcontractor directly, and for each such portion, the percentage of the Work claimed to be completed to the date of the Requisition.

(f) A waiver of lien (and, if final payment is requested, a general release) in a form approved by the Lessee.

(g) Such other documentation as may reasonably be required by the Lessee, the Architect or the Lenders (if applicable).

10.1.5. The General Contractor shall review and make recommendations to the Architect and the Lessee regarding payment on each Subcontractor's Requisition for Payment.

10.1.6. All amounts due Subcontractors shall be subject to retainage in accordance with the applicable provisions of each Subcontract, which retainage at a minimum will be ten percent (10%) until the work under such Subcontract is fifty percent (50%) complete as certified by the Architect; and five percent (5%) thereafter, unless otherwise agreed to by the Lessee.

10.2. The Lessee will make monthly progress payments based upon Requisitions submitted in accordance with Section 10.1, as follows:

10.2.1. Provided that the Requisition has been submitted to the Architect and the Lessee on or before the 30th day of the month, then so long as the General Contractor is not then in default under the terms of this Agreement and there are then no outstanding liens filed against the Project Site, on or about the date which is 45 days after receipt of the requisition, the Lessee will pay to the General Contractor a sum equal to the amount set forth in such Requisition or such lesser amount as shall be certified for payment by the Architect. Notwithstanding the foregoing, payments due to the General Contractor will not be withheld on account of outstanding liens filed against the Project Site, so long as the General Contractor has commenced and is diligently pursuing the necessary steps to discharge such lien and the Lenders fund the Requisition (if applicable).

10.3. Prior to start of the construction, the Lessee shall advance an agreed-upon sum of money appropriate for the General Contractor's working capital requirements. The General Contractor shall deposit said amount in an account (the "Account") to be established and maintained by the General Contractor with a bank in New York designated by the General Contractor and approved by the Lessee, which shall be segregated from all other monies which the General Contractor may have on deposit. The purpose of the Account is to provide working capital for the General Contractor to be used prior to the receipt of payments from the Lessee hereunder as it is not intended that the General Contractor utilize its own funds for working capital. The Account shall be drawn upon by the General Contractor only for the payment of expenses of the General Contractor expressly reimbursable pursuant to the terms of this Agreement. The Account shall be reconciled monthly, and an accounting made of all disbursements therefrom to the Lessee's reasonable satisfaction, whereupon the Lessee shall monthly advance such additional monies to the General Contractor for deposit in the Account as may be necessary to cover the General Contractor's reasonably anticipated reimbursable expenses for the next succeeding period; provided, however, the General Contractor may requisition additional funds to be deposited in the Account in connection with previously unanticipated expenses, when necessary. A designated representative of the Lessee shall have the irrevocable right to draw against the funds in the Account. In no event shall the General Contractor exercise any right of set-off, or, upon receipt of notice by the Lessee of any objection, draw against the monies in the Account for the payment of any items owed or claimed to be owed from the Lessee to the General Contractor or to any Subcontractor or third party. Upon termination of this Agreement, in accordance with Article XIII, the balance in the Account shall be immediately returned to the Lessee.

10.4. If the Lessee should fail to pay the General Contractor any undisputed payment within thirty (30) calendar days after the same shall have become due (including payments of additional funds to be deposited in the Account), then the General Contractor may, thereafter, upon ten (10) days' written notice to the Lessee, stop the Project until payment of the undisputed amount owing has been received.

#### ARTICLE XI

##### **(Insurance)**

11.1. The Lessee shall, at the Lessee's expense, procure and maintain at all times during the performance of the Project, for the benefit of the Lessee and the General Contractor, insurance for the Project in accordance with insurance specifications that shall be mutually agreed upon by the parties prior to the commencement of any Work and upon the terms and conditions set forth herein. In addition, Lessee shall elect to secure and maintain a comprehensive liability/workers compensation "Wrap-Up" which shall conform to the Insurance Specifications and include the interests of the Lessee, the Lenders (if applicable), the General Contractor and any Subcontractors or Subsubcontractors for the full amount of insurance indicated. In no event shall the limits provided for the Lessee and the General Contractor be less than that contained in the Insurance Specifications, unless both parties are unable to secure such limits and both parties agree to accept lower limits.

11.2. In connection with the Lessee's "Wrap-Up", all Subcontractors and Sub-subcontractors will be notified and the General Contractor will aid in the solicitation of all quotations including and excluding the insurance contained in the Insurance Specifications. The General Contractor will cooperate with the Lessee and the Lessee's insurer and broker as required in all reporting, safety and inspection requirements and assist in the defense of any suit

or action including the production of documents or employees for testimony or as witnesses at any trial. Such cooperation shall not be limited by the term of this Agreement or completion of the Project. If a full time safety person is required for this Project, the Lessee shall reimburse the General Contractor for the additional cost of said individual in accordance with the terms of Article VI, which cost shall be outside of each Sub-Project GMP, as applicable, and subject to the issuance of a Change Order.

11.3. For any Subcontractor specifically excluded and except as approved by the Lessee, the Subcontractors and their respective Sub-subcontractors shall obtain insurance that is satisfactory to the Lessee in its sole and absolute discretion.

11.4. [Intentionally deleted.]

11.5. The Lessee shall provide and maintain, at its cost and expense, all necessary property insurance for the Project as follows: Property insurance upon the entire Work at the Site to the full insurable value thereof. Such insurance shall insure against the perils of fire and the other perils covered by the standard form of extended coverage endorsement and shall include "all risk" insurance for physical loss or damage, including without duplication of coverage, theft, vandalism and malicious mischief, transit, collapse, earthquake, flood, terrorism, and shall include the interest of the General Contractor as its interest may appear. The Lessee shall provide the General Contractor with a copy of the policy and any subsequent endorsements for such insurance when so requested. The General Contractor shall be given thirty (30) days' notice of cancellation, non-renewal or any endorsements restricting or reducing coverage. The insurance may contain a per occurrence deductible as elected by the Lessee. The General Contractor shall be notified of the deductible prior to the start of Project. The Lessee shall be responsible for the deductible.

11.6. The policy for the insurance mentioned in Section 11.5 hereof and all other property insurance policies obtained by the Lessee or the General Contractor shall contain a waiver of the insurer's right of subrogation against the Lessee and the General Contractor and the agents, officers, partners and employees of any of the above.

11.7. In the event of a property loss, the General Contractor, if requested by the Lessee, will on behalf of the Lessee, assist in the negotiation of and any settlement of any claim subject to the Lessee's approval.

11.8. If automobiles are provided to any employees of the General Contractor in connection with the Project, then insurance on those automobiles shall be the responsibility of the General Contractor or the employee. The Lessee and the Lenders (if applicable) shall be named as an additional insured for all liability coverage if the automobile is to be used exclusively for business related to the Project. The following specifications ("Insurance Specifications") shall apply to the Project:

11.8.1. Commercial General Liability pursuant to one or more liability and/or excess liability policies, as the Lessee shall determine, to provide a Combined Single Limit in a customary amount that is commercially available and mutually agreed upon by the parties covering the liability of the Lessee and the General Contractor for Bodily Injury and Property Damage arising as a result of the construction of the Project and the services performed thereunder. Commercial General Liability policies shall include Broad Form Commercial General Liability, Water Damage Legal Liability, Fire Damage Legal Liability, Explosion underground and collapse coverage, Non-Owned Automobiles and hire Car Coverage, Independent Contractor and the Lessee's and Contractor's Protective Liability. Products and

Completed Operations with a two (2) year extension following completion. Employees of the General Contractor as Additional Insurers, Asbestos and Pollution Coverage not included.

11.8.2. Workers Compensation to statutory limits, Employer's Liability, and Bodily Injury by Disease, each Bodily Injury by Disease each employee, by accident each accident, with policy limits not to exceed an amount to be mutually agreed upon by the parties (except as otherwise mandated by law).

11.8.3. The insurance policies obtained pursuant to this Article XI shall comply with any applicable requirements set forth in the Lessees' leases with the Port Authority or in the related Reciprocal Easement and Operating Agreement, and to the extent required by such leases or related agreement, the Port Authority shall be named an additional insured thereunder.

## ARTICLE XII

### (Liens and Other Encumbrances)

12.1. If any lien or encumbrance is filed against the Project, the General Contractor shall, upon receiving notice of such filing, immediately give notice thereof to the Lessee, and, provided the Lessee is making all undisputed payments due and owing to the General Contractor in accordance with the terms hereof, the General Contractor shall (i) discharge the lien of record by bonding or otherwise in accordance with the terms of the applicable Subcontract, (ii) direct the responsible Subcontractor to take such further action as the Lessee may reasonably request, and (iii) withhold from payments thereafter to be made to the Subcontractor who has suffered or permitted such lien or encumbrance to be filed, such amounts as are permitted to be withheld under the provisions of the applicable Subcontract until said lien or encumbrance has been discharged of record, all of such items (i), (ii) and (iii) shall be

performed within thirty (30) days of the General Contractor's receipt of notice of the filing of such lien.

### ARTICLE XIII

#### **(Termination)**

13.1. If (i) the Project and/or any Sub-Project in whole or substantial part, is stopped for a period of 180 days through no act or fault of the General Contractor, or (ii) the Lessee transfers title to the Site or the Project and/or any Sub-Project and the transferee does not assume in writing all obligations of the Lessee under this Agreement, then the General Contractor may terminate this Agreement upon ten (10) days' prior written notice to the Lessee. In the event of a termination of this Agreement by the General Contractor pursuant to this Subsection 13.1 or pursuant to Subsection 13.2 below, the General Contractor shall be entitled to receive the then-earned portions of the Cost of the Work and the Construction Services Fee as shall have become due and payable up to and including such date, less such funds then being withheld on account of defective Work, until such time as the defective Work shall have been corrected, and upon the payment of any such amount due to the General Contractor, the Lessee shall be fully released from any further obligations of liabilities under this Agreement, other than as expressly provided for in this Agreement.

13.2. If the Lessee fails to make payments hereunder for General Contractor's Work, except for failure of the Lessee to make payments on account of disputed Work and/or claims, and/or the General Contractor's failure to perform pursuant to the Contractor Documents, and such failure continues for thirty (30) days or more, then the General Contractor shall be permitted to stop the General Contractor's Work and work on the Project or a Sub-Project, as applicable. Thereafter, the General Contractor may give the Lessee ten (10) days' written notice

of such default, and, in the event such default is not cured within said ten (10) day time period, then this Agreement shall be deemed terminated at the end of such notice period.

13.2.1. If the General Contractor fails to perform any of its material obligations under this Agreement, including, without limitation, the discharge of liens within the time period provided in this Agreement, or any other material agreement with the Lessee relating to work contemplated under Agreement, the Lessee may, without prejudice to any other remedy available to the Lessee and after ten (10) days' written notice to the General Contractor (except in the case of an emergency), make good such deficiencies.

13.2.2. If the General Contractor is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its insolvency, or if, in the Lessee's reasonable judgment, the General Contractor fails to supply enough properly skilled workers or proper materials to complete the Work in accordance with the terms of the Contract Documents, including, without limitation, the terms requiring Substantial Completion on or before any Sub-Project Completion Date, except in cases for which extension of time is provided, or if the General Contractor fails to make proper payment to Subcontractors or for materials or labor, or willfully disregards any law, ordinance, rule, code, regulation or order of any public authority having jurisdiction over the Project, or otherwise breaches any material provision of this Agreement, the Contract Documents, or any other material agreement with the Lessee relating to the Work contemplated under this Agreement (individually and collectively, an "Event of Default"), and such Event of Default is not corrected after ten (10) days' notice from the Lessee, then the Lessee may, without prejudice to any right or remedy, terminate the employment of the General Contractor upon ten (10) days' notice and take possession of the Site and of all materials, equipment, tools, construction equipment and

machinery thereon owned by the General Contractor and may finish the Project by whatever method the Lessee may deem expedient without cost or charge to the Lessee for the use made of such materials, equipment, tools, construction equipment and machinery thereon. In such case, the General Contractor shall be fully liable to the Lessee for all damages suffered by the Lessee on account of the Event of Default, including, without limitation, the additional Cost of the Work to complete the Project, any loss of income (net of any actual expense savings) and any additional debt service payments (other than principal) payable by the Lessee which would not have been payable but for the Event of Default and the General Contractor shall not be entitled to receive any further payment, other than payments for the then-earned portions of the Cost of the Work and the Construction Services Fee which shall have become due and payable up to and including the date of termination only, and all of which shall be payable subject to offset by the Lessee for claims or potential claims against the General Contractor, damages suffered or reasonably anticipated to be suffered by the Lessee and withholding on account of defective Work. Upon payment of any amount due to the General Contractor pursuant to this Section 13.2.2, the Lessee shall be fully released from any further obligations or liabilities under this Agreement, other than as expressly provided for in this Agreement. Notwithstanding the foregoing, if the Event of Default is of a nature that it is not susceptible to cure within the ten (10) day period following the Lessee's notice of default, then the General Contractor shall not be in default hereunder so long as the General Contractor commences all required actions to cure the Event of Default within such ten (10) day period and thereafter continues to diligently prosecute to completion all steps reasonably necessary to remedy the same.

13.2.3. If the Lessee is adjudged a bankrupt, or if it makes a general assignment for the benefit of its creditors, or if a receiver is appointed on account of its

insolvency, then, subject to the rights of the Lenders and the Port Authority, the General Contractor may, without prejudice to any right or remedy, terminate this Agreement upon ten (10) days' notice.

In the event of the termination of this Agreement by the Lessee pursuant to this Section 13.2.3, and at the Lessee's election, the General Contractor shall execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights arising out of or in connection with the Project as the Lessee may require for the purpose of fully vesting in the Lessee or any party designated by the Lessee the rights and benefits of the General Contractor under such obligations or commitments. In the event the General Contractor fails to execute and deliver any document or instrument reasonably requested by the Lessee to effectuate the foregoing within five (5) business days of the Lessee's request, the Lessee is hereby appointed attorney-in-fact of the General Contractor to execute any such document and/or instrument on behalf of the General Contractor.

13.2.4. The right of termination reserved to the Lessee as provided herein shall not be an exclusive remedy, and the General Contractor shall be liable to the Lessee for any and all damages, losses, costs, and expenses, which, by reason of any default of the General Contractor with respect to the due performance of its obligations hereunder or any negligence or unlawful conduct of the General Contractor or anyone directly or indirectly employed by it in the performance of the Work, shall be sustained by the Lessee at any time whether before or after the final completion and acceptance of the Work.

13.2.5. The Lessee shall have the right to terminate this Agreement in its sole discretion, as to the entire Project or as to any Sub-Project, at any time and from time to time, without cause, upon at least twenty (20) days' prior written notice to the General

Contractor. Without limiting any amounts payable to the General Contractor pursuant to Subsection 13.2.6, in the event that the Lessee exercises its termination right pursuant to this Subsection 13.2.5, then the Lessee shall nevertheless remain obligated to pay to the General Contractor the General Contractor's share of the savings, if any, under an agreed upon Sub-Project GMP prorated up to the date of termination, which amount will become payable upon the final close-out of the Project. In the event that the Lessee exercises its termination right pursuant to this Subsection 13.2.5, the Lessee may, without prejudice to any right or remedy, immediately take possession of the Site and may finish the Project by whatever method the Lessee wishes in its sole discretion, without any further obligation or liability to the General Contractor other than to make payments to the General Contractor as otherwise provided for herein or as expressly provided in Section 17.5.

13.2.6. If the Lessee terminates this Agreement as to the entire Project other than pursuant to Subsection 13.2.2, it shall reimburse the General Contractor for the then-earned portions of the Cost of the Work and the Construction Services Fee which shall have become due and payable up to and including the date of termination only. The Lessee shall also pay to the General Contractor fair compensation for any equipment retained and reasonable demobilization costs. In case of such termination of this Agreement, the Lessee shall further assume and become liable for obligations, commitments and unsettled claims (except for claims for any portion of the Work for which the General Contractor has already been paid by the Lessee) that the General Contractor has previously undertaken or incurred in good faith in connection with the Work. The General Contractor shall, as a condition of receiving the payments referred to in this Subsection 13.2.6, execute and deliver all such papers and take all such steps, including the legal assignment of its contractual rights arising out of or in connection

with the Project and/or each Sub-Project, as applicable, as the Lessee may require for the purpose of fully vesting in the Lessee or any entity designated by the Lessee the rights and benefits of the General Contractor under such obligations or commitments. In the event the General Contractor, for any reason whatsoever, fails or refuses to comply with the provisions of this Subsection 13.2.6, the Lessee may take over and administer any Subcontract entered into by the General Contractor for the Project and/or each Sub-Project, as applicable, as if the Lessee had received a full and complete assignment of such Subcontract; further, the General Contractor shall cease administering or directing the Work to be performed under such Subcontract and shall not interfere or disrupt the performance of the Work by such Subcontractor, and the Lessee shall be responsible only for payment of Work furnished by any such Subcontractor from the date of termination of this Agreement. Upon the payment of any amount due to the General Contractor pursuant to this Section 13.2.6, the Lessee shall be fully released from any further obligations and liabilities under this Agreement, other than as expressly provided for in this Agreement. If the Lessee shall terminate this Agreement pursuant to Section 13.2.4 with regard to one or more Sub-Projects but not the entire Project, then the foregoing provisions of this Section 13.2.6 shall apply only as to the terminated Sub-Projects and this Agreement shall continue to apply in full force and effect to the remainder of the Project. The General Contractor shall exercise its best efforts and cooperate with the Lessee to mitigate damages hereunder and to reduce the amounts owing to the General Contractor under this Section 13.2.6 to the maximum extent possible.

13.2.7. The Lessee may from time to time during the Project and/or each Sub-Project, as applicable, suspend work on the Project and/or each Sub-Project, as applicable, for any reason, upon at least three (3) days' written notice to the General Contractor. In such

event, the Lessee shall reimburse the General Contractor for the then-earned portions of the Cost of the Work and the Construction Services Fee as shall have become due and payable up to and including the date of suspension. In the event that the Lessee directs the General Contractor to recommence the Work following a material delay caused by the Lessee's suspension of the Project and/or each Sub-Project, as applicable, the parties shall negotiate in good faith a Change Order extending each Sub-Project Completion Date and the Milestone Completion Date and increasing each Sub-Project GMP, as applicable, by an appropriate amount equal to the necessary increased cost, if any, directly arising from the suspension.

#### ARTICLE XIV

##### **(Assignments)**

14.1. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that this Agreement may not be assigned by the General Contractor without the prior written consent of the Lessee and the Lenders (if applicable). Transfers in excess of 25% in the aggregate of the outstanding stock of the General Contractor shall be deemed an assignment for purposes of this Agreement. The Lessee may assign this Agreement without the General Contractor's consent, provided that the assignee expressly assumes all of the Lessee's obligations hereunder in writing and is the fee owner of the Site or a net lessee of the Site, unless the assignee is the Lender for the Project or an entity controlled by such Lender (if applicable). In all other cases, the General's Contractor's consent shall not be unreasonably withheld. Upon any such assignment, the Lessee shall be released from any further obligations or liabilities hereunder. The General Contractor hereby consents to the collateral assignment of this Agreement to the Lender(s) for the Project (if

applicable) if such collateral assignment is required under the terms of the Lessee's construction loan. Any assignment made in violation of this Section 14.1 shall be null and void and shall not vest any rights in the assignee.

#### ARTICLE XV

##### **(Entire Agreement)**

15.1. This Agreement, including all attachments hereto, and the Contract Documents, constitutes the entire agreement and understanding of the parties and supersedes all prior written or oral agreements or understandings in respect to the subject matter hereof. Each party represents to the other that, except as set forth in this Agreement and the Contract Documents, neither the other party nor any representative of the other party has made any representation or promise not embodied in this Agreement upon which such party has relied.

15.2. This Agreement shall not be changed or modified, nor any of its provisions waived unless such change, modification or waiver is in a writing signed by both parties hereto.

#### ARTICLE XVI

##### **(Books and Records)**

16.1. The General Contractor's Project staff shall maintain a daily log of all onsite operations and correspondence, minutes of meetings, schedules and Requisitions, copies of which, together with progress photos until the building structure is fully enclosed, shall be delivered to the Lessee on a monthly basis and the originals of which shall be maintained at the Project Site office or the General Contractor's home office and shall be available for inspection by the Lessee, the Architect and the Lenders (if applicable) during normal business hours upon reasonable advance notice.

16.2. The General Contractor's Project staff shall perform all accounting and bookkeeping services requested by the Lessee and/or required by the Lenders (if applicable) in connection with the Work, including processing of all Requisitions by Subcontractors, payroll records and invoice processing for all labor and materials utilized by the General Contractor in the performance of the Work, and payment of all Requisitions by Subcontractors and other invoices in connection with the Work, payment of which is the ultimate responsibility of the Lessee.

16.3. The Lessee and the Lenders (if applicable) and their respective authorized representatives shall be afforded access to all of the aforementioned books and records and shall have the right to audit and photocopy such books and records during normal business hours upon reasonable advance notice. Such books and records shall be maintained by the General Contractor for at least six (6) years after final payment, or, at General Contractor's option, may be returned to Lessee at an earlier date.

## ARTICLE XVII

### **(Indemnification)**

17.1. To the fullest extent permitted by law, the General Contractor shall defend, indemnify and hold harmless the Lessee, the Lessee's representative, the Architect, the Lessee's consultants and the Lenders (if applicable), as well as their respective agents, partners, principals and employees from and against all claims, damages, losses, costs, suits, liabilities and expenses, including, but not limited to, reasonable attorneys' fees, directly or indirectly arising out of or resulting from or alleged to arise out of or result from the negligent acts or omissions of the General Contractor, actions taken by the General Contractor outside the scope of the Work or the General Contractor's scope of authority, or not in accordance with specific instructions from

the Lessee, whether the same arises on account of a claim, dispute, action or proceeding between the General Contractor and an indemnified party hereunder or a third party. Such obligation shall not be construed to negate, abridge or otherwise reduce any other right or indemnify which would otherwise exist as to any indemnitee described in this Section. In any and all claims against the Lessee by any employee of the General Contractor, the indemnification obligation under this Section 17.1 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the General Contractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. The obligations of the General Contractor under this Section 17.1 shall not extend to the liability of the Architect or the Lessee or their agents or employees, arising out of (1) the preparation or approval of maps, drawings, opinions, reports, surveys, change orders, designs or specifications, or (2) the giving of or the failure to give directions or instructions by the Lessee or the Architect or their respective agents or employees; provided such giving or failure to give is the primary cause of the injury or damage.

17.2. To the fullest extent permitted by law, the General Contractor shall defend, indemnify and hold harmless the Port Authority, its Commissioners, officers, agents and employees and to its or their property against the following distinct and several risks arising or alleged to arise out of our performance of the Work described herein, and for all expenses, including without limitation thereto legal expenses (including the costs to the Port Authority of its in-house legal counsel), incurred by it and by them in the defense, settlement or satisfaction of all claims and demands, just or unjust, arising or alleged to arise out of the performance of the Work described herein, whether they arise from the acts or omissions of the Lessee, any contractors of the Lessee, the Port Authority, or third persons, or from acts of God or of the

public enemy, or otherwise, excepting only claims and demands which result solely from affirmative willful acts done by the Port Authority with respect to the construction and installation Work:

(a) Risk of loss or damage to the Work described herein or any part thereof prior to completion thereof;

(b) The risk of death, injury or damage, direct or consequential, to the Port Authority, its Commissioners, officers, agents and employees and to its or their property arising out of or in connection with performance of the work described herein; and

(c) The risk of claims and demands, just or unjust by third persons against the Port Authority, its Commissioners, officers, agents and employees arising or alleged to arise out of the performance of the Work described herein.

17.3. The General 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 party 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.

17.3.1. If the General Contractor fails to pay any such claim lawfully made against him, or any subcontractor or the aforesaid contingencies is likely to arise, then the Lessee 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 Lessee may deem ample to assure the payment of such claims and to apply such sums in such manner as the Lessee may deem proper to satisfy such claims. All sums so applied shall be deducted from the Lessee's compensation, omission by the Lessee to withhold out of any payment, final or otherwise, a sum of 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 Lessee does not intend to exercise its right with respect to such contingency. Neither the above provisions for rights of the Lessee to withhold and apply monies, nor any exercise, or attempted exercise of, or omission to exercise, such rights by the Lessee shall create any obligation of any kind to such materialmen, subcontractors, workmen or other third persons.

17.3.2. Until actual payment to the General Contractor, its right to any amount to be paid under this Agreement (even though such amount has already been certified as due) shall be subordinate to the rights of the Lessee under this provision.

17.4. Lessee agrees that, notwithstanding any provision contained herein to the contrary, General Contractor's total maximum liability under this Agreement, including, without limitation, for any Milestone Damages, shall not exceed up to 150% (with the exact percentage to be agreed upon in each Sub-Project GMP) of the Construction Services Fee for the applicable Sub-Project GMP or such other amount as may be mutually agreed upon by the parties in writing.

17.5. The Lessee agrees to defend, indemnify the General Contractor for all loss, cost, liability or expense incurred by the General Contractor pursuant to the provisions of Section 17.2 except to the extent such loss, cost, liability or expense was incurred by the General Contractor as a result of the negligence, willful misconduct or breach of the provisions of this Agreement by the General Contractor or its principals, officers, agents or employees (but not its subcontractors).

## ARTICLE XVIII

### (Responsibility for Subcontracts)

18.1. The General Contractor shall supervise and be responsible for the furnishing of all labor and materials required by Subcontracts. The General Contractor shall deliver copies of all Subcontracts to the Lessee as such agreements are made. It is expressly understood and agreed that no portion of the Work shall be performed and no materials, supplies or equipment on account of the Work shall be furnished by any Subcontractor (other than General Conditions) unless and until the General Contractor shall have first entered into a Subcontract with such Subcontractor in accordance with the terms of this Agreement. Any Subcontract in excess of \$10,000 shall be subject to the Lessee's prior written approval, both as to the Subcontractor and the form of Subcontract.

18.1.1. Any cost or expenses due to the negligent or intentional misconduct of any Subcontractor (including any persons or entities directly or indirectly employed or engaged by any such Subcontractor) in connection with the Work, or due to the failure of such Subcontractor to perform any of its covenants, agreements or obligations in accordance with its Subcontract, shall be borne by the Subcontractor who was responsible for same, and in no event shall the same increase any Sub-Project GMP. If any such Subcontractor fails to bear such costs or expenses or fails to perform any of its Subcontract covenants, agreements or obligations in connection with the Project or any Sub-Project, then the General Contractor shall take prompt action to enforce such Subcontractor's Subcontract covenants, agreements and obligations. In such event, the costs and expenses of such enforcement incurred by the General Contractor, including, without limitation, reasonable attorneys' fees and the wages and expenses of the General Contractor's personnel, shall be deemed a Cost of the Work,

but shall in no event increase any Sub-Project GMP. Further, if it appears that any such enforcement actions will materially delay the progress of the Work, the General Contractor shall promptly so notify the Lessee and, after receiving the Lessee's approval, shall cause any such Subcontractor's Subcontract covenants, agreements, and obligations to be performed by others, in which event, any costs and expenses incurred by the General Contractor in connection with such performance shall be deemed a Cost of the Work, but shall in no event increase any Sub-Project GMP. The foregoing provisions of this Section 18.1 shall only apply to the relationship between the General Contractor and the Lessee and shall not limit any rights or remedies which the General Contractor or the Lessee may have against any Subcontractors.

18.1.2. The Lessee shall have the right to require the General Contractor to use any Subcontractor or to purchase directly any of the materials for the Work. The cost of such materials and Subcontracts, as well as any additional costs incurred by the General Contractor as a result of its use of such required Subcontractor, shall be part of the Cost of the Work and shall result in an appropriate Change Order increasing the applicable Sub-Project GMP. Notwithstanding the provisions of Section 18.1.1 above, in the event that Lessee requires the use of any particular Subcontractor to which the General Contractor reasonably objects for cause, then the Lessee shall be responsible for the liabilities and obligations of the General Contractor described in Section 18.1.1 as relate to that required Subcontractor.

18.1.3. All Subcontracts shall contain the following provision:

"The Lessee may elect at any time or from time to time, including in connection with the termination of the Agreement between the Lessee and the General Contractor, to have this Subcontract Agreement assigned from the General Contractor to the Lessee or any entity designated by the Lessee or by the Lender (if applicable) of the Lessee, and the parties agree that such assignment shall be effective upon the delivery of a notice of such election by the Lessee to the Subcontractor."

18.1.4. The Lessee shall not be liable hereunder with respect to any general conditions provided for in any Subcontract, it being expressly acknowledged and agreed by the General Contractor that the General Contractor shall be responsible for any such amounts without increase to any Sub-Project GMP.

ARTICLE XIX

(Force Majeure)

19.1. If the General Contractor is delayed at any time in the progress of the Project or any Sub-Project by Force Majeure (as hereinafter defined) or by the failure, through no fault of the General Contractor, of governmental entities to process or issue permits, approvals, licenses or ordinances within customary time periods, and such delay results in the extension of any Sub-Project Completion Date, such date shall be extended for such reasonable length of time as shall mutually be agreed upon between the Lessee and the General Contractor. The General Contractor shall be entitled to reimbursement for actual out-of-pocket additional General Conditions resulting directly from such delay. In no event, however, shall the General Contractor or any Subcontractor be entitled to an additional fee, cost reimbursement (other than additional General Conditions to the General Contractor as set forth above), compensation or damages (consequential or otherwise) for such delays.

19.1.1. Force Majeure shall mean: Strikes, lock-outs, fire or other casualties, citywide labor disputes, unforeseen material or labor shortages, adverse weather conditions not reasonably anticipated, concealed or subsurface conditions not reasonably anticipated or otherwise disclosed in the Langan Report, test results or otherwise prior to the commencement of work, war or governmental regulations or controls not in existence as of the commencement of the Construction Phase (including any work stoppages at the Site ordered by

an authorized court or governmental or quasi-governmental body directly related to the events of September 11, 2001), acts of God, acts of terrorism or civil disobedience or other similar causes beyond the General Contractor's control and provided that such event is not caused by the willful misconduct or negligent act or omission of the General Contractor or any Subcontractor. Notwithstanding the foregoing, in no event shall Force Majeure be construed or deemed to include any delay caused by (i) the bankruptcy or insolvency of any Subcontractor; (ii) the failure of any Subcontractor to perform any portion of the Work in accordance with the terms of its Subcontract; (iii) the negligence or willful misconduct of the General Contractor or any Subcontractor; or (iv) any event or circumstance which constitutes a breach or default by the General Contractor under this Agreement. Nothing contained herein shall be deemed to relieve the General Contractor from its obligation to mitigate the effects of any Force Majeure upon the timely performance of the Work to the extent possible provided that the costs of such mitigation shall increase a Sub-Project GMP. The General Contractor agrees to provide the Lessee with prompt notice of the occurrence of any event of Force Majeure.

#### ARTICLE XX

##### **(General Conditions)**

20.1. For purposes of this Agreement, "General Conditions" shall be defined as set forth on Exhibit "C".

#### ARTICLE XXI

##### **(Miscellaneous Provisions)**

21.1. The General Contractor acknowledges and agrees that the Contract Documents are adequate and sufficient to provide for the completion of the Work, and include all

work, whether or not shown or described, which reasonably may be inferred to be required for the completion of the Work.

21.1.1. Upon agreeing to a Sub-Project GMP, the General Contractor shall be deemed to have acknowledged and to have declared that the Contract Documents are sufficient to have enabled it to determine the applicable Sub-Project GMP and that the same are sufficient to enable the General Contractor to construct the Work outlined therein in accordance with all applicable laws, statutes, building codes and regulations, and otherwise to fulfill all of its obligations under the Contract Documents.

21.1.2. The General Contractor represents and covenants that key employees satisfactory to the Lessee and to be set forth in an addendum hereto to be agreed upon commencement of each Sub-Project shall at all times personally oversee all material aspects of the General Contractor's services hereunder (provided that they remain in the employ of the General Contractor and do not become unable to work by reason of death or disability), even should an assignment of the General Contractor's interest in this Agreement take place by operation of law or otherwise during the term of this Agreement. The General Contractor acknowledges that such representation and covenant is a material inducement to the Lessee to enter into this Agreement.

21.2. If the General Contractor performs any portion or portions of the Work which shall fail to comply with the requirements of the Port Authority, or other applicable law, rule or regulation governing the Work, the General Contractor shall reimburse the Lessee for any and all additional architectural, engineering and/or legal fees or other additional costs or expenses incurred on account of such noncompliance, unless the Work or such portion thereof is performed in accordance with the Contract Documents and a reasonably prudent contractor of

similar reputation and experience as the General Contractor would not have discovered the discrepancy between the Contract Documents and the requirements of the Port Authority.

21.3. The Lessee shall have the right to interview and approve in advance the key personnel of the General Contractor performing supervisory and/or administrative functions with respect to the Project. Any of such personnel approved by the Lessee shall not be removed from the Project without the prior written approval of the Lessee, in the Lessee's sole discretion. In addition, the Lessee shall have the right, upon notice to the General Contractor, to demand that the superintendent, other key personnel of the General Contractor or any laborer performing any portion of the Work, whether employed by the General Contractor or any subcontractor, be replaced by the General Contractor or such subcontractor, as the case may be. In the event of such demand, the General Contractor shall, within seven (7) days after notification thereof, replace said individual(s) with an individual satisfactory to the Lessee, in the Lessee's sole discretion. If said replacement is disapproved, this Agreement, may, at the Lessee's option, be terminated for cause.

21.4. In addition to the books and records required to be maintained by the General Contractor pursuant to Article XVI hereof, the General Contractor shall prepare such additional reports as the Lessee or any Lender (if applicable) may reasonably request. In addition, the General Contractor shall maintain a daily log of events occurring at the Project Site or otherwise connected with the progress of the Work. A copy of such log shall be reproduced and delivered to the Lessee on a weekly basis and the original kept in the General Contractor's main office. Such log shall be made available for inspection and reproduction by the Lessee, the Lenders (if applicable), and/or the Architect.

21.5. If any the Lender shall designate an inspecting architect or other representative, the Lessee may require the concurrence of such architect or representative in each instance in which the approval of the Architect is required by any provision of this Agreement. The General Contractor shall cooperate with such inspecting architects or representatives to the fullest extent possible.

21.6. Notwithstanding anything to the contrary contained in the Contract Documents, the Lessee may withhold any payment to the General Contractor hereunder if and for so long as the General Contractor fails to perform any of its obligations hereunder or otherwise is in default under any of the Contract Documents; provided, however, that any such holdback shall be limited to an amount sufficient in the reasonable opinion of the Lessee to cure any such default or failure of performance by the General Contractor.

21.7. Notwithstanding any provision of the Contract Documents to the contrary, no applicable statute of limitations shall be deemed to have commenced with respect to any portion of the Work which is not in accordance with the requirements of the Contract Documents, which would not be visible or apparent upon conducting a reasonable investigation, and which is not discovered by the Lessee until after the date which, but for this Section 21.7, would be the date of commencement of the applicable statute of limitations; the applicable statute of limitations instead shall be deemed to have commenced on the date of such discovery by the Lessee, but in no event shall the date of the commencement of the applicable statute of limitations be later than the date which is six (6) years following the date of Substantial Completion.

21.8. The General Contractor shall, at any time and from time to time, upon not less than ten (10) days' prior notice from the Lessee, execute and deliver to the Lessee a

statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating whether or not, to the best knowledge of the General Contractor, the Lessee is in default of its obligations under this Agreement and, if so, specifying each such default.

21.9. To the extent applicable, the General Contractor shall cooperate with all of the Lenders and their respective successors and assigns, at all times during the performance of the Work. The General Contractor shall agree to any changes or modifications to this Agreement that may be reasonably requested by any Lender and which shall not impose any unreasonable obligations, or any costs or liability on the General Contractor. The General Contractor shall execute any document presented to it amending this Agreement to reflect such changes or modifications. The General Contractor shall use its best efforts to have its subcontractors make any changes or modifications in the Work that may be requested by any Lender. The General Contractor also shall, upon request by the Lessee or any Lender, execute any document required by such Lender in connection with such financing and/or equity investment. Notwithstanding the foregoing, nothing herein shall obligate the General Contractor to agree to any changes or modifications which materially increase the General Contractor's obligations herein such that the General Contractor's cost and/or risks materially increase.

21.10. Notwithstanding any other provision of this Agreement, in no event and under no circumstances shall the Lessee, the Lessee's agents and representatives, any Lender (if applicable) or any of the foregoing's partners, or any partner of any of their partners, or any officer, shareholder or employee of any of the foregoing, have any personal obligation or liability for any of the terms, covenants, agreements, undertakings, representations or warranties contained in this Agreement, and, in the case of a default hereunder, the General Contractor and

all persons claiming by, through, or under the General Contractor, shall look solely to the Lessee's beneficial interest in the Project. The General Contractor shall not enter into any agreement unless said agreement provides that the Lessee and the parties described above shall have no personal obligation or liability for performance of any term or condition to be performed under this Agreement or under said agreement.

21.11. The General Contractor acknowledges that it has visited and examined the Project Site, including, but not limited to, any buildings located thereon, all observable conditions affecting the Work and is fully familiar with all of the conditions thereon and thereunder affecting the same, including, but not limited to, the services and utilities presently available at the Project Site. In connection therewith, the General Contractor specifically represents and warrants to the Lessee that it has, by careful examination of documents provided to General Contractor by Lessee ("Lessee Documents") (on which General Contractor is entitled to rely) and visual inspection of the surface of the Site, satisfied itself as to: (1) the nature, location, and character of the Project and the Site, including, without limitation, the surface conditions of the Site and all structures and obstructions thereon but not thereunder except as identified in the Lessee Documents, both natural and man-made, and all surface water conditions of the Site and the surrounding area; (2) the nature, location, and character of the general area in which the Project is located, including, without limitation, its climatic conditions, available labor supply and labor costs, and available equipment supply and equipment costs; and (3) the quality and quantity of all utilities, services, materials, supplies, tools, equipment, labor, and professional services necessary to complete the Work in the manner and within the cost and time frame required by the Contract Documents.

21.12. The General Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, age, ancestry or national origin. The General Contractor will take affirmative action to insure that employees are treated, during employment, without regard to their race, color, religion, sex, age, ancestry, or national origin. Such action shall include, but not be limited to, the following: employment, job classification, upgrading, demotion, promotion, layoff, termination or transfer, rates of pay or other forms of compensation and selection for training, including apprenticeship.

21.13. The General Contractor shall not divulge information concerning the Project to anyone (including, without limitation, information and applications for permits, variances, etc.) without the Lessee's prior written consent. The Lessee reserves the right to release all information concerning the Project as well as to time such release and its form and content. No signs advertising the Work or identifying any person, firm or entity concerned with the Work shall be allowed at the job site unless approved in advance in writing by the Lessee, which approval shall lie within the Lessee's sole and exclusive discretion, except as to signs required by building department or transportation department regulations.

21.14. All documents prepared and furnished by the General Contractor or any Subcontractor in connection with the Work to be performed pursuant to this Agreement, such as the Drawings and Specifications and all other drawings, sketches, shop drawings, as-built plans and other specifications, shall at all times be and remain the property of the Lessee.

21.15. The General Contractor hereby agrees to comply with all applicable laws, regulations and codes of any governmental authority having jurisdiction over the Project and agrees to take any and all necessary steps and actions requested by the Lessee to comply with any such legal requirements.

21.16. The General Contractor agrees, at any time and from time to time, as the Lessee shall reasonably request, upon not less than 10 days' prior notice, to execute and deliver to the Lessee a statement that this Agreement is unmodified and in full force and effect (or if there have been modifications, that the same is in full force and effect as modified and stating the modifications) and stating whether or not, to the best knowledge of the General Contractor, either party is in default in the performance of any of its obligations under this Agreement, and if so, specifying each such default.

21.17. Upon Substantial Completion of the Work and as a condition to Final Payment, the General Contractor shall deliver to the Lessee, all keys, manuals, guarantees, specification sheets on mechanical equipment and/or systems, warranties, drawings and all other documents and items required to be delivered to the Lessee not previously delivered to the Lessee and/or the Architect.

21.18. In any dispute including, without limitation, a default or alleged default, between the parties arising under this Agreement, the prevailing party's reasonable attorneys' fees will be paid or reimbursed by the unsuccessful party. For purposes of this Subsection, "prevailing party" shall be defined as: a) the party which ultimately is awarded an amount in excess of the last settlement offer made by the other party, or b) the party that made the last settlement offer, if the amount ultimately awarded is less than the last settlement offer made, or c) the party ultimately awarded an amount, regardless of the sum, if no settlement offer was ever made by the other party. In the event of the settlement of any dispute, each party shall pay for its own attorneys' fees.

**ARTICLE XXII**

**(Additional Provisions)**

22.1. The General Contractor, covenants to fully cooperate with, and cause all Subcontractors to fully cooperate with the Lessee, the Architect, the Lenders (if applicable), any outside consultant retained by the Lessee, and their respective representatives, and representatives of the City of New York or any other federal, state or local authority having jurisdiction over or an interest in the Project Site, all of which shall, at all times, have access to the Site and the General Contractor's books and records related hereto.

22.2. This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

22.3. All notices required to be made in writing hereunder shall be deemed given, made or served two (2) business days after mailing the same by Registered or Certified Mail, Return Receipt Requested, or on the date delivered if delivered by hand or by reputable overnight courier, as follows:

(a) to the General Contractor:

Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103  
Attn: Daniel R. Tishman & Michael J. Mennella

(b) to Lessee:

1 World Trade Center LLC  
2 World Trade Center LLC  
4 World Trade Center LLC  
5 World Trade Center LLC  
  
c/o Silverstein Properties, Inc.  
530 Fifth Avenue  
New York, New York 10036  
Attn: Larry A. Silverstein

with a copy of any notice of default, dispute or claim only to:

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, New York 10019  
Attn: Stephen G. Gellman & Robin Panovka

or at such other address(es) as the Lessee or the General Contractor shall, from time to time, designate by notice given to the other as hereinabove provide. Notices given by counsel for the Lessee or the General Contractor shall be deemed valid notice if addressed and sent in accordance with the terms of this Section.

22.4. The language in this Agreement shall be construed according to its customary meaning within the metropolitan New York building industry. Whenever used, the singular shall include the plural, the plural the singular, and the use of any gender shall be applicable to all genders.

22.5. Captions and titles of the different articles and sections are solely for the purpose of aiding and assisting in the location of different material in this Agreement and are not to be considered under any circumstances as parts, provisions or interpretations of this Agreement.

22.6. Whenever in this Agreement any words of obligation or duty regarding any party are used, they shall have the same force and effect as those in the form of an express covenant.

22.7. This Agreement shall be executed in multiple original copies by the Lessee and the General Contractor.

22.8. If any provisions of the Contract Documents is invalid or unenforceable as against any person or party, the remainder of the Contract Documents and the applicability of such provision to other persons or parties shall not be affected thereby. Each provision of the

Contract Documents shall, except as otherwise herein provided, be valid and enforceable to the fullest extent permitted by law.

22.9. No personal liability arising out of this Agreement shall accrue against any individual, officer, director, shareholder, representative or fiduciary of the Lessee, the General Contractor or the Lender (if applicable).

22.10. The Lessee shall have the right, in its sole discretion, to occupancy of the Project for itself and the Lessee's prospective occupants of the Project prior to substantial completion thereof, provided (i) such occupancy will not materially interfere with the General Contractor's performance of its obligations hereunder and (ii) such portions so occupied shall be deemed to have been accepted by the Lessee, subject to contemporaneous punchlist and completion items identified by the Lessee prior to its occupancy, and warranties on such areas and systems therein shall be deemed to have commenced on such early occupancy.

22.11. No delay in enforcing any right, remedy, privilege or recourse accorded to either party or to which either party may be or become entitled to have or exercise under this Agreement shall diminish, suspend or exhaust any such right, remedy, privilege or recourse.

22.12. The sole beneficiaries of this Agreement are the parties hereto and the permitted assignees hereof. This Agreement is not intended to confer any benefit or rights upon persons other than the parties hereto and the permitted assignees hereof.

22.13. Nothing contained in this Agreement shall be construed to mean that the General Contractor and the Lessee are joint venturers or partners.

22.14. The Lessee shall endeavor to refer and give credit to the General Contractor in all advertisements, press releases, publicity, brochures, articles and other

**announcements generated by the Lessee regarding the Project, as may be appropriate, however is the sole judgment of the Lessee.**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of  
the date first written above.

Lessee:

1 WORLD TRADE CENTER LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: Larry A. Silverstein  
Title: President

2 WORLD TRADE CENTER LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: Larry A. Silverstein  
Title: President

4 WORLD TRADE CENTER LLC, a  
Delaware limited liability company

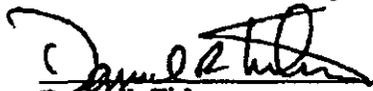
By: \_\_\_\_\_  
Name: Larry A. Silverstein  
Title: President

5 WORLD TRADE CENTER LLC, a  
Delaware limited liability company

By: \_\_\_\_\_  
Name: Larry A. Silverstein  
Title: President

**General Contractor:**

**TISHMAN CONSTRUCTION  
CORPORATION, a Delaware corporation**

By:   
Name: Daniel R. Tishman  
Title: Chairman and Chief Executive  
Officer

**EXHIBIT "A"**

**Master Plan for the redevelopment of the World Trade Center, as approved by the Lessees, to be generally consistent with the master plan developed by Studio Daniel Libeskind, currently being discussed by the Port Authority and the Lessees, and that provides for, among other things, (a) not less than 10,000,000 square feet of useable, commercially viable Class A, above-grade office space (or the amount of space necessary to provide Lessees collectively with the same amount of Class A, above-grade carpetable office space as existed at the World Trade Center as of September 10, 2001), and (b) sub-grade parking, loading and other ancillary uses.**

**EXHIBIT "B"**

**STANDARD FORM OF TRADE CONTRACT**

**PROJECT:**           **WORLD TRADE CENTER  
NEW YORK, NEW YORK**

**Date**

**TRADE:**

**OWNER:**           **1 WORLD TRADE COMPANY LLC  
2 WORLD TRADE COMPANY LLC  
4 WORLD TRADE COMPANY LLC  
5 WORLD TRADE COMPANY LLC  
530 Fifth Avenue  
New York, New York  
(herein called the "Owner")**

**CONSTRUCTION  
MANAGER:**       **Tishman Construction Corporation  
  
(herein called the "Construction Manager")**

**CONTRACTOR:**

(herein called the "Contractor")

As used herein:

- (i) "Architect" shall mean:
- (ii) "Building" shall mean:
- (iii) "Indemnitees" shall mean:  
Silverstein Properties, 1 World Trade Center, LLC, 2 World Trade Center, LLC, 4 World Trade Center, LLC, 5 World Trade Center, LLC, Port Authority of New York & New Jersey, Tishman Construction Corporation of New York and 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.
- (iv) "Site" shall mean:  
World Trade Center  
New York, New York

**WITNESSETH:**

WHEREAS, Construction Manager has entered into or will enter into, a Contract (hereinafter referred to as "Prime Contract") with the Owner for the furnishing of labor, materials, equipment and services in connection with the construction of the Project in accordance with the drawings and specifications prepared by the Architect. (A copy of the Prime Contract and all other Contract Documents enumerated therein have been, or will be, made available to the Contractor); and

WHEREAS, Construction Manager desires to let and Contractor desires to perform

a portion of the construction work;

NOW, THEREFORE, Construction Manager and Contractor agree as follows:

#### **CONTRACTOR TO COMPLY WITH PLANS AND SPECIFICATIONS**

1. The Contractor shall provide for the Site all the labor, supervision and materials hereinafter set forth in exact accordance with specifications hereto annexed or described herein and as shown on plans, drawings and details prepared by the Architect, which plans, drawings and details are to be returned to the Construction Manager upon the completion of the work. Such additional drawings as may be necessary to explain and detail the work will be furnished by the Construction Manager, and are to be conformed to, except where inconsistent with original plans and specifications. The plans, drawings and details, and the specifications are intended to supplement one another, and any work or materials shown, mentioned or reasonably implied in one and not in the others are to be furnished by the Contractor without extra charge. The enumeration of particular items in this contract or in the specifications shall not be construed to exclude other items. The intention of the documents is to include all labor, materials, engineering, equipment, transportation, tools, plant, appliances, appurtenances and other facilities, whether specified herein or not, necessary for the proper execution and completion of the work. Contractor must refer any question respecting the specifications, plans, drawings and details, about which it is in doubt, or which seems to admit of a dual interpretation, to the Construction Manager for its resolution in accordance with the Prime Contract.

#### **DUTIES OF CONTRACTOR**

2. The Contractor recognizes the relations of trust and confidence established between it and the Construction Manager by this contract. The Contractor covenants and agrees with the Construction Manager to furnish its best skill and judgment and to cooperate with the Owner and Construction Manager in forwarding the best interests of the Owner and Construction Manager. The Owner and Construction Manager shall have the right to exercise complete supervision and control over the work to be done by the Contractor, but such supervision and control shall not in any way limit the obligations of the Contractor to perform in strict accordance with the Contract Documents.

The name of any/all subcontractors or suppliers shall be submitted in writing to Construction Manager, and no subcontractor or supplier shall be employed unless acceptable to Construction Manager. 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 Contractor. Contractor shall cause subcontractors and suppliers to comply with all the Contract Documents. Contractor shall be responsible for all the acts, work, material and equipment of its subcontractors and suppliers and all persons either directly or indirectly employed by any of them.

#### **SHOP DRAWINGS**

3. The Contractor shall, at its own cost and expense, furnish the Construction Manager within ten (10) days from the date hereof, a submission schedule of all shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data regarded by the Construction Manager as necessary, in the number required by the Construction Manager for submission to the Owner for its approval, correction, rejection or disapproval. The Owner's and/or the Architect's and Consultants' approval of such shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data shall not relieve the Contractor from responsibility for deviations from the contract, specifications and/or drawings, unless it has, in writing, called the Construction Manager's attention to such deviations, at the time of delivery of such shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data to the Construction Manager, nor shall it relieve Contractor from responsibility for errors. The Contractor shall make any corrections required by the Architect and/or Construction Manager, file with the Construction Manager corrected copies and furnish such other copies as may be needed. The Contractor shall make all

submissions of shop drawings directly to the Construction Manager for its approval. No submission shall be made directly to the Architect, unless approved by Construction Manager, and if any submission is so made, the approval or modifications authorized by the Architect shall not be binding upon the Owner and Construction Manager unless and until the Owner has granted its approval thereto. The Contractor shall obtain shop drawings from other contractors and coordinate its work to avoid interference with other contractors work. The Contractor shall furnish its shop drawings to other contractors, if necessary for the Project.

#### **SPECIFICATIONS VARIED BY LAWS**

4. The Contractor shall furnish, without extra charge, all work and materials not mentioned or shown, but generally included under this class of contract, necessary for the proper execution and completion of the work, and also any work or materials of the kind herein contracted for required to conform the Building to all laws and the Rules and Regulations of all Municipal Departments, the Board of Fire Underwriters and all other authorities having jurisdiction.

#### **MEASUREMENTS VARIED BY JOB CONDITIONS**

5. Dimensions on plans are to be followed in preference to scale measurements, and all measurements must be checked at the premises before the work is executed. No extra charge shall be made for changes necessitated by minor variations in the actual condition of the Site from what is shown on plans. Contractor shall examine the Site, note and ascertain the construction, materials, work, existing conditions at the Site and the nature and location of the work. All work affected or governed thereby or required for the thorough and satisfactory completion of its work, whether indicated and specified or not, and regardless of quantity estimated, shall constitute part of this contract and shall be performed by the Contractor without extra charge to the Construction Manager.

#### **ARCHITECT TO INTERPRET SPECIFICATIONS**

6. The Owner's Architect shall decide all questions which may arise as to the performance, quantity, quality, acceptability, fitness and rate of progress of the work or materials furnished under this contract. It shall decide all questions which may arise as to the interpretation of the specifications and of drawings and as to their fulfillment on the part of the Contractor, and as to defects in the Contractor's work. The Architect, whose interpretation of and decision as to the meaning of the plans, drawings, details and specifications or any part thereof shall be final and binding.

#### **INDEMNITY VIOLATION OF LAW**

7. To the fullest extent permitted by law, the Contractor shall indemnify, defend, and hold harmless the Owner, Construction Manager, Indemnitees, and their respective parent companies, corporations, limited liability companies and/or partnerships and their owned, controlled, associated, affiliated and subsidiary companies, corporations, limited liability companies, and/or partnerships, and the respective agents, consultants, principals, members, partners, servants, officers, stockholders, directors and employees thereof, from and against all claims or causes of action, damages, losses and expenses, including but not limited to attorneys' fees and legal costs and expenses, arising out of or resulting from the performance of Subcontractor's Work, or the Subcontractor's operations, or the condition of the Site or by the condition of any other place where work incidental to the Project is being performed or operations are being conducted including, without limiting the generality of the foregoing, all claims or causes of action, damages, losses, expenses, attorneys fees and legal costs and expenses relating to the payment of any sales or use taxes, contributions under any Unemployment Insurance Law, Old Age Retirement Benefits Law, Social Security Law, or Payroll or Income Tax now or hereinafter enacted by any State or Federal Authorities or subdivision of either, bodily injury, sickness, disease or death, or to injury to or destruction of tangible property including the loss of use resulting therefrom, whether arising on or near the Site, or while performing Project-related work, including those claims and mechanic's liens, of third parties or by reason of any claim or dispute of any person or entity for damages from any cause directly or indirectly related to any breach of statutory duty or to any willful or negligent act or failure to act by the Contractor, its representatives, employees, servants,

agents, subcontractors, delegates, or suppliers and whether or not it is alleged that the Owner, Construction Manager, other Indemnitees or Architects in any way contributed to the alleged wrongdoing. The Contractor acknowledges that specific consideration has been received by it for this indemnification and that same shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any subcontractor and/or delegates under Workers Compensation acts or other employee benefits acts.

#### INSURANCE

8. Unless otherwise provided for by the attached Insurance Rider, prior to commencement of any work under this contract, and until completion and final acceptance of the Work, the Contractor and each and every subcontractor shall, at its own expense, maintain the following insurance on its own behalf and for the protection of the Owner, Construction Manager and all other Indemnitees named in this Contract:

- a. Comprehensive General Liability
- b. Worker's Compensation
- c. Comprehensive Automobile Liability
- d. All other insurance protection required by the Owner and Construction Manager

All of the above coverages shall comply with the specific requirements contained in the Insurance Rider hereby attached and made a part of this contract.

#### SIGNS

9. Contractor shall not place any signs, billboards or posters on any portion of the Site, Building, the property or fences (temporary or permanent) surrounding the same, except upon prior written permission received from the Construction Manager, and then only of a size, material, color and type and at a location approved by the Construction Manager.

#### TOOL SHEDS

10. If so required by Construction Manager, the Contractor shall, at its own cost, provide, erect and maintain, at locations designated by the Construction Manager, fireproof tool sheds for storing the by Contractor's tools, materials and equipment. The Contractor shall relocate its tool sheds as requested by the Construction Manager at the Contractor's own cost. The Owner or Construction Manager will not be responsible for any clothing, tools, materials or equipment lost, damaged, stolen or destroyed.

#### CONDITION OF PREMISES AND ADJACENT PROPERTY

11. The Contractor shall examine all premises and buildings adjoining or in close proximity to the Site (including, for the purposes hereof, street and sidewalks) and ascertain before beginning work, the depth of cellars, materials and construction of the buildings thereon, and shall be governed thereby for the necessary thorough, safe and satisfactory execution of all work called for herein, whether indicated on drawings and/or specified, or not, and all work and protective measures necessary to keep and leave such premises and buildings in the same condition as they were before commencing work shall be done without any addition to the contract sum. Wherever any parts of the present adjoining buildings interfere with or are interfered with by the work to be performed hereunder, the Contractor shall make whatever changes are made necessary thereby, whether shown on the drawings, called for in the specifications or not shown or not called for. The Contractor, before commencing work on the premises shall, if it sees fit, make a written report of the conditions as found at that time, noting particularly any defects in evidence, taking photographs of the exteriors, and, if necessary, photographs of interiors, and shall deliver to the Construction Manager a copy of the written report of the examination and copies of photographs with date of taking thereon. The Contractor shall invite the Owner and Construction Manager and the owners of the respective properties and buildings to join with it in the examination of such premises and buildings. The Owner and Construction Manager may at its option be present during the examination. If the Contractor fails to make the examination and report as herein specified, it will be deemed that said buildings and premises are in good condition, and all claims for damages, repairs and replacements must be treated by the Contractor on the basis that said buildings and premises were in good condition before it began work.

**ARCHITECT TO DECIDE IN EVENT OF CONFLICT**

12. Whenever the specifications shall be at variance, or in conflict with any of the provisions of this contract, the Contractor shall advise the Construction Manager, who will advise the Architect, and the interpretation and decision of the Architect shall be final and binding on the Contractor.

**INSPECTION**

13. The Contractor shall provide sufficient, proper and safe facilities at all times for the inspection of the work by Architect, the Owner, Construction Manager, Mortgages, the Municipal and/or State Inspectors, and their authorized representatives. If any work is covered up without the approval of the Construction Manager, it must, if required by the Construction Manager, be uncovered for inspection at the Contractor's expense. The Contractor shall afford and provide at all times to the Architect, the Owner, the Construction Manager and their representatives satisfactory evidence of the quality of materials used and complete information in writing as to where materials to be used in the performance of this contract are being manufactured or assembled, and full and free access to all shops and manufactories for the purpose of informing themselves as to the general condition and progress of the materials herein contracted to be used or installed. The Contractor shall instruct such suppliers and manufacturers to give full and accurate information in writing directly to the Construction Manager on any questions concerning quality, performance, delivery status, and such other data as may be requested by the Construction Manager.

**MATERIALS AND EQUIPMENT**

14. All materials and equipment are to be new and of the best quality of the kind specified unless material or equipment of inferior type is distinctly specified, and the Contractor shall, if required by the Construction Manager, furnish satisfactory evidence of the kind and quality of materials and equipment. The Contractor shall, if required by the Construction Manager, obtain the manufacturer's written recommendation that the material and equipment is designed and appropriate for the use intended. Such materials and equipment shall not be subject to any conditional bill of sale, security agreement, financing statement, chattel mortgage, or any other claim, lien or encumbrance. Materials and equipment shall be promptly delivered and distributed where Construction Manager may require or direct, as needed for the uninterrupted and speedy progress and completion of the work, and so as not to encumber the Site unreasonably. The Contractor shall, if required by the Construction Manager, cause the materials (1) to be manufactured in advance, (2) to be warehoused either at the factory or elsewhere, as directed by the Construction Manager, (3) to be delivered to the Site promptly when so instructed by the Construction Manager and (4) to be relocated or removed from the Site at the cost of the Contractor. Care must be exercised by the Contractor against overloading any parts of floors, roofs, scaffolding and other installations. All materials delivered at the Site which are to form a part of the work herein specified shall not be removed without the consent of the Construction Manager, but the Contractor will have the right to and shall remove all its surplus material after completion.

**LABOR**

15. All work is to be done in the best manner and by persons skilled in the type of work to be performed. All labor employed under this contract shall, at the option of the Construction Manager, to the extent permitted by law, be union and/or that recognized by and in harmony with the local Building Trades Employers' Association and Contractor shall not employ any labor which may cause dissension with other workers on the Site, by whomsoever employed. The Contractor shall give the work constant attention and supervision through a responsible representative or superintendent, and any necessary assistants. Such representative shall be authorized to act for the Contractor in all matters relating to the work, and all directions given him shall be as binding as if given to the Contractor. The Contractor shall also keep a competent foreman at the Site while work is in progress, and enforce strict discipline among its employees, including the Construction Manager's regulations with regard to fires, smoking and other hazards. The Construction Manager is given the right to require the Contractor to remove immediately any employee or agent employed at the Site whom the Construction Manager deems incompetent or a hindrance to the proper progress of the work, and such person shall not again be employed in the work without the prior consent of the Construction Manager.

**PROTECTION OF WORK AND EQUIPMENT**

16. The Contractor during the construction of its work and while it is working on the Site in any capacity whatever, and until the completion of the project, shall protect all unfinished work and all materials on the Site, all adjacent property and all tools, plants, equipment and other appliances for the Contractor's use or incidental thereto for the execution of this contract, whether furnished by the Contractor or Construction Manager, from rain, water, frost and the elements and from all other kinds of damage which may be caused in any manner whatsoever, and the Contractor shall be entirely responsible for any loss or damage done to said work, materials, tools, plant, equipment and other appliances in any manner aforementioned, excepting damage by fire to materials incorporated into the work or delivered to the Site for incorporation into the work, even though the particular work damaged may be finished at the time and the Contractor may be working in some other portion of the Site, and the Contractor hereby agrees that it will not hold the Indemnitees responsible for any such loss or damage, by whomsoever caused.

**UN SOUND WORK OR MATERIALS**

17. The Contractor, upon receiving notice from the Construction Manager that the Contractor has furnished inferior, improper or unsound work or materials (including equipment) (whether worked or unworked), or work or materials at variance with that which is specified, will, within twenty-four (24) hours, proceed to remove such work or materials and make good all other work or materials damaged thereby, and, at the option of the Construction Manager, the Contractor shall immediately replace such work or materials with work or materials as specified. The removal, replacement and repair shall be performed on "off hours" or overtime with manpower sufficient, in the judgment of the Construction Manager, so as not to interrupt or delay the Construction Manager's construction schedule and so as to avoid disturbance to occupants of the completed Site and/or Building. If the Contractor does not remove such unsound work within a reasonable time, the Construction Manager may remove it and may store the material at the expense of the Contractor. If the Contractor does not pay the expenses of such removal within ten (10) days' time thereafter, the Construction Manager may, upon (10) days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor and all expenses of the sale. The Construction Manager shall have the authority at all times, until final completion and acceptance of the work, to inspect and reject work and materials which in its judgment are not in conformity with the drawings and specifications, and its decision in regard to character and value of work shall be final and conclusive on both contracting parties. If the Construction Manager permits said work or materials to remain, the Construction Manager shall be allowed the difference in value or shall at its election have the right to have said work or materials repaired or replaced, as well as the damage caused thereby, at the expense of the Contractor, at any time within one year after the completion of the entire project, or within such longer period as may be covered by any guaranty; and neither payments made to the Contractor, nor any other acts of the Construction Manager, shall be construed as evidence of acceptance, waiver or estoppel. Any expense incurred by the Construction Manager in connection with the foregoing, shall be borne by the Contractor, and the Construction Manager may withhold money due to the Contractor or recover money already paid to the Contractor, to the extent of such expense.

**FITTING OF THIS WORK WITH OTHER WORK**

18. The Contractor will furnish all labor, implements, tools, scaffolding, rigging, hoisting and other items required to carry on its work, in the most approved and up-to-date manner, and shall do the necessary incidental cutting of woodwork, brick, stone, masonry, plaster, cement, iron, metal or other material for the installation of its work, and will do all patching in connection therewith; but cutting is to be avoided where possible. The Contractor will, if required by Construction Manager, do all necessary cutting, fitting and patching of its own work that may be required to make the several parts come together properly, and fit the work to receive or be received by work of other contractors shown upon, or reasonably implied by, the drawings and specifications. The Contractor shall not endanger any work by cutting, digging or otherwise. In laying out its work, Contractor shall also examine the work installed by others and the shop drawings of

the work to be installed by others prior to the beginning of the installation of its own work. If the Contractor begins its work, the starting of such work shall be conclusively deemed to mean that it accepts all preceding work as suitable and proper to receive its work, unless it has notified the Construction Manager in writing to the contrary before starting. In the event of failure of the Contractor and another contractor to agree as to the extent of cooperation to be exhibited or of work to be done by either, to insure the carrying out of their respective agreements, such disagreement shall be resolved by the Construction Manager whose decision shall be final and binding upon all parties.

#### **RUBBISH REMOVAL**

19. The Contractor shall at all times keep the Site free from accumulation of waste materials or rubbish caused by its employees or work and, at the completion of the work, it shall remove all its tools, scaffolding and surplus materials. The Contractor shall daily, or less frequently as the Construction Manager may require, collect its rubbish at places where directed by the Construction Manager.

#### **COMPLIANCE WITH LAW**

20. The Contractor shall procure and pay for all permits, licenses, approvals, certificates and authorizations necessary to the prosecution and completion its work and deliver evidence of the same to the Construction Manager. All work shall be done in strict accordance with all laws, ordinances, rules, regulations and requirements of the Board of Underwriters and all Municipal, State, Federal and other authorities having jurisdiction. Where drawings and specifications conflict with the law, the law is to be followed. The Contractor shall promptly notify the Construction Manager, the respective departments or official bodies when its work is ready for inspection and shall, at once, do all work required to remove any violations or to comply with such inspections, without additional charge to the Construction Manager. The Contractor shall perform all work necessary to obtain approvals of the authorities mentioned above without additional cost to the Construction Manager.

#### **LIENS**

21. If at any time, there shall be evidence of any lien or claim for which, if established, the Owner or Construction Manager might become liable, or which should, in any event, be charged to the Contractor, the Construction Manager shall have the right to retain, out of any payment due or thereafter to become due, an amount sufficient to indemnify the Owner and Construction Manager against such lien or claim, including bond premiums and attorneys' fees, and to apply the same in such manner as Construction Manager deems proper to secure protection and/or satisfy such claim and liens. Should there prove to be any such lien or claim after all payments are made to the Contractor, it shall repay the Construction Manager all sums which may be compelled to pay in discharging such lien or claim, including any and all legal fees or other charges.

#### **PATENTS**

22. The Contractor will not unlawfully use or install any patented article, and agrees to indemnify and save the Indemnitees harmless from any claim and against all damage which the Indemnitees may sustain by reason of the use or installation of such patented article, and at its own cost and expense to defend any action, whenever instituted, brought against the Indemnitees or their respective successors or assigns, founded upon the claim that any such article, or any part thereof, infringes any such patent. In the event of any such claim or damage, the Construction Manager may withhold from any payment due or thereafter to become due to the Contractor, an amount sufficient in its judgment to protect and indemnify the Indemnitees for any such claim or damage, or the Construction Manager may require the Contractor to furnish a surety bond satisfactory to the Construction Manager providing for such protection and indemnity, which bond shall be furnished by the Contractor at its own cost and expense, within five (5) days after written demand has been made therefore. The Contractor shall pay all royalties, fees and other claims in connection with patented articles which it uses under this contract. In the event of any injunction or legal action serving to stop the work, the Construction Manager shall have the privilege of requiring the Contractor to substitute such other articles of like kind as will make it possible to proceed with and complete the work, and all cost and expenses occasioned thereby shall be borne by the Contractor.

**ASSIGNMENT**

23. (a) The interests, rights, powers, duties and liabilities of the parties hereto shall be binding upon, and shall ensure to the benefit of, the respective successors and assignees of the parties; but the Contractor shall not assign or transfer its interest in this contract or assign or transfer any right it may have under the same or the proceeds payable hereunder or any part hereof, or subcontract or delegate to others the work or any part thereof, unless the written consent thereto of the Construction Manager is first procured, and any assignment or subcontract made in violation of this provision shall be null and void. Any such subcontract shall provide that it is subject to the provisions of this contract and shall provide that the Contractor has all the rights and remedies against the subcontractor that the Construction Manager has against the Contractor under this contract and shall expressly incorporate all such provisions as far as the same are applicable and no such subcontract shall be valid without the consent of the Construction Manager endorsed thereon. The Contractor agrees that it is as fully responsible to the Construction Manager for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. Nothing contained in this contract shall create any contractual relationship between any subcontractor and the Construction Manager, or create any obligation on the part of the Construction Manager to pay or to see to the payment of any sum to any subcontractor. The Construction Manager may, without limitation, assign this contract, or any portions thereof, or any rights arising hereunder, including any guaranties or warranties of workmanship or material.
- (b) The Owner may elect at any time or from time to time, including in connection with the termination of the Agreement between the Owner and the Construction Manager, to have this Contract Agreement assigned from the Construction Manager to the Owner or any entity designated by the Owner or by the Lender of the Owner, and the parties agree that such assignment shall be effective upon the delivery of a notice of such election by the Owner to the Contractor.

**CHANGE OF STATUS**

- (c) In the event that the project should be abandoned by the Owner, the Construction Manager shall have the right, at any time, to send a written notice to the Contractor, terminating this contract, in which event, the Construction Manager shall pay the Contractor for all work actually provided up to the date of the sending of such notice and shall reimburse the Contractor for all costs and expenses actually expended and incurred (amounts "incurred" to be limited as though Contractor's suppliers and subcontractors had received a similar notice and were bound by a similar provision in their agreements) up to said date which are not cancelable or recoverable by the Contractor, and the Contractor shall not receive any markup for overhead and profit except to the extent of a reasonable markup on said amount so paid and reimbursed and the parties hereto shall, except as otherwise provided hereinabove, be released of all future liability or obligations under this contract.

**TIME OF ESSENCE**

24. The Contractor shall commence and complete work and deliveries of material at the times hereinafter mentioned or as soon thereafter as required by the Construction Manager. Where the dates for the commencement or completion of work on the making of deliveries are not specified after the time fixed for such commencement, such work or deliveries or the part of the same concerning which no dates are given shall be commenced on three (3) days' notice from the Construction Manager and shall be prosecuted and completed with all possible diligence and speed or as otherwise directed by the Construction Manager. The time stated in this contract for the commencement, prosecution and completion of this work and the deliveries and installation of material shall be deemed of the essence of this contract.

**COOPERATION WITH OTHER CONTRACTORS**

25. The Contractor must keep itself informed of the conditions at the Site, so as not to delay the delivery of

materials or the installation of the work called for in this contract. It is expressly agreed that the Contractor must cooperate with and extend every possible facility to other contractors employed at the Site, and must afford all other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work. The Contractor recognizes that efficient construction of the project requires that all the work thereon be coordinated and therefore agrees to accept the determination of the Construction Manager as to the time when work of the Contractor shall begin and the manner in which it shall progress in connection with other work involved in the said construction. It further agrees that the direction of the Construction Manager with respect thereto shall be complied with fully and promptly.

#### DELAYS IN GENERAL

26. (a) Should the Contractor be delayed by fault of the Owner, Construction Manager, Architect or any other contractor, or by abnormal weather conditions, then the time fixed for the completion of the work shall be extended for a period equivalent to the time so lost. The Owner, Construction Manager or Architect shall not be held responsible for any loss or damage sustained by the Contractor through delay caused by the Owner, Construction Manager, Architect or any other contractor, or by abnormal weather conditions, or by any other cause.

#### STRIKES

(b) Should the Contractor be delayed by general strikes or lockouts throughout the trade, then time for the completion of the work shall be extended for a period equivalent to the time lost, or the Construction Manager shall, at its option, have the right to terminate this contract and to employ other contractors to finish the work and provide the materials therefore, and to pay the Contractor pro rata for materials and work already supplied, or this contract price, reduced by the cost to the Construction Manager of completing the work for which provision is made herein, whichever is less.

#### NOTICE TO OWNER

(c) None of the foregoing causes of delay shall be deemed a valid excuse for failure to start, perform or complete the work or deliveries at the times specified, unless the cause of such delay is beyond the Contractor's control and arose without its fault or negligence, and the Contractor has notified the Construction Manager in writing of the alleged cause of delay within forty-eight (48) hours after the commencement thereof.

#### ADDITIONAL LABOR

(d) Should the Contractor fail, refuse or neglect to supply a sufficiency of workmen or to deliver the materials with such promptness as to prevent the delay in the progress of the work, or fail in any respect diligently to commence and prosecute the work and proceed to the point to which the Contractor should have proceeded hereunder, or if the different parts thereof are not commenced, prosecuted, finished, delivered or installed on time as herein specified or if the Contractor shall fail in the performance of any of the covenants of this contract, the Construction Manager shall have the right to direct the Contractor, upon three (3) days' written notice, at the Contractor's cost and expense, to furnish such additional labor and to expedite deliveries of materials (or the Construction Manager may furnish such labor and expedite such deliveries at the cost of the Contractor), which labor or expediting shall, in the Construction Manager's opinion, be sufficient to speed up and complete the work as herein provided.

#### OVERTIME

(e) If such additional labor shall not be available, the Construction Manager shall have the right to direct the Contractor, at the latter's own cost and expense, to work overtime to such an extent as will be sufficient, in the Construction Manager's opinion, to speed up and complete the work as herein provided.

**REMEDIES OF OWNER**

- (f) The Contractor agrees that if it delays the speedy progress of the work so as to cause loss or damage to the Construction Manager or to other contractors, then it shall reimburse the Construction Manager and such other contractors for such loss. In addition to the foregoing, the Construction Manager shall have the right, after three (3) days' written notice to the Contractor, to provide any such labor, additional labor, overtime labor and materials and to deduct the cost thereof from any moneys then due or thereafter to become due to the Contractor. Permission by the Construction Manager for delayed finishing shall not be construed as a waiver of the Construction Manager's right to be compensated by the Contractor for damage resulting from such delay.

**TERMINATION BY CONSTRUCTION MANAGER**

- (g) If the Contractor shall fail to comply with any of the provisions of this contract on its part to be performed, the Construction Manager shall have right after three (3) days' written notice to the Contractor, to terminate this contract and the employment of the Contractor, to take possession of the Contractor's materials, tools, plant, equipment and appliances used or to be used for the construction, whether on or off the Site, (and for that purpose to enter the premises of the Contractor) and to cause the entire remaining work to be finished and the materials therefore to be furnished by another contractor or contractors or by day's work, as the Construction Manager deems fit; and the Contractor shall not be entitled to any further payment until all the work specified in this contract shall be finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by the Construction Manager in finishing the work, including overhead, attorneys' fees and damage incurred through the default of the Contractor, such excess shall be paid to the Contractor, but if such expense shall exceed such unpaid balance, the Contractor shall pay the difference to the Construction Manager. After the work has been completed, the Contractor may remove such materials, tools, plant, equipment and appliances as remain, but neither the Owner nor the Construction Manager shall be liable for anything that has been lost, stolen, destroyed, worn or used. In addition, without terminating this contract, the Construction Manager may, under the circumstances set forth above, terminate the Contractor's right to proceed with any part of the work or with the furnishing of any part of the labor and/or materials.
- (h) Construction Manager may terminate this Agreement for its convenience at any time without cause upon three (3) days written notice to Contractor. In the event that the Agreement is terminated for convenience by Construction Manager, Construction Manager will pay the actual value of work (based on approved schedule of values) earned up to the date of termination plus reasonable, actual, documented demobilization costs. Upon such a termination, Construction Manager will have no further obligation to Contractor nor shall Construction Manager be obligated to pay for (and Contractor hereby waives) any lost profits, lost bond capacity or other type of expenses or damages.

**PERFORMANCE BOND AND PAYMENT BOND**

27. The Contractor, within five (5) days after notice by the Construction Manager given at any time prior to the completion of the work, (unless Performance and Payment Bonds are included in the contract price, in which case bonds shall be submitted within five (5) days of contract execution without notice) shall at its own cost and expense, furnish to the Construction Manager performance and payment bonds issued by a surety company satisfactory to the Construction Manager, and in form satisfactory to the Construction Manager, guaranteeing the due and prompt performance of all of the terms of this contract on the part of the Contractor to be performed, and the prompt payment of all amounts to be paid by the Contractor for labor and materials. Cost of Performance and Payment Bonds not included in contract price will be added to Contract Price by change order. In the event that the Contractor fails to furnish the bonds as aforesaid, the Construction Manager shall have the option of declaring the Contractor to be in default and of exercising any or all of the rights set forth in this contract. Bonds shall be written at standard rates of surety companies authorized to do business in the State in which the Site is located and may, at the Construction Manager's option, be placed directly by the Construction Manager at the Contractor's cost and expense.

**BANKRUPTCY**

28. If, prior to the commencement of this contract, the Contractor shall be adjudged a bankrupt or becomes insolvent, or if any petition under the Bankruptcy Act of the United States is filed by or against the Contractor, or if it should make an assignment for the benefit of creditors, or if a receiver of the Contractor's property should be appointed, or if any judgment is taken against the Contractor and execution is issued thereon, or if the property of the Contractor passes into the hands of any legal representative, then and in any of those events, the Construction Manager may, at its option, terminate this contract and the employment of the Contractor, with the same rights and privileges set forth in Article 28.

**ACCELERATION OF PERFORMANCE**

29. If the Construction Manager shall desire the Work of the Contractor hereunder to be performed with greater speed than is herein contracted for, the Contractor shall, without affecting or abridging the rights of the Construction Manager set forth in any Article hereof, upon receipt of a written order from the Construction Manager, employ overtime Work as so ordered. Direct cost of the premium time for all labor utilized by the Contractor in such overtime work as shown on the time slips checked and approved each day by the Construction Manager shall be paid by Construction Manager to the Contractor, but no overhead, supervision costs, commission or other costs shall be charged thereon.

**NO WAIVER**

30. The failure of the Construction Manager to insist in any one or more instances upon a strict compliance with any provision of this contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of the right of the Construction Manager thereafter to require a compliance with such provision of this contract, or a waiver of the right of the Construction Manager thereafter to exercise such option, but such provision or option will remain in full force and effect.

**GUARANTY**

31. The Contractor hereby agrees to repair and make good any damage, defects or fault in the premises that may appear within one year after completion, or within such longer period as may be provided in the specifications, guaranty or other writing, as the result of imperfect or defective work or materials furnished by the Contractor (even if such defects or imperfections be latent) or work or materials at variance with what is specified. All materials furnished or installed (except where otherwise expressly specified) shall be subject to a guaranty of one year from the date of (a) completion of the entire project, (b) the making of final payment by the Construction Manager to the Contractor, (c) the issuance of a final Certificate of Occupancy, or (d) the discontinuance of the use of permanently installed work for temporary construction purposes, whichever is latest. Contractor hereby agrees to make any and all repairs which may become necessary, during the guaranty period, on account of faulty materials furnished or faulty workmanship performed, and the guaranty period, within three (3) days from receipt of written notice, without cost to and to the satisfaction of the Construction Manager. All rights acquired by the Construction Manager through guaranties by the Contractor shall ensure to the benefit of the Construction Manager, its successors and assigns. In addition to the foregoing, any equipment warranties secured by the Contractor, including those in excess of one (1) year, and any bond or guaranty which may be required under the plans or specifications, shall also ensure to the benefit of the Construction Manager, its successors and assigns. The Contractor further agrees that the Port Authority of New York and New York (the "Port Authority") and the Owner shall be third party beneficiaries of any and all warranties contained in this agreement and/or by the Contract Documents.

**PAYROLL AND SALES TAXES**

32. The Contractor hereby accepts exclusive liability and shall hold the Owner and Construction Manager harmless for the payment of contributions pursuant to any Unemployment Insurance Law, Old Age Retirement Benefits Law and any other or similar Social Security Law or Payroll or Income Tax now or hereafter enacted by any City, State or Federal Government or any subdivision of either, levied or based upon the payroll of the Contractor for employees partly or wholly engaged in the work covered by this contract.

The Contractor agrees to furnish all necessary information to enable the Construction Manager to comply fully with all the requirements of such laws. All sales and use taxes are included in the contract price and are to be paid by the Contractor. In the event that any law is or has been passed, or any rule or regulation pursuant thereof is enacted, which requires the Construction Manager to pay, either directly or indirectly, the amount of any such tax, or should any such law, rule or regulation direct the Construction Manager to collect the same, or make the Construction Manager liable for the collection thereof, or make the Construction Manager responsible therefore, it is covenanted and agreed that the Contractor shall fully and completely make all payments therefore, and shall fully and completely indemnify and save the Owner and Construction Manager harmless from any and all such taxes. It is further agreed that the Construction Manager shall have the right to deduct the amount of any and all such taxes from the contract price at any time the Construction Manager may, in its sole discretion, deem it advisable, to the end that the Construction Manager may not be under liability therefore whatsoever, it being agreed that the Construction Manager shall have the right to deduct any and all such moneys from the next payments due under this contract and from the retained percentages. If any Sales Tax provides any exemption from tax for capital improvements, Construction Manager agrees to provide Contractor with the necessary certification and Contractor agrees not to charge tax with respect to the furnishing of labor and/or materials as long as said exemption provision is in effect.

#### **PRICE NOT ADJUSTED FOR RISING COSTS**

33. The Construction Manager agrees to pay the sum herein set forth in current funds for such work and materials, and in the manner and at the times herein set forth. Said sum is intended to include all increases in cost, foreseen or unforeseen, including, without limiting the generality of the foregoing, taxes, labor and materials, all of which is to be borne solely by the Contractor. All loss or damage arising from any of the work performed under this contract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same or through the action of the elements shall be borne by the Contractor. It is mutually agreed between the parties hereto that no payment made under this contract, shall be conclusive evidence of the performance of this contract, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper material, or an approval of any of the items in any requisition made or bill rendered. All bills or requests for payments must be presented in writing.

#### **SCHEDULE OF VALUES**

34. (a) Prior to the commencement of work hereunder, Contractor shall prepare and submit to Construction Manager, for Owner's approval, 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 Contract Price.

#### **PROGRESS PAYMENTS**

(b) On or before the 20<sup>th</sup> day of each calendar month the Contractor shall forward to the Construction Manager, for its approval, a written statement showing the amount due or to become due and including the last day of that calendar month. The Contractor shall attach to each such application for payment, an acknowledgment of payment 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. All requisitions shall be made on and in compliance with Construction Manager's standard form of Contractor's requisition and shall be subject to the terms thereof, including the submission of sworn statements from Contractor's subcontractors and vendors. The Construction Manager, on or about 45 days from the end of the calendar month, shall remit to the Contractor 90% of the amount so requisitioned by the Contractor, and as approved by the Construction Manager. In addition to the said retainage of 10%, 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 contract price unpaid. In no event will the Construction Manager be required to pay in excess of 90% of the contract price prior to the completion of all the work the Contractor is obligated to perform under this contract.

#### **WITHHOLDING BY CONSTRUCTION MANAGER**

- (c) The Construction Manager may withhold payment to the Contractor 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 to avoid the reasonable probability of the filing of liens or claims against the Construction Manager, the project or the Contractor, and (3) damage to another contractor by reason of acts or failure to act of the Contractor.

#### **FINAL PAYMENT**

- (d) The balance owing to the Contractor under the terms of this contract shall be due and payable within sixty (60) days after
- (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
  - (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 on the Construction Manager's standard form in favor of the Owner, Construction Manager and Owner's sureties, if any; and (E) satisfactory proof that all claims, including taxes, growing out of the work to be performed hereunder and any liens growing out of the same which shall have been filed or recorded, have been released.
  - (4) Payment of the Contract Price 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 only from funds which Construction Manager has actually received in hand from the Owner and designated by Owner for disbursement to Contractor. CONTRACTOR AGREES TO LOOK SOLELY TO SUCH FUNDS AND/OR TO PROCEEDS OF FORECLOSURE OF MECHANIC'S LIEN (AS SET FORTH IN PARAGRAPH 5 HERE OF) FOR PAYMENT. Contractor understands and agrees that Construction Manager shall have no responsibility to pay Contractor any amounts due to Contractor upon the Contract Price 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 Owner specifically designated for disbursement to Contractor. Receipt of such funds by the Construction Manager shall be a condition precedent to payment by Construction Manger to Contractor.
  - (5) Nothing set forth herein, in sub-paragraph 4 above, or in any other Contract Document shall be construed to limit, impair or diminish any and all rights of the Contractor under the Lien Law of the State of New York to file and enforce a mechanic's lien against the Owner's right, title, or interest, if any, or any right, title or interest, if any, of any other "owner" (as defined in the Lien Law) in and to the real property on which the project is being constructed, and improvements thereof. Solely for the purposes of filing and foreclosing a mechanic's lien on real property under the Lien Law of the State of New York, there shall be deemed to be a valid and existing debt of the Construction Manager to Contractor for any payments to which the Contractor would be entitled to under the Contract Documents or otherwise but for the Owner's failure to make payment to the Construction Manger. THEREFORE, THE CONTRACTOR SPECIFICALLY AGREES TO LOOK FOR PAYMENT OR OTHER SATISFACTION OF THE DEBT SOLELY FROM (i) PROCEEDS OF FORECLOSURE OF ANY SUCH MEHCANIC'S LIEN AND/OR (ii) AS SET FORTH IN PARAGRAPH 4 HEREOF, FUNDS ACUTALLY RECEIVED BY

CONSTRUCTION MANAGER FROM THE OWNER SPECIFICALLY DESIGNATED FOR DISBURSEMENT TO THE CONTRACTOR.

**TRUST FUNDS**

36. Any and all funds payable to the Contractor hereunder are hereby declared to constitute trust funds in the hands of the Contractor, to be applied first to the payment of claims of subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described work, to claims for utilities furnished and taxes imposed, and to the payment of premiums on surety bonds and other bonds filed and premiums on insurance accruing during the construction of the described work, before application to any other purpose. Whenever required by the Construction Manager, it shall be the duty of the Contractor to file with the Construction Manager a verified statement, in form satisfactory to the Construction Manager, certifying the amounts then due and owing from the Contractor for labor and materials furnished under the terms of this contract, setting forth herein the names of the persons whose charges or claims for labor, materials or supplies are unpaid, and the amount due each respectively.

**CHANGES AND EXTRAS**

37. The Construction Manager, without invalidating this contract, may order extra work or make changes by altering, adding to or deducting from the work, the Contract Price to be adjusted accordingly. The Contractor shall not make any alterations or omit anything, or perform additional or extra work, except upon written order signed by the Construction Manager. The Construction Manager shall at any time have the right to order extra work to be performed on (a) Lump Sum Proposal, (b) Unit Prices, or (c) Time and Material Basis. No request for payment for extra work will be honored unless accompanied by such written order. All such work shall be executed under the provisions of this Contract. The Construction Manager's choice of the manner in which the extra work is to proceed is described as follows:

**(A) Lump Sum Proposal**

The Contractor will within ten (10) days after receipt of the Construction Manager's communication submit its Lump Sum Proposal. This Proposal will be itemized and segregated by labor and material for the various components of the work. No aggregate labor total will be acceptable. The Contractor will furnish with its Proposal supporting data consisting of Subcontractor's and vendor's signed proposals.

The Contractor will be allowed 15% for overhead and profit on labor performed by his own forces and material purchases. Subcontractors, likewise, will be permitted an allowance of 15% for overhead and profit on their own work. The Contractor will be further allowed a 6% commission on all of his subcontractor's work, 6% overhead and profit will be allowed on equipment rented by the Contractor or subcontractor. The Contractor may include in his labor proposal only those workmen and foremen directly involved in the work. All other supervision is included in the 15% overhead and profit allowed.

Contractor will be entitled to payment for labor, union fringe benefits, insurance, unemployment insurance, social security and taxes paid on labor. No overhead or profit will be allowed on social security, unemployment insurance or other insurances or premium time. Contractor's material costs will include invoiced costs, transportation, applicable sales or use taxes, actual rental costs or discounted local published rental rates. Use of small tools is included in the Contractor's overhead and profit. Overhead and profit as outlined above includes all other costs whatsoever beyond those enumerated.

If any of the extra work included in the Lump Sum Proposal is covered by Contract Unit Prices, the Construction Manager may elect to use these unit prices within the Lump Sum Proposal. No overhead and profit may be applied to these unit prices. The entire value of the change will be the net difference of the work to which will be applied overhead and profit percentages.

**(B) Unit Prices:**

The Contractor will submit within ten (10) days after receipt of the Construction Manager's communication submit its written proposal itemizing the quantities of each item of work for which there is an applicable Unit Price contained in the Contract. The quantities must be itemized in relation to each specific contract drawing. Unit prices will be applied to net differences of quantities of the same item.

**(C) Time and Material:**

Should the Construction Manager elect to have any extra work performed on a time-and-material basis in lieu of Lump Sum Proposal or Unit Prices, and so notifies the Contractor in writing, the Contractor shall perform such work at actual cost (without any charge for administration, clerical expense, supervision or superintendence of any nature whatever, including non-working foremen, or the cost, use or rental of tools or plant) plus 15 percent for overhead and profit. To this figure the Contractor may add Unemployment Insurance and Old Age Retirement Benefits taxes paid on labor required for the extra work. Moreover, if the Contractor procures the performance of extra work by others than its own employees, the Contractor shall not be entitled to greater payment than that to which it would have been entitled if it had itself furnished the labor and materials required in connection with the work to be performed under this provision. The Contractor will submit to the Construction Manager daily time and material tickets. These tickets will include the identification number assigned to this work, the location and description of the work, the classification of labor employed including workers' names and social security numbers, the material used, the equipment rented (not tools) and any other information ordered by the Construction Manager.

Where any such additional work is ordered as provided in this Contract, the Contractor shall, for such purposes, permit the Construction Manager to audit its books. The Contractor shall produce any and all data which the Construction Manager may request for the purpose of determining the correctness of the changes. The Contractor shall keep such full and detailed accounts as may be necessary to reflect its operations with respect to such changes and extras, and the system adopted shall be such as is satisfactory to the Construction Manager. The Owner, Construction Manager, their agents and employees, shall be afforded access at all reasonable times to the Contractor's, Subcontractor's and Vendor's books, correspondence, instructions, receipts, vouchers, memoranda and records of all kinds, relating to all work under this Contract as well as to such changes and extras, and the Contractor shall preserve the same for a period of six years after final payment hereunder. In regard to the foregoing and generally, the Contractor hereby authorizes the Owner and Construction Manager to check directly with its suppliers of labor and materials the charges for such labor, materials and other items appearing in the Contractor's bills rendered to the Construction Manager, to confirm balances due and obtain sworn statements and waivers of lien.

In the case of disagreement as to the amount to be paid or credited the Contractor shall promptly comply with the order and payment to Contractor or credit to the Construction Manager shall be made in accordance with the contract payment provisions up to the reasonable estimated value of the change as determined by Construction Manager.

Unless and until the Construction Manager shall elect either the lump sum, the unit price method or time and material, the Contractor shall maintain and submit daily records of labor, material and equipment used in the work which have been acknowledged thereon daily by the Construction Manager. In any event, Construction Manager shall have the right to order such changes in the work to proceed promptly prior to the submission of any proposal and/or Construction Manager's election.

Any work included in this contract shall be performed by the Contractor at no extra cost to the Construction Manager despite any order from the Construction Manager to the Contractor which might contemplate such work as an extra.

**NO DELAY BY CONTRACTOR**

38. Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of this contract the performance of any work, the delivery of any material, the payment of any moneys to the Contractor, or otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any work or part of its work on its part required to be performed or stop or delay the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy.

**SCHEDULING**

39. The scheduling of construction operations for the project will be monitored by a method to be chosen by the Construction Manager. The Contractor, and its subcontractors, if required, shall furnish all scheduling information requested by the Construction Manager at such time and in such form and detail as requested for its particular trade.

Such information shall be furnished within 2 weeks of the request and shall further be revised from time to time when requested either prior to and/or at any time during performance of its work.

Information submitted by the Contractor or others, acceptance or approval by the Construction Manager and the scheduling that may be developed and implemented by the Construction Manager shall not constitute the basis of any claim by Contractor or its subcontractors for damage or delay nor excuse the Contractor's performance as required herein.

**BILLS AND NOTICES**

40. A bill, statement, notice or communication which one of the parties hereto desires to serve upon the other shall be deemed sufficiently given and rendered if sent by registered or certified mail, return receipt requested, reputable overnight courier, addressed to the other party at the address set forth herein. The time of the rendition of such bill, statement, notice or communication shall be deemed to be the time when the same was mailed and each day's notice shall be construed to mean a period of twenty-four (24) hours from the time of mailing.

**RIGHTS AND REMEDIES**

41. All Rights and Remedies of Construction Manager under this Contract shall be cumulative and shall be in addition to all other Rights and Remedies of Construction Manager provided by law.

**NO ORAL MODIFICATIONS**

42. This contract constitutes the entire agreement between the parties. The Contractor affirms and agrees and represents and warrants that only the statements, representations and promises expressly contained in this Contract have been relied upon by him and have induced him to enter into this Contract. No provision of this contract shall be changed or modified, nor shall this Contract be discharged, in whole or in part, except by an agreement in writing signed by the party against whom the change, modification or discharge is claimed or sought to be enforced, nor shall any waiver of any of the conditions or provisions of this contract or of any of the rights of either of the parties hereunder be effective or binding unless such waiver shall be in writing and signed by the party claimed to have given, consented to or suffered the waiver. In the event any written change or modification is made as aforesaid, the Construction Manager's rights and remedies under this contract and under any bond given to the Construction Manager, in accordance with the requirements of this Contract, shall in no way be prejudiced or impaired, and the bond shall apply and be in full force and effect with respect to this contract as so changed and modified.

**SAVING CLAUSE**

43. If any of the provisions hereof shall contravene or be invalid under the laws of the jurisdiction where it is to be performed, such contravention or invalidity shall not invalidate the whole contract or any other provision thereof, but this contract shall be construed as if not containing the provisions held to be invalid, and the rights and obligations of the parties shall be enforced accordingly.

**EQUAL OPPORTUNITY CLAUSE**

44. In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor

shall use best efforts to hire both minority and female employees whenever qualified individuals apply for employment. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In conjunction with this provision, the Contractor shall conduct its business in accordance with all federal, state and local laws and/or ordinances pertaining to programs concerning affirmative action and equal opportunity.

#### **EXCULPATION OF PARTNERS**

45. No general or limited partner or shareholder of the Owner or other holder of any equity interest in the Owner shall be personally liable to this agreement or other holder of any equity interest in any such party shall be personally liable for the performance of any such party's obligations under this agreement. The liability of Owner for Owner's obligations under this agreement shall be limited to Owner's interest in the Property, and the Contractor shall not look to any of Owner's other assets seeking either to enforce Owner's obligations under this agreement or to satisfy a judgment for Owner's failure to perform such obligations. The Contractor will not enter into any agreements with third parties without the inclusion of any exculpatory clause similar to that set forth herein, limiting Owner's obligations to Owner's interest in the property.

#### **HEADINGS**

46. Headings used in this contract are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope or intent of this contract, nor do they in any way affect this contract.

#### **OWNER BENEFICIAL OCCUPANCY**

47. If, before final acceptance the Owner desires to occupy the project or any part thereof which is completed or partly completed, or to place or install therein certain equipment and furnishings; the Owner shall have the right to do so and the Contractor shall in no way interfere with or object to such occupancy by the Owner.

#### **AFFIRMATIVE ACTION**

48. The Construction Manager has a long standing practice of encouraging the participation of Minority and Women owned firms in its business opportunities. Accordingly, the contractor shall make every good faith effort to subcontract with minority and women owned firms in the performance under this contract. Additionally, the Construction Manager is an Equal Employment Opportunity Employer and will expect all the contractors to secure Minorities and Women in the workforce to the maximum extent possible. This policy shall be supplemented by such specific goals and obligations imposed by governmental authorities and/or as otherwise specified in the Contract documents.

#### **LABOR AND MATERIALS TO BE FURNISHED BY CONTRACTOR**

All labor, materials, equipment, tools, appliances, services, delivery, hoisting, scaffolding, permits, testing, engineering, layout, supervision, applicable taxes and insurance, coordination and all other operations required for the complete performance of all specified and related work stated herein, in accordance with the Contract Drawings, Specifications, Riders and other Contract Documents listed or referenced herein, all of which become part of this Contract.

WTC

**CONTRACT PRICE**

This Contractor shall perform all work set forth herein for the contract price of (\$ \_\_\_\_\_ ) including all applicable taxes, overhead and profit.

Dollars

**CONTRACT DOCUMENTS**

- Rider "A", General Addendum and Scope of Work, dated \_\_\_\_\_
- Rider "B", List of Drawings and Specifications, dated \_\_\_\_\_
- Rider "C", Alternates and Unit Prices, dated \_\_\_\_\_
- Insurance Rider, dated \_\_\_\_\_

**TIME OF PERFORMANCE**

This Contractor represents that he has sufficient manpower, equipment and materials available to expedite all phases of his work schedule. Work in any area shall commence upon 48 hours notice from the Construction Manager. Work shall proceed in sequence and direction as required by the Construction Manager and as provided for in the Time and Performance Section of Rider "A".

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**

\_\_\_\_\_  
(Contractor)

BY: \_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Print Name & Title)

DATE: \_\_\_\_\_

BY: \_\_\_\_\_

DATE: \_\_\_\_\_

**EXHIBIT "C"**

**GENERAL CONDITIONS**

## DESCRIPTION OF GENERAL CONDITIONS

1. **Project Management Staff (Supervisory Payroll & Fringe Benefits)**  
(including Project Director, managers, superintendents, accountants, secretaries, plan clerks, etc.).
2. **Field Labor, Union Personnel (Field Payroll & Fringe Benefits)**  
(including Teamsters, Elevator Operators, Operating Engineers, Maintenance Engineers, Mason Tenders (Laborers)).
3. **Temporary Services, including surveys, permits & fees, temporary construction, electrical, water, rubbish removal, watchman service, messenger service, progress photos, final clean-up.**
4. **Field Office Expenses, including rent, fitout, equipment, furniture, computers, blueprinting, telephone, postage, travel, pest control, office supplies.**
5. **Site Safety & Maintenance, including site safety program, small tools & supplies.**

## AMENDMENT TO GENERAL CONTRACTOR AGREEMENT

AMENDMENT TO GENERAL CONTRACTOR AGREEMENT (this "Amendment"), dated as of July 1, 2004, by and between TISHMAN CONSTRUCTION CORPORATION, a Delaware corporation having an office at 666 Fifth Avenue, New York, N.Y. 10103 ("Tishman") and WTC REDEVELOPMENT LLC, a Delaware limited liability company, having an office c/o Silverstein Properties, Inc., 530 Fifth Avenue, New York, N.Y. 10036 ("WTC Redevelopment"). 1 World Trade Center LLC, 2 World Trade Center LLC, 4 World Trade Center LLC, and 5 World Trade Center LLC (collectively, the "Lessees" and, together with Tishman and WTC Redevelopment, each a "Party" and collectively, the "Parties") have executed this Agreement for the purposes set forth below.

### WITNESSETH:

WHEREAS, the Lessees lease, among other things, various components of the World Trade Center complex in Block 58, Lot 1, New York, New York (the "Site") from The Port Authority of New York and New Jersey (the "Port Authority") and in connection with the redevelopment of the Site, the Lessees and Tishman entered into a General Contractor Agreement, dated as of September 10, 2003 (the "General Contractor Agreement"); and

WHEREAS, pursuant to a Partial Assignment and Assumption Agreement dated as of the date hereof between the Lessees, as assignor, and WTC Redevelopment, as assignee (the "Assignment"), the Lessees assigned to WTC Redevelopment certain rights and obligations under the General Contractor Agreement with respect to the Demolition Sub-Project (as hereinafter defined), and WTC Redevelopment assumed such rights and obligations; and

WHEREAS, in connection with the commencement and performance, in accordance with the General Contractor Agreement, of the demolition work and certain soil boring work at the Site, the Parties desire to amend and modify certain provisions of the General Contractor Agreement;

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto mutually agree as follows:

#### 1. Defined Terms.

(a) Capitalized terms used herein but not defined herein shall have the respective meanings assigned to them in the General Contractor Agreement and the Cost Allocation Agreement for Demolition Work, dated as of the date hereof, between WTC Redevelopment and the Port Authority, pursuant to which the costs for the Demolition Work are allocated between WTC Redevelopment and the Port Authority (collectively, the "CAA Parties") (such agreement, the "Cost Allocation Agreement"), as applicable.

(b) The term "Architect", as used in the General Contractor Agreement (and for purposes of the Demolition Sub-Project only) shall mean The Port Authority of New York and New Jersey.

(c) The term "Contract Documents", as used herein and in the General Contractor Agreement (and for purposes of the Demolition Sub-Project only), shall mean, collectively, (i) the plans and specifications and demolition sub-contracts for the Demolition Sub-Project set forth on Exhibit A.

(d) The term "Demolition Sub-Project", as used herein, shall mean the Sub-Project consisting of the demolition work at the Site, as described on the plans and specifications attached as Exhibit A hereto.

(e) The term "Demolition Work", as used herein, shall mean all labor, materials, equipment, tools and services required for the complete construction and performance of the Demolition Sub-Project.

(f) The term "Initial Work" as used herein shall mean (x) the Demolition Work, and (y) coordination of access to the Site for Jersey Boring and Drilling Company, Inc., a soil boring contractor performing work on the Site for WTC Redevelopment and/or its affiliates.

2. References in General Contractor Agreement.

(a) All references to "Lessee" or "Lessees" in the General Contractor Agreement shall mean, for purposes of the Initial Work only, WTC Redevelopment.

(b) All references to "Work" in the General Contractor Agreement shall mean, for purposes of the Initial Work only, the Initial Work.

3. Notice to Proceed. WTC Redevelopment hereby notifies Tishman, pursuant to Section 5.1 of the General Contractor Agreement, to proceed with the Initial Work in accordance with the Contract Documents and with the General Contractor Agreement (as amended by this Amendment).

4. Sub-Project Budget and Additional Costs.

(a) Notwithstanding anything contained in the General Contractor Agreement to the contrary, the Parties hereby acknowledge and agree that there shall be no Sub-Project GMP (as such phrase is defined in Section 3.3.2 of the General Contractor Agreement) for the Demolition Sub-Project. The estimated line item budget for the Demolition Sub-Project is attached as Exhibit B hereto. For purposes of the Demolition Sub-Project only, (i) the term "Cost of the Work" (as such term is defined in Section 6.2.1 of the General Contractor Agreement) shall be deemed included in the line item budget on Exhibit B hereto, and (ii) the Tishman Fee (as such term is described on Exhibit B hereto) shall be deemed to include "Costs Not to be Reimbursed" (as such phrase is described in Article VII of the General Contractor Agreement).

(b) If and to the extent that Tishman shall incur any additional costs or expenses (in excess of those set forth on Exhibit B hereto) hereunder for any reports or other items of information requested by a CAA Party pursuant to Section 6(c)(ii) through (iv) herein, Tishman shall allocate such additional costs or expenses solely to the respective CAA Party re-

questing such reports or other items of information, as applicable. Notwithstanding anything contained herein to the contrary, the Tishman Fee (as defined below) shall not exceed \$100,000 in the aggregate.

5. Construction Schedule. The construction schedule for the Demolition Sub-Project shall be mutually agreed upon by the Parties as soon as practicable after the date hereof. The Parties acknowledge and agree that the Demolition Sub-Project is expected to begin promptly after the date hereof and is scheduled to be completed before December 1, 2004 and Tishman shall use its best efforts to complete the Demolition Sub-Project on or before such date.

6. Tishman's Duties and Responsibilities, Payment.

(a) Subject to Section 4(b) of this Agreement, each requisition for payment submitted by Tishman to WTC Redevelopment in connection with the Demolition Work (each, a "Requisition") shall also be provided simultaneously to the Port Authority and shall allocate as between WTC Redevelopment and the Port Authority (i) the amount being requisitioned in the manner specified in Sections 5, 6, 8, 10 and 11 of the Cost Allocation Agreement, and (ii) any recycling credits originating from the performance of the Demolition Work in the manner specified in Section 7 of the Cost Allocation Agreement. The Cost Allocation Agreement is attached hereto as Exhibit C. Each Requisition shall include only those Exhibit B costs that have been actually incurred by Tishman from the date of the previous Requisition that has been submitted to WTC Redevelopment and the Port Authority (or, in the case of the first Requisition, from the date hereof) to the date of such subsequent Requisition. WTC Redevelopment shall be responsible for paying Tishman only the amount set forth in each Requisition that is allocated to WTC Redevelopment pursuant to this Section 6(a) and shall not have any responsibility or liability for any amounts set forth in any Requisition that are allocated to the Port Authority pursuant to this Section 6(a).

(b) Tishman shall (i) be the general contractor for all purposes of the Demolition Sub Project hereunder including, without limitation, the duties described in more detail in Article II of the General Contractor Agreement, (ii) set up, keep and maintain records, payroll records and books of account (including records of original entry and daily forms) recording all transactions of Tishman with any of the CAA Parties in any way connected with or related to the Demolition Work, including, but not limited to, all matters relating to the charges/costs payable to or by the CAA Parties and Tishman hereunder and such additional information relating to performance of the Demolition Work as any of the CAA Parties may from time to time and at any time reasonably require, and also including, if appropriate, recording the actual number of hours of service provided under the Demolition Work contract(s), and keeping separate records thereof which records and books of account shall be kept at all times in New York, (iii) permit, during ordinary business hours, the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account, (iv) furnish to the CAA Parties from time to time such written reports in connection with its operation with respect to the Demolition Work under the General Contractor Agreement as the CAA Parties may (acting reasonably and in good faith) deem necessary or desirable, (v) require that any Demolition Work construction contract provide that either the respective demolition Subcontractor and/or Tishman shall (A) provide for adequate documentation of recycling activities includ-

ing, without limitation, the providing and execution of suitable manifests, recycling center locations, inserting of quantities, and the like, and (B) stipulate that demolition/construction debris shall in no way be identified with the Site, (vi) prepare Requisitions in accordance with Section 6(a) above, and (vii) implement, to the extent applicable to the work being carried out hereunder, the Sustainable Guidelines for the World Trade Center Redevelopment Projects that are described on Exhibit D hereto and which shall be incorporated into the specifications of the construction contract(s) in connection with the Demolition Sub-Project. The format of all forms, schedules and reports furnished by Tishman or its contractors to the CAA Parties shall be subject to the continuing reasonable approval of the CAA Parties.

(c) Notwithstanding anything contained in the Cost Allocation Agreement to the contrary, including without limitation the third sentence of Section 3 thereof, the parties hereby acknowledge and agree that, for purposes of the Demolition Sub-Project only, (i) WTC Redevelopment or its affiliates has retained Testwell Laboratories, Inc. or one of its affiliates to perform noise and vibration monitoring and that Tishman shall not be required to perform any noise or vibration monitoring in connection with the Demolition Sub-Project, and (ii) the phrase "air quality" as used in the ROD (as such term is defined in the Cost Allocation Agreement) shall be deemed to refer to "dust control" and that Tishman shall be responsible for such dust control monitoring in connection with the Demolition Sub-Project.

(d) Nothing contained herein or in the Cost Allocation Agreement shall (i) require Tishman to provide photography services for historic preservation purposes and (ii) require Tishman to provide inspection reports to the Port Authority on a monthly basis.

7. Not Incorporated. With respect to the Initial Work only, the following provisions of the General Contractor Agreement are specifically not incorporated in this Agreement: Section 4.9(a), Article VII (General Contractor's Fees), Sections 10.1, 10.2 and 10.3 (Payments), Article XI (Insurance), and Section 13.2.

8. Indemnity.

(a) Tishman hereby indemnifies, defends and holds harmless WTC Redevelopment and its affiliates from and against any loss, cost, expense, claim, injury or damage (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Losses"), whether incurred due to third party claims or otherwise, arising or resulting from or caused by the Port Authority's failure to make its payment obligations hereunder and under the Cost Allocation Agreement (excluding any Losses for which WTC Redevelopment indemnifies Tishman pursuant to Section 8(b) below). WTC Redevelopment hereby agrees to use its reasonable best efforts to enforce the Port Authority's payment obligations to Tishman pursuant to the Cost Allocation Agreement.

(b) WTC Redevelopment agrees to indemnify, defend and hold harmless Tishman from and against any Losses incurred by Tishman in connection with the Demolition Sub-Project, but only to the extent that (a) the Port Authority indemnifies, defends, and holds harmless WTC Redevelopment for such Losses pursuant to indemnifications contained in the Cost Allocation Agreement and (b) WTC Redevelopment recovers such Losses from the Port Authority.

9. **Insurance.** Tishman shall (a) cause the Subcontractors performing the Work to maintain the insurance set forth on Exhibit E-1 hereto, (b) include WTC Redevelopment and the Additional Insured Entities (as hereinafter defined) as additional named insureds under Tishman's corporate liability insurance policy in connection with the Demolition Sub-Project, and Tishman shall promptly provide WTC Redevelopment with a certificate evidencing that WTC Redevelopment and the Additional Insured Entities shall have been added to such coverage, and (c) in respect of the foregoing, WTC Redevelopment shall not be required to carry or maintain any of the insurance required to be maintained by the Lessees pursuant to Article XI of the General Contractor Agreement. The term "Additional Insured Entities" shall mean those entities identified on Exhibit E-2 hereto. WTC Redevelopment hereby agrees to pay its allocable share of the premiums for the insurance coverage described in clause (b) of the immediately preceding sentence, based upon the pricing schedule previously provided by Tishman in writing to WTC Redevelopment; provided, however, that nothing contained herein shall obligate WTC Redevelopment to pay the Port Authority's allocated share of such premiums. WTC Redevelopment hereby agrees to use commercially reasonable efforts to cause the Port Authority to pay its allocated share of such premiums.

10. **Effect of Amendment.** Except as amended by this Amendment, the terms and provisions of the General Contractor Agreement remain unmodified and in full force and effect. Any future reference to the General Contractor Agreement shall be deemed to be a reference to the General Contractor Agreement, as amended by this Amendment, and as same may, from time to time, hereafter be further amended.

11. **Not a Waiver.** Except as expressly provided in this Amendment, nothing contained in or contemplated by this Amendment shall constitute, or be construed as (a) the waiver by any party of such party's rights or another party's obligations under the General Contractor Agreement, or (b) the consent or approval by any party of any matter, decision or selection requiring the consent or approval of such party under the General Contractor Agreement.

12. **No Liens.** Nothing contained herein shall be or be deemed or construed as a submission by a Party or a CAA Party to the application to itself of any vendor's, mechanic's, laborer's or materialman's statutory or similar lien. There shall be no third party beneficiaries of this Agreement, and no third party may rely on any of the terms hereof.

13. **Counterparts.** This Amendment may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of such counterparts shall together constitute but one and the same instrument.

14. **Successors and Assigns.** This Amendment has been duly authorized by each of by each of the parties hereto, and shall be binding on, and shall inure to the benefit of, the heirs, legal representatives, successors and permitted assigns of the parties hereto.

15. **No Amendment.** This Amendment may not be changed, amended, modified, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of such change, amendment, modification, waiver, discharge or termination is sought.

16. No Liability. No director, officer, agent or employee of WTC Redevelopment, the Lessees or their respective affiliates shall be charged personally with any liability or held liable personally under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

17. Notices.

To: WTC Redevelopment and the Lessees  
c/o Silverstein Properties, Inc.  
530 Fifth Avenue, 18<sup>th</sup> Floor  
New York, NY 10036  
Attention: John L. Lieber  
Michael L. Levy

With copies to:

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Attention: Stephen Gellman, Esq.

To: Tishman

Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103  
Attention: John T. Livingston, President

With a copy to:

Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103  
Attention: Michael J. Mennella, Executive Vice President

To: The Port Authority (for purposes of submitting Requisitions pursuant to Section 6(a) of this Agreement only)

225 Park Avenue South, 14<sup>th</sup> Floor  
New York, NY 10003-1604  
Attention: Darrell Buchbinder, Esq.  
Herbert S. Somertwitz, Esq.

18. Entire Agreement. This Amendment (together with the General Contractor Agreement, as amended hereby) constitutes the entire agreement and understanding between

the parties hereto with respect to the subject matter hereof and there are no other agreements, understandings, undertakings, representations or warranties among the parties hereto with respect to the subject matter hereof except as set forth herein.

19. Counterparts. This Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original agreement, but all of which shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the parties have caused this Amendment to General Contractor Agreement to be duly executed as of the day and year first above written.

**TISHMAN CONSTRUCTION  
CORPORATION**

By: Michael Mcmella Jr  
Name: Michael J. McMella  
Title: Executive Vice President

**WTC REDEVELOPMENT LLC, as assignee  
of the General Contractor Agreement for pur-  
poses of the Initial Work only**

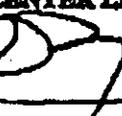
By:   
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Accepted and agreed to:**

**1 WORLD TRADE CENTER LLC**

By:   
Name:  
Title:

**2 WORLD TRADE CENTER LLC**

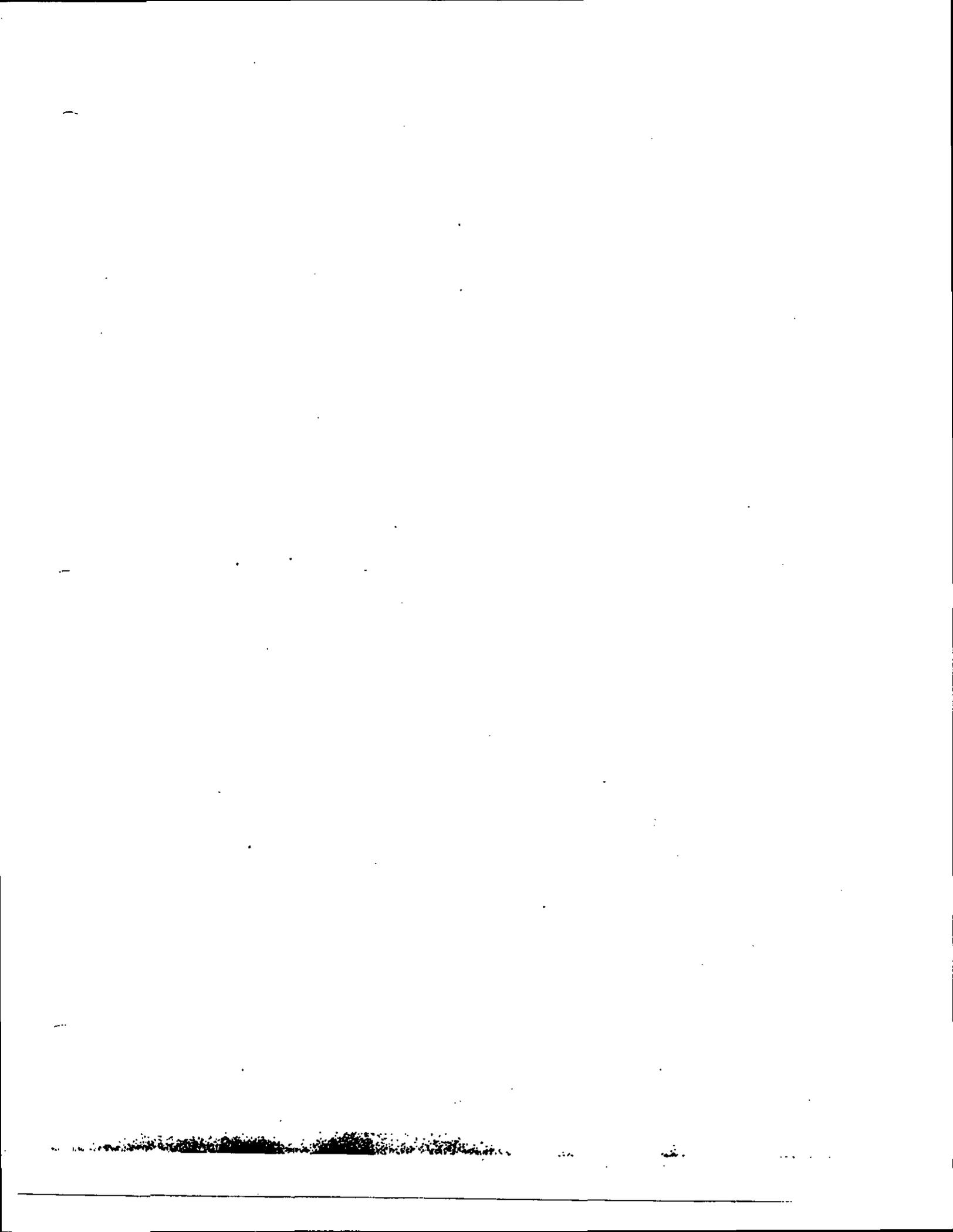
By:   
Name:  
Title:

**4 WORLD TRADE CENTER LLC**

By:   
Name:  
Title:

**5 WORLD TRADE CENTER LLC**

By:   
Name:  
Title:



**Exhibit A**

**Demolition Sub-Project Plans, Specifications and Contract Documents**

**THE AGREEMENT**

**PROJECT:** **FREEDOM TOWER**  
**1 WORLD TRADE CENTER**  
**NEW YORK, NEW YORK** June 3, 2004

**TRADE:** **SELECTIVE DEMOLITION, STRUCTURAL BRACING, AND TEMPORARY ROCK ANCHORS**

**CONSTRUCTION MANAGER:** **TISHMAN CONSTRUCTION CORPORATION**  
**686 Fifth Avenue**  
**New York, New York 10103**  
(herein called "Tishman")

**CONTRACTOR:** **Seasons Industrial Contracting Corp.**  
**268 Green Valley Road**  
**Staten Island, NY 10312**(herein called the "Contractor")

## As used herein:

- (i) "Engineer" shall mean:  
 Port Authority of New York and New Jersey
- (ii) "Building" shall mean:  
 Freedom Tower  
 1 World Trade Center  
 New York, New York
- (iii) "Indemnitees" shall mean:  
 Owner; One World Trade Center LLC; Two World Trade Center LLC;  
 Four World Trade Center LLC; Five World Trade Center LLC;  
 Silverstein Properties, Inc.; Port Authority of New York & New Jersey,  
 PATH, Tishman Construction Corporation; and 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, trustees and employees of each
- (iv) "Owner" shall mean:  
 WTC Redevelopment LLC  
 C/O Silverstein Properties LLC  
 530 Fifth Avenue  
 New York, NY 10036
- (v) "Site" shall mean:  
 Freedom Tower  
 1 World Trade Center  
 New York, New York

**WITNESSETH:** WHEREAS, Silverstein Properties and Tishman Construction Corporation have undertaken the construction of the Building on the Site in accordance with the drawings and specifications prepared by the Architect; and

WHEREAS, pursuant to arrangements between Owner and Tishman, Tishman has agreed to construct and/or cause the construction of the Building; and

WHEREAS, Tishman desires to let and Contractor desires to perform a portion of the construction work on the Building;

**NOW, THEREFORE, Tishman and Contractor agree as follows:**

**CONTRACTOR TO COMPLY WITH PLANS AND SPECIFICATIONS**

1. The Contractor shall provide for the Site all the labor, supervision and materials hereinafter set forth in exact accordance with specifications hereto annexed or described herein and as shown on plans, drawings and details prepared by the Architect, which plans, drawings and details are to be returned to the Owner or Tishman upon the completion of the work. Such additional drawings as may be necessary to explain and detail the work will be furnished by the Owner or Tishman, and are to be conformed to, except where inconsistent with original plans and specifications. The plans, drawings and details, and the specifications are intended to supplement one another, and any work or materials shown, mentioned or reasonably implied in one and not in the others are to be furnished by the Contractor without extra charge. The enumeration of

particular items in this contract or in the specifications shall not be construed to exclude other items. The intention of the documents is to include all labor, materials, engineering, equipment, transportation, tools, plant, appliances, appurtenances and other facilities, whether specified herein or not, necessary for the proper execution and completion of the work. Contractor must refer any question respecting the specifications, plans, drawings and details, about which it is in doubt, or which seems to admit of a dual interpretation, to Tishman for its decision, by which Contractor must abide.

#### **DUTIES OF CONTRACTOR**

2. The Contractor recognizes the relations of trust and confidence established between it and Tishman by this contract. The Contractor covenants and agrees with Tishman to furnish its best skill and judgment and to cooperate with the Owner and Tishman in forwarding the best interests of the Owner and Tishman. Tishman shall have the right to exercise complete supervision and control over the work to be done by the Contractor, but such supervision and control shall not in any way limit the obligations of the Contractor.

#### **SHOP DRAWINGS**

3. The Contractor shall, at its own cost and expense, furnish to Tishman all shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data regarded by Tishman as necessary, in the number required by Tishman for submission to the Owner for its review. The Owner's, Tishman's and/or the Architect's and Consultants' approval of such shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data shall not relieve the Contractor from responsibility for deviations from the contract, specifications and/or drawings, unless it has, in writing, called Tishman's and Owner's attention to such deviations, at the time of delivery of such shop drawings, schedules, reports, diagrams, layouts, setting plans, cuts, explanations, catalogue references, samples and other data to the Owner and Tishman, nor shall it relieve Contractor from responsibility for errors. The Contractor shall make any corrections required by Tishman, file with Tishman corrected copies and furnish such other copies as may be needed. The Contractor shall make all submissions of shop drawings to Tishman for transmittal to the Owner. No submission shall be made directly to the Architect, unless approved by Tishman, and if any submission is so made, the approval or modifications authorized by the Architect shall not be binding upon Tishman or Owner unless and until Tishman and Owner have reviewed the shop drawings and Tishman has granted its approval thereof. The Contractor shall obtain shop drawings from other contractors and coordinate its work to avoid interference with other contractors work. The Contractor shall furnish its shop drawings to other contractors, if necessary for the Project.

#### **SPECIFICATIONS VARYED BY LAWS**

4. The Contractor shall furnish, without extra charge, all work and materials not mentioned or shown, but generally included under this class of contract, necessary for the proper execution and completion of the work, or necessary for any work or materials of the kind herein contracted for to conform the Building to all laws and the Rules and Regulations of all Municipal Departments, the Board of Fire Underwriters and all other authorities having jurisdiction.

#### **MEASUREMENTS VARYED BY JOB CONDITIONS**

5. Dimensions on plans are to be followed in preference to scale measurements, and all measurements must be checked at the premises before the work is executed. No extra charge shall be made for changes necessitated by minor variations in the actual condition of the Site from what is shown on plans. Contractor shall examine the Site, note and ascertain the construction, materials, work, existing conditions at the Site and the nature and location of the work. All work affected or governed thereby or required for the thorough and satisfactory completion of its work, whether indicated and specified or not, and regardless of quantity estimated, shall constitute part of this contract and shall be performed by the Contractor without extra charge to Tishman.

#### **TISHMAN TO INTERPRET SPECIFICATIONS**

6. Tishman shall decide all questions which may arise as to the performance, quantity, quality, acceptability, fitness and rate of progress of the work or materials furnished under this contract. It shall decide all questions which may arise as to the interpretation of the specifications and of drawings and as to their fulfillment on the part of the Contractor, and as to defects in the Contractor's work. Tishman's interpretation of and decision as to the meaning of the plans, drawings, details and specifications or any part thereof shall be final and binding on the Contractor.

#### **INDEMNITY VIOLATION OF LAW**

7. (a) The Contractor agrees to perform the work in a safe and proper manner and so as to comply with all laws, rules, regulations and ordinances as well as all requirements of the Board of Underwriters and of all Municipal, State, Federal and other authorities having jurisdiction, which are applicable to such work, and will indemnify and save the indemnitees harmless (such indemnity, as used in this Article, to include the defense of all claims made against the indemnitees) against all penalties for violation of same and any and all costs and damages incurred in connection therewith.

While Tishman shall provide the Contractor with assistance and direction in prosecuting the work, such action will not relieve the Contractor from any responsibility for the work, including, but not limited to responsibility for construction means, methods, techniques, sequences or procedures or for safety precautions and programs in connection with the work. In no event shall the Owner or Tishman be liable to the Contractor, either in tort or otherwise, for any costs or damages, whether

asserted directly against the Owner or Tishman or by the way of indemnification or contribution in whole or part, resulting from any act, direction, supervision, instruction or coordination furnished to the Contractor by the Owner or Tishman or the failure to furnish same, which directly or indirectly affects the performance of the Contractor, unless the Contractor, before complying therewith to its damage, or in the case of a failure to act, within five (5) days after such omission has occurred, objects in writing to Tishman and Owner to said act or omission and notifies it in writing that same will result in monetary costs or damages to the Contractor. Failure by the Contractor to furnish said notice of objection in writing as required herein shall constitute an irrevocable waiver and release of all claims for damages against Tishman and the Owner arising therefrom. Nothing in this paragraph shall be construed to provide the Contractor with any rights or remedies beyond those provided under other paragraphs of this contract or pursuant to applicable law.

#### **PROPERTY DAMAGE**

- (b) The Contractor hereby assumes entire responsibility for any and all damage or injury of any kind or nature to property, including adjoining property, caused by or resulting from the execution of the work or occurring in connection therewith, and agrees to indemnify and save harmless the Indemnitees from and against all claims, liabilities, damages, loss and expense, including but not limited to attorneys fees, incurred by or imposed upon the Indemnitees for damage or injury to such property, however such damage or injury may be caused, whether such claims, liabilities, damages, loss or expense arise from or are caused directly or indirectly by (i) the negligence of the Contractor or any subcontractor, or the agents or employees of either of them, in the performance of work under this contract, or the use by the Contractor or any subcontractor, or the agents or employees of either of them, of any materials, tools, hoists, ladders, implements, appliances, scaffolding ways, works, machinery or other property, or (ii) the negligence of the Indemnitees, whether attributable to a breach of statutory duty or regulation or otherwise or (iii) injury or damage to property for which liability is imputed to the Indemnitees; or (iv) any other manner; provided, however, that the foregoing indemnity shall not extend to a particular Indemnitee where such damage or injury is caused solely by the negligence or willful misconduct of that Indemnitee. The Contractor shall be solely responsible for the safety of its work and of all equipment and materials to be used therein until final completion and acceptance of the same and shall promptly at its own expense repair any damage or injury to same, unless such damage or injury is caused solely by the negligence or willful misconduct of any of the Indemnitees.

#### **PERSONAL INJURIES**

- (c) The Contractor hereby assumes entire responsibility for any and all damage or injury of any kind or nature to persons, caused by or resulting from the execution of the work or occurring in connection therewith, and agrees to indemnify and save harmless the Indemnitees from and against all claims, liabilities, damages, loss and expense, including but not limited to attorneys fees, incurred by or imposed upon the Indemnitees for damage or injury to such persons, however such damage or injury may be caused, whether such claims, liabilities, damages, loss or expense arise from or are caused directly or indirectly by (i) the negligence of the Contractor or any subcontractor, or the agents or employees of either of them, in the performance of work under this contract, or the use by the Contractor or any subcontractor, or the agents or employees of either of them, of any materials, tools, hoists, ladders, implements, appliances, scaffolding ways, works, machinery or other property, or (ii) the negligence of the Indemnitees, whether attributable to a breach of statutory duty or administrative regulation or otherwise or (iii) injury or damage to persons for which liability is imputed to the Indemnitees; or (iv) any other manner; provided, however, that the foregoing indemnity shall not extend to a particular Indemnitee where such damage or injury is caused solely by the negligence or willful misconduct of that Indemnitee.

#### **DAMAGE INDEPENDENT CONTRACTORS**

- (d) The Contractor agrees to indemnify and hold the Indemnitees harmless by reason from and against any liens, claims, demands, judgment or other liabilities, which may be asserted against the Indemnitees by any other independent contractor, subcontractor, or supplier on the job, and which arise out of any act or omission of the Contractor.

#### **WITHHOLDING OF PAYMENTS TO EFFECT INDEMNITY**

- (e) In the event of any such liability, loss, expense, damage or injury, or if any claim or demand for damages is made against the Indemnitees, Tishman may withhold from any payment due or hereafter to become due to the Contractor under the terms of this contract, an amount sufficient in its judgment to protect and indemnify Indemnitees for any and all such claims, liability, expense, loss, damage, or injury, or Tishman, in its discretion may require the Contractor to furnish a surety bond satisfactory to Tishman, guaranteeing such protection, which bond shall be furnished by the Contractor within five (5) days after written demand has been made therefore.
- (f) The indemnification obligations of the Contractor under this Article 7 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefit payable by or for the Contractor or any Subcontractor under Workers' Compensation Acts, Disability Benefit Acts or other employee benefits acts, and in addition to any rights to indemnification or contribution which may exist at law. Contractor expressly agrees that Tishman and/or Owner may pursue claims for contribution and indemnification against Contractor in connection with any claims against Tishman and/or Owner, as applicable, for injury and/or death to Contractor's employee notwithstanding the provisions of Section 11 of the Workers' Compensation Law limiting such claims for contribution and

indemnification against employers, and Contractor hereby waives the limitations on contribution and indemnity claims against employers provided in Section 11 of the Workers' Compensation Law insofar as such claims are asserted by Tishman and/or Owner

- (g) In the event that 100 percent indemnity to a particular indemnitee under any of the paragraphs above in this Article 7 is prohibited by law because the negligence of such indemnitee in whole or in part caused the claim, liability, damage, loss or expense that is the subject of the indemnity, then such 100 percent indemnity to such indemnitee shall be reduced by a percentage equal to the extent to which the negligence of such indemnitee caused such claims, liabilities, damages, loss or expense.

It is further agreed that, if the Contractor subcontracts or delegates to others the work or any part thereof, said subcontractors and/or delegates and their agents, servants and/or employees, for the purpose of contractual indemnity only, shall all be deemed servants and/or employees of the Contractor so that any negligence on the part of the subcontractors or the delegates or their agents, servants and/or employees shall be deemed the negligence of the Contractor for purposes of indemnity under this Article 7.

It is further agreed that, if the Contractor subcontracts or delegates to others the work or any part thereof, the Contractor will have the subcontractors and/or delegates agree to indemnify the indemnitees in the same manner as the Contractor has agreed to indemnify the indemnitees under this Article 7 and shall deliver a true copy of said agreement to Tishman. In the absence of such agreement or the delivery of same prior to the subcontractors or delegates commencing their work, the Contractor will be held liable to indemnify the indemnitees in the same manner and to the same extent that the subcontractors and/or delegates would have been required to indemnify the indemnitees if such agreement had been made. Whether or not the Contractor secures or delivers an agreement by the subcontractors and/or delegates to indemnify the indemnitees as provided herein, the Contractor's independent duty to indemnify the indemnitees pursuant to the terms of the contract, shall remain in full force and effect.

The Contractor's requirements of indemnity under this Article 7 shall be read cumulatively, and no paragraph of indemnity shall be read so as to restrict in any way any other paragraph of indemnity. The purpose of these indemnity paragraphs is to give the indemnitees the greatest right of indemnity against the Contractor allowed by law.

**INSURANCE**

8. Unless otherwise provided for by the attached insurance Rider, prior to commencement of any work under this contract, and until completion and final acceptance of the Work, the Contractor and each and every subcontractor shall, at its own expense, maintain the following insurance on its own behalf and for the protection of the Owner, Tishman and all other indemnitees named in this Contract:

- a. Comprehensive General Liability
- b. Worker's Compensation
- c. Comprehensive Automobile Liability
- d. Railroad Protective Insurance
- e. All other insurance protection required by Tishman

All of the above coverages shall comply with the specific requirements contained in the insurance Rider hereby attached and made a part of this contract.

**SIGNS**

9. Contractor shall not place any signs, billboards or posters on any portion of the Site, Building, the property or fences (temporary or permanent) surrounding the same, except upon prior written permission received from Tishman, and then only of a size, material, color and type and at a location approved by Tishman.

**TOOL SHEDS**

10. If so required by Tishman, the Contractor shall, at its own cost, provide, erect and maintain, at locations designated by Tishman, fireproof tool sheds for storing the Contractor's tools, materials and equipment. The Contractor shall relocate its tool sheds as requested by Tishman at the Contractor's own cost. Tishman will not be responsible for any clothing, tools, materials or equipment lost, damaged, stolen or destroyed.

**CONDITION OF PREMISES AND ADJACENT PROPERTY**

11. The Contractor shall examine all premises and buildings adjoining or in close proximity to the Site (including, for the purposes hereof, street and sidewalks) and shall be governed thereby for the necessary thorough, safe and satisfactory execution of all work called for herein, whether indicated on drawings and/or specified, or not, and all work and protective measures necessary to keep and leave such premises and buildings in the same condition as they were before commencing work shall be done without any addition to the contract sum. Whenever any parts of the present adjoining buildings interfere with or are interfered with by the work to be performed hereunder, the Contractor shall make whatever changes are made necessary thereby, whether shown on the drawings, called for in the specifications or not shown or not called for. The Contractor, before commencing work on the premises shall, if it sees fit, make a written report of the conditions as found at that time, noting particularly any defects in evidence, taking photographs of the exterior, and, if necessary, photographs of interiors, and shall deliver to Tishman a copy of the written report of the examination and copies of photographs with date of taking thereon. The Contractor shall invite the

Owner and Tishman and the owners of the respective properties and buildings to join with it in the examination of such premises and buildings. Tishman under Owner may at its option be present during the examination.

#### **TISHMAN TO DECIDE IN EVENT OF CONFLICT**

12. Whenever the specifications shall be at variance, or in conflict with any of the provisions of this contract, the Contractor shall advise Tishman and the interpretation and decision of Tishman shall be final and binding on the Contractor.

#### **INSPECTION**

13. The Contractor shall provide sufficient, proper and safe facilities at all times for the inspection of the work by Engineer, the Owner, Tishman, Mortgagees, the Municipal and/or State Inspectors, and the Port Authority and their authorized representatives. If any work is covered up without the approval of Tishman, it must, if required by Tishman, be uncovered for inspection at the Contractor's expense. The Contractor shall afford and provide at all times to the Architect, the Owner, Tishman and their representatives satisfactory evidence of the quality of materials used and complete information in writing as to where materials to be used in the performance of this contract are being manufactured or assembled, and full and free access to all shops and manufacturing for the purpose of informing themselves as to the general condition and progress of the materials herein contracted to be used or installed. The Contractor shall instruct such suppliers and manufacturers to give full and accurate information in writing directly to Tishman on any questions concerning quality, performance, delivery status, and such other data as may be requested by Tishman.

#### **MATERIALS AND EQUIPMENT**

14. All materials and equipment are to be new and of the best quality of the kind specified unless material or equipment of inferior type is distinctly specified, and the Contractor shall, if required by Tishman, furnish satisfactory evidence of the kind and quality of materials and equipment. The Contractor shall, if required by Tishman, obtain the manufacturer's written recommendation that the material and equipment is designed and appropriate for the use intended. Such materials and equipment shall not be subject to any conditional bill of sale, security agreement, financing statement, chattel mortgage, or any other claim, lien or encumbrance. Materials and equipment shall be promptly delivered and distributed where Tishman may require or direct, as needed for the uninterrupted and speedy progress and completion of the work, and so as not to encumber the Site unnecessarily. The Contractor shall, if required by Tishman, cause the materials (1) to be manufactured in advance, (2) to be warehoused either at the factory or elsewhere, as directed by Tishman, (3) to be delivered to the Site promptly when so instructed by Tishman and (4) to be relocated or removed from the Site at the cost of the Contractor. Care must be exercised by the Contractor against overloading any parts of floors, roofs, scaffolding and other installations. All materials delivered at the Site which are to form a part of the work herein specified shall not be removed without the consent of Tishman, but the Contractor will have the right to and shall remove all its surplus material after completion.

#### **LABOR**

15. All work is to be done in the best manner and by persons skilled in the type of work to be performed. All labor employed under this contract shall, at the option of Tishman, to the extent permitted by law, be union and/or that recognized by and in harmony with the local Building Trades Employees' Association and Contractor shall not employ any labor which may cause dissension with other workers on the Site, by whomsoever employed. The Contractor shall give the work constant attention and supervision through a responsible representative or superintendent, and any necessary assistants. Such representative shall be authorized to act for the Contractor in all matters relating to the work, and all directions given him shall be as binding as if given to the Contractor. The Contractor shall also keep a competent foreman at the Site while work is in progress, and enforce strict discipline among its employees, including Tishman's and Owner's regulations with regard to fires, smoking and other hazards. Tishman is given the right to require the Contractor to remove immediately any employee or agent employed at the Site whom the Owner or Tishman deems incompetent or a hindrance to the proper progress of the work, and such person shall not again be employed in the work without the prior consent of Tishman.

#### **PROTECTION OF WORK AND EQUIPMENT**

16. The Contractor during the construction of its work and while it is working on the Site in any capacity whatever, and until the completion of the project, shall protect all finished work and all materials on the Site, all adjacent property and all tools, plants, equipment and other appliances for the Contractor's use or incidental thereto for the execution of this contract, whether furnished by the Contractor or Tishman or Owner, from rain, water, frost and the elements and from all other kinds of damage which may be caused in any manner whatsoever, and the Contractor shall be entirely responsible for any loss or damage done to said work, materials, tools, plant, equipment and other appliances in any manner aforementioned, even though the particular work damaged may be finished at the time and the Contractor may be working in some other portion of the Site, and the Contractor hereby agrees that it will not hold the Intermediate responsible for any such loss or damage, by whatsoever caused.

#### **UNEQUAL WORK OR MATERIALS**

17. The Contractor, upon receiving notice from Tishman that the Contractor has finished inferior, improper or unbound work or materials (including equipment) (whether worked or unworked), or work or materials at variance with that which is specified, will, within twenty-four (24) hours, proceed to remove such work or materials and make good all other work or materials damaged thereby, and, at the option of Tishman, the Contractor shall immediately replace such work or materials with work or materials as specified. The removal, replacement and repair shall be performed on "off hours" or overtime with manpower sufficient, in the

judgment of Tishman, so as not to interrupt or delay the Owner's construction schedule and so as to avoid disturbance to occupants of the completed Site and/or Building. If the Contractor does not remove such unbound work within a reasonable time, Tishman may remove it and may store the material at the expense of the Contractor. If the Contractor does not pay the expenses of such removal within ten (10) days' time thereafter, Tishman may, upon (10) days' written notice, sell such materials at auction or at private sale and shall account for the net proceeds thereof, after deducting all the costs and expenses that should have been borne by the Contractor and all expenses of the sale. Tishman shall have the authority at all times, until final completion and acceptance of the work, to inspect and reject work and materials which in its judgment are not in conformity with the drawings and specifications, and its decision in regard to character and value of work shall be final and conclusive on both contracting parties. If Tishman permits said work or materials to remain, Tishman shall be allowed the difference in value or shall at its election have the right to have said work or materials repaired or replaced, as well as the damage caused thereby, at the expense of the Contractor, at any time within one year after the completion of the entire project, or within such longer period as may be covered by any guaranty; and neither payments made to the Contractor, nor any other acts of Tishman or Owner, shall be construed as evidence of acceptance, waiver or stoppage. Any expense incurred by the Owner or Tishman in connection with the foregoing, shall be borne by the Contractor, and Tishman may withhold money due to the Contractor or recover money already paid to the Contractor, to the extent of such expense.

#### **FITTING OF THIS WORK WITH OTHER WORK**

18. The Contractor will furnish all labor, implements, tools, scaffolding, rigging, hoisting and other items required to carry on its work, in the most approved and up-to-date manner, and shall do the necessary incidental cutting of woodwork, brick, stone, masonry, plaster, cement, iron, metal or other material for the installation of its work, and will do all patching in connection therewith; but cutting is to be avoided where possible. The Contractor will, if required by Tishman, do all necessary cutting, fitting and patching of its own work that may be required to make the several parts come together properly, and fit the work to receive or be received by work of other contractors shown upon, or reasonably implied by, the drawings and specifications. The Contractor shall not endanger any work by cutting, digging or otherwise. In laying out its work, Contractor shall also examine the work installed by others and the shop drawings of the work to be installed by others prior to the beginning of the installation of its own work. If the Contractor begins its work, the starting of such work shall be conclusively deemed to mean that it accepts all preceding work as suitable and proper to receive its work, unless it has notified Tishman in writing to the contrary before starting. In the event of failure of the Contractor and another contractor to agree as to the extent of cooperation to be exhibited or of work to be done by either, to insure the carrying out of their respective agreements, such disagreement shall be resolved by Tishman whose decision shall be final and binding upon all parties.

#### **RUBBISH REMOVAL**

19. The Contractor shall at all times keep the Site free from accumulation of waste materials or rubbish caused by its employees or work and, at the completion of the work, it shall remove all its tools, scaffolding and surplus materials and shall leave its work broom clean or its equivalent. The Contractor shall daily, or less frequently as Tishman may require, collect its rubbish at places where directed by Tishman and shall remove the rubbish from the Site without unnecessary delay. The Contractor shall do all required cleaning within twenty-four (24) hours notice from Tishman, whether verbal or in writing, and if the Contractor fails to do such cleaning to the satisfaction of Tishman, Tishman may do the cleaning and charge the Contractor for all costs incurred.

#### **COMPLIANCE WITH LAW**

20. The Contractor shall properly guard its work and areas affected by its work and properly perform its work to prevent any person or persons from being injured by it or by the condition of the Site or by the condition of any other place where work incidental to the project is being performed, and shall in all respects comply with any and all provisions of the law and of local ordinances relating to construction work, including but not limited to maintenance of danger signals, barriers, lights and similar safeguards respecting falling materials and in and about all excavations, protruding nails, hoists, openings, scaffolding, stairways and other parts of the work and adjacent and other areas where the same are required. The Contractor shall procure and pay for all permits, licenses, approvals, certificates and authorizations necessary to the prosecution and completion its work and deliver evidence of the same to Tishman. All work shall be done in strict accordance with all laws, ordinances, rules, regulations and requirements of the Board of Underwriters, and Port Authority "as though a private corporation", and all Municipal, State, Federal and other authorities having jurisdiction. Where drawings and specifications conflict with the law, the law is to be followed. The Contractor shall promptly notify Tishman, the respective departments or official bodies when its work is ready for inspection and shall, at once, do all work required to remove any violations or to comply with such inspections, without additional charge to Tishman. The Contractor shall perform all work necessary to obtain approvals of the authorities mentioned above without additional cost to Tishman.

#### **LIENS**

21. If at any time, there shall be evidence of any lien or claim for which, if established, the Owner or Tishman might become liable, or which should, in any event, be charged to the Contractor, Tishman shall have the right to retain, out of any payment due or thereafter to become due, an amount sufficient to indemnify the Owner and Tishman against such lien or claim, including bond premiums and attorneys' fees, and to apply the same in such manner as Tishman deems proper to secure protection and/or satisfy such claims and liens. Should there prove to be any such lien or claim after all payments are made to the Contractor, it shall repay the Owner and Tishman all sums which they may be compelled to pay in discharging such lien or claim, including any and

all legal fees or other charges.

#### **PATENTS**

22. The Contractor will not unlawfully use or install any patented article, and agree to indemnify and save the Indemnitees harmless from any claim and against all damage which the Indemnitees may sustain by reason of the use or installation of such patented article, and at its own cost and expense to defend any action, whenever instituted, brought against the Indemnitees or their respective successors or assigns, founded upon the claim that any such article, or any part thereof, infringes any such patent. In the event of any such claim or damage, Tishman may withhold from any payment due or thereafter to become due to the Contractor, an amount sufficient in its judgment to protect and indemnify the Indemnitees for any such claim or damage, or Tishman may require the Contractor to furnish a surety bond satisfactory to Tishman providing for such protection and indemnity, which bond shall be furnished by the Contractor at its own cost and expense, within five (5) days after written demand has been made therefor. The Contractor shall pay all royalties, fees and other claims in connection with patented articles which it uses under this contract. In the event of any injunction or legal action tending to stop the work, Tishman shall have the privilege of requiring the Contractor to substitute such other articles of like kind as will make it possible to proceed with and complete the work, and all cost and expenses occasioned thereby shall be borne by the Contractor.

#### **ASSIGNMENT**

23. (a) The interests, rights, powers, duties and liabilities of the parties hereto shall be binding upon, and shall inure to the benefit of, the respective successors and assigns of the parties; but the Contractor shall not assign or transfer its interest in this contract or assign or transfer any right it may have under the same or the proceeds payable hereunder or any part hereof, or subcontract or delegate to others the work or any part thereof, unless the written consent thereto of Tishman is first procured, and any assignment or subcontract made in violation of this provision shall be null and void. Any such subcontract shall provide that it is subject to the provisions of this contract and shall provide that the Contractor has all the rights and remedies against the subcontractor that Tishman has against the Contractor under this contract and shall expressly incorporate all such provisions as far as the same are applicable and no such subcontract shall be valid without the consent of Tishman endorsed thereon. The Contractor agrees that it is as fully responsible to Tishman for the acts and omissions of its subcontractors and of persons either directly or indirectly employed by them, as it is for the acts and omissions of persons directly employed by it. Nothing contained in this contract shall create any contractual relationship between any subcontractor and Tishman, or create any obligation on the part of Tishman to pay or to see to the payment of any sum to any subcontractor. Tishman may, without limitation, assign this contract, or any portions thereof, or any rights arising hereunder, including any guarantees or warranties of workmanship or material.

#### **CHANGE OF STATUS**

(b) In the event that the project should be abandoned by the Owner, Tishman shall have the right, at any time, to send a written notice to the Contractor, terminating this contract, in which event, Tishman (i) shall pay the Contractor for all work actually provided up to the date of the sending of such notice and (ii) shall reimburse the Contractor for all costs and expenses actually expended and incurred (amounts "incurred" to be limited as though Contractor's supplies and subcontractors had received a similar notice and were bound by a similar provision in their agreements) up to said date which are not cancellable or recoverable by the Contractor, and the Contractor shall not receive any markup for overhead and profit (except to the extent of such reasonable amount as may be part of the amount Tishman pays the Contractor for work actually performed pursuant to clause (i) immediately above) and the parties hereto shall, except as otherwise provided hereinabove, be released of all future liability or obligations under this contract.

#### **TIME OF BEGINNING**

24. The Contractor shall commence and complete work and deliveries of material at the times hereinafter mentioned or as soon thereafter as required by Tishman. Where the dates for the commencement or completion of work or the making of deliveries are not specified after the time fixed for such commencement, such work or deliveries or the part of the same concerning which no dates are given shall be commenced on three (3) days' notice from Tishman and shall be prosecuted and completed with all possible diligence and speed or as otherwise directed by Tishman. The time stated in this contract for the commencement, prosecution and completion of this work and the deliveries and installation of material shall be deemed of the essence of this contract.

#### **COOPERATION WITH OTHER CONTRACTORS**

25. The Contractor must keep itself informed of the conditions at the Site, so as not to delay the delivery of materials or the installation of the work called for in this contract. It is expressly agreed that the Contractor must cooperate with and extend every possible facility to other contractors employed at the Site, and must afford all other contractors reasonable opportunity for the introduction and storage of their materials and execution of their work. The Contractor recognizes that efficient construction of the project requires that all the work thereon be coordinated and therefore agrees to accept the determination of Tishman as to the time when work of the Contractor shall begin and the manner in which it shall progress in connection with other work involved in the said construction. It further agrees that its direction of Tishman with respect thereto shall be complied with fully and promptly.

**DELAYS IN GENERAL**

26. (a) Should the Contractor be delayed by fault of the Owner, Tishman, Architect or any other contractor, or by abnormal weather conditions, then the time fixed for the completion of the work shall be extended for a period equivalent to the time so lost. The Owner, Tishman or Architect shall not be held responsible for any loss or damage sustained by the Contractor through delay caused by the Owner, Tishman, Architect or any other contractor, or by abnormal weather conditions, or by any other cause, pending a review on a case-by-case basis, depending on the cause of the delay.

**STRIKES**

(b) Should the Contractor be delayed by general strikes or lockouts throughout the trade, then time for the completion of the work shall be extended for a period equivalent to the time lost, or Tishman shall, at its option, have the right to terminate this contract and to employ other contractors to finish the work and provide the materials therefor, and to pay the Contractor pro rata for materials and work already supplied, or this contract price, reduced by the cost to Tishman of completing the work for which provision is made herein, whichever is less.

**NOTICE TO TISHMAN**

(c) None of the foregoing causes of delay shall be deemed a valid excuse for failure to start, perform or complete the work or deliveries at the times specified, unless the cause of such delay is beyond the Contractor's control and arose without its fault or negligence, and the Contractor has notified Tishman in writing of the alleged cause of delay within forty-eight (48) hours after the commencement thereof.

**ADDITIONAL LABOR**

(d) Should the Contractor fail, refuse or neglect to supply a sufficiency of workmen or to deliver the materials with such promptness as to prevent the delay in the progress of the work, or fail in any respect diligently to commence and prosecute the work and proceed to the point to which the Contractor should have proceeded hereunder, or if the different parts thereof are not commenced, prosecuted, finished, delivered or installed on time as herein specified or if the Contractor shall fail in the performance of any of the covenants of this contract, Tishman shall have the right to direct the Contractor, upon three (3) days' written notice, at the Contractor's cost and expense, to furnish such additional labor and to expedite deliveries of materials (or Tishman may furnish such labor and expedite such deliveries at the cost of the Contractor), which labor or expediting shall, in Tishman's opinion, be sufficient to speed up and complete the work as herein provided.

**OVERTIME**

(e) If such additional labor shall not be available, Tishman shall have the right to direct the Contractor, at the latter's own cost and expense, to work overtime to such an extent as will be sufficient, in Tishman's opinion, to speed up and complete the work as herein provided.

**REMEDIES OF TISHMAN**

(f) The Contractor agrees that if it delays the speedy progress of the work so as to cause loss or damage to Tishman or to other contractors, then it shall reimburse Tishman and such other contractors for such loss. In addition to the foregoing, Tishman shall have the right, after three (3) days' written notice to the Contractor, to provide any such labor, additional labor, overtime labor and materials and to deduct the cost thereof from any moneys then due or thereafter to become due to the Contractor. Permission by Tishman for delayed finishing shall not be construed as a waiver of Tishman's right to be compensated by the Contractor for damage resulting from such delay.

**TERMINATION BY TISHMAN**

(g) If the Contractor shall fail to comply with any of the provisions of this contract on its part to be performed, Tishman shall have right after three (3) days' written notice to the Contractor, to terminate this contract and the employment of the Contractor, to take possession of the Contractor's materials, tools, plant, equipment and appliances used or to be used for the construction, whether on or off the Site, (and for that purpose to enter the premises of the Contractor) and to cause the entire remaining work to be finished and the materials therefore to be furnished by another contractor or contractors or by day's work, as Tishman deems fit; and the Contractor shall not be entitled to any further payment until all the work specified in this contract shall be finished, at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expense incurred by Tishman in finishing the work, including overhead, attorney's fees and damage incurred through the default of the Contractor, such excess shall be paid to the Contractor, but if such expense shall exceed such unpaid balance, the Contractor shall pay the difference to Tishman. After the work has been completed, the Contractor may remove such materials, tools, plant, equipment and appliances as remain, but neither the Owner nor Tishman shall be liable for anything that has been lost, stolen, destroyed, worn or used. In addition, without terminating this contract, Tishman may, under the circumstances set forth above, terminate the Contractor's right to proceed with any part of the work or with the furnishing of any part of the labor and/or material.

**PERFORMANCE BOND AND PAYMENT BOND**

27. The Contractor, within five (5) days after notice by Tishman given at any time prior to the completion of the work, shall furnish to Tishman performance and payment bonds issued by a surety company satisfactory to Tishman, and in form satisfactory to Tishman, guaranteeing the due and prompt performance of all of the terms of this contract on the part of the Contractor to be performed, and the prompt payment of all amounts to

be paid by the Contractor for labor and materials. In the event that the Contractor fails to furnish the bonds as aforesaid, Tishman shall have the option of declaring the Contractor to be in default and of exercising any or all of the rights set forth in this contract. Bonds shall be written at standard rates of surety companies authorized to do business in the State in which the site is located and may, at Tishman's option, be placed directly by Tishman.

#### **BANKRUPTCY**

28. If, prior to the commencement of this contract, the Contractor shall be adjudged a bankrupt or becomes insolvent, or if any petition under the Bankruptcy Act of the United States is filed by or against the Contractor, or if it should make an assignment for the benefit of creditors, or if a receiver of the Contractor's property should be appointed, or if any judgment is taken against the Contractor and execution is issued thereon, or if the property of the Contractor passes into the hands of any legal representative, then and in any of those events, Tishman may, at its option, terminate this contract and the employment of the Contractor, with the same rights and privileges set forth in Article 28.

#### **ACCELERATION OF PERFORMANCE**

29. If Tishman shall desire the Work of the Contractor hereunder to be performed with greater speed than is herein contracted for, the Contractor shall, without affecting or abridging the rights of Tishman set forth in any Article hereof, upon receipt of a written order from Tishman, employ overtime Work as so ordered. Direct cost of the premium time for all labor utilized by the Contractor in such overtime work as shown on the time slips checked and approved each day by Tishman shall be paid by Tishman to the Contractor, but no overhead, supervision costs, commission or other costs shall be charged thereon.

#### **NO WAIVER**

30. The failure of Tishman to insist in any one or more instances upon a strict compliance with any provision of this contract, or to exercise any option herein conferred, shall not be construed as a waiver or relinquishment of the right of Tishman thereafter to require a compliance with such provision of this contract, or a waiver of the right of Tishman thereafter to exercise such option, but such provision or option will remain in full force and effect.

#### **GUARANTEE**

31. The Contractor hereby agrees to repair and make good any damage, defects or fault in the work or the Building that may appear within the one year guaranty period specified in the immediately following sentence, or within such longer period as may be provided in the specifications, any separate guaranty, or any other writing, as the result of imperfect or defective work or materials (including equipment) furnished by the Contractor (whether such defects or imperfections be patent or latent) or work or materials (including equipment) at variance with what is specified. The guaranty period for all work and materials (including equipment) furnished or installed (except where a longer period is provided as aforesaid) shall be one year from the date of (a) completion of the entire project, (b) the making of final payment by Tishman to the Contractor, (c) the issuance of a final Certificate of Occupancy, or (d) the discontinuance of the use of permanently installed work for temporary construction purposes, whichever is latest. Contractor hereby agrees to re-perform, repair and replace any and all damage, defects or fault in the work or the Building appearing within the guaranty period as the result of imperfect or defective work or materials (including equipment) furnished by it within three (3) days from receipt of written notice and without cost to, and to the satisfaction of, Tishman. All such re-performance, repair and replacement shall be subject anew to the guaranty hereunder, provided that the guaranty period applicable to such re-performance, repair and replacement shall be a one year period commencing on the date that such re-performance, repair and replacement is completed. All rights and remedies acquired by Tishman through the guaranty provided under this Article and through any other guaranties relating to the Contractor's work under this contract shall inure to the benefit of the Owner, and its successors and assigns. In addition to the foregoing, any equipment warranties secured by the Contractor, including those in excess of one (1) year, and any bond or guaranty which may be required under the plans or specifications, shall also inure to the benefit of the Owner, and its successors and assigns.

#### **PAYROLL AND SALES TAXES**

32. The Contractor hereby accepts exclusive liability and shall hold the Owner and Tishman harmless for the payment of contributions pursuant to any Unemployment Insurance Law, Old Age Retirement Benefits Law and any other or similar Social Security Law or Payroll or Income Tax now or hereafter enacted by any City, State or Federal Government or any subdivision of either, levied or based upon the payroll of the Contractor for employees partly or wholly engaged in the work covered by this contract. The Contractor agrees to furnish all necessary information to enable Tishman to comply fully with all the requirements of such laws. All sales and use taxes are included in the contract price and are to be paid by the Contractor. In the event that any law is or has been passed, or any rule or regulation pursuant thereto is enacted, which requires the Owner or Tishman to pay, either directly or indirectly, the amount of any such tax, or should any such law, rule or regulation direct the Owner or Tishman to collect the same, or make the Owner or Tishman liable for the collection thereof, or make the Owner or Tishman responsible therefor, it is covenanted and agreed that the Contractor shall fully and completely make all payments therefor, and shall fully and completely indemnify and save the Owner and Tishman harmless from any and all such taxes. It is further agreed that Tishman shall have the right to deduct the amount of any and all such taxes from the contract price at any time Tishman may, in its sole discretion, deem it advisable, to the end that the Owner and Tishman may not be under liability therefor whatsoever, it being agreed that Tishman shall have the right to deduct any and all such moneys from the next payments due under this contract and from the retained percentages. If any Sales

Tax provides any exemption from tax for capital improvements, Tishman shall seek from Owner the necessary certification and provide same to Contractor and Contractor agrees not to charge tax with respect to the furnishing of labor and/or materials as long as said exemption provision is in effect.

#### PRICE NOT ADMITTED FOR RISING COSTS

33. Tishman agrees to pay the sum herein set forth in current funds for such work and materials, and in the manner and at the times herein set forth. Said sum is intended to include all increases in cost, foreseen or unforeseen, including, without limiting the generality of the foregoing, taxes, labor and materials, all of which is to be borne solely by the Contractor. All loss or damage arising from any of the work performed under this contract through unforeseen or unusual obstructions, difficulties or delays which may be encountered in the prosecution of same or through the action of the elements shall be borne by the Contractor. It is mutually agreed between the parties hereto that no payment made under this contract, shall be conclusive evidence of the performance of this contract, either wholly or in part, nor shall it be construed to be an acceptance of defective work or improper material, or an approval of any of the items in any requisition made or bill rendered. All bills or requests for payments must be presented in writing.

#### SCHEDULE OF VALUES

34. (a) Prior to the commencement of work hereunder, Contractor shall prepare and submit to Tishman, for Tishman's approval, a "Schedule of Values" itemizing 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 Contract Price.

#### PROGRESS PAYMENTS

(b) On or before the 26th day of each calendar month the Contractor shall forward to Tishman, for its approval, a written statement showing the amount due or to become due and including the last day of that calendar month. The Contractor shall attach to each such application for payment, an acknowledgment of payment to the date of the last advance, as well as a statement of any back charges and credits to which Tishman 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. All requisitions shall be made on and in compliance with Tishman's standard form of Contractor's requisition and shall be subject to the terms thereof, including the submission of sworn statements from Contractor's subcontractors and vendors. Tishman shall, on or about the first day of each calendar month, remit to the Contractor 90% of the amount so requisitioned by the Contractor in the month prior to the month of payment and as approved by Tishman. In addition to the said retainage of 10%, Tishman 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 Tishman that the cost of the work remaining to be done under this contract does not exceed 90% of the balance of the contract price unpaid. In no event will Tishman be required to pay in excess of 90% of the contract price prior to the completion of all the work the Contractor is obligated to perform under this contract.

#### WITHHOLDING BY TISHMAN

(c) Tishman may withhold payments to the Contractor, 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 to avoid the reasonable probability of the filing of liens or claims against the Owner, the project or the Contractor, and (3) damage to another contractor by reason of acts or failure to act of the Contractor.

#### FINAL PAYMENT

(d) The balance owing to the Contractor under the terms of this contract shall be due and payable within sixty (60) days after

- (1) the completion of all work in this contract, including patching and the furnishing of missing material,
- (2) acceptance thereof by the Owner and Tishman, and
- (3) receipt by the Owner and Tishman of (A) all Contractor's "as built" drawings, records and related data; (B) all guarantees and warranties to be provided hereunder; (C) all permits, licenses, approvals, certificates and authorizations required by any authority having jurisdiction; (D) a general release from the Contractor on Tishman's standard form in favor of the Owner, Tishman and Owner's sureties, if any; and (E) satisfactory proof that all claims, including taxes, growing out of the work to be performed hereunder and any liens growing out of the same which shall have been filed or recorded, have been released.

#### TRUST FUNDS

35. Any and all funds payable to the Contractor hereunder are hereby declared to constitute trust funds in the hands of the Contractor, to be applied first in the payment of claims of subcontractors, architects, engineers, surveyors, laborers and materialmen arising out of the described work, to claims for utilities

furnished and taxes imposed, and to the payment of premiums on surety bonds and other bonds filed and premiums on insurance covering during the construction of the described work, before application to any other purpose. Whenever required by the Owner or Tishman, it shall be the duty of the Contractor to file with the Owner and Tishman, a verified statement, in form satisfactory to the Owner, certifying the amounts then due and owing from the Contractor for labor and materials furnished under the terms of this contract, setting forth herein the names of the persons whose charges or claims for labor, materials or supplies are unpaid, and the amount due each respectively.

#### **CHANGES AND EXTRAS**

35. Tishman, without invalidating this contract, may order extra work or make changes by starting, adding to or deducting from the work, the Contract Price to be adjusted accordingly. The Contractor shall not make any alterations or omit anything, or perform additional or extra work, except upon written order signed by Tishman. Tishman shall at any time have the right to order extra work to be performed on (a) Lump Sum Proposal, (b) Unit Prices, or (c) Time and Material Basis. No request for payment for extra work will be honored unless accompanied by such written order. All such work shall be executed under the provisions of this Contract. Tishman's choice of the manner in which the extra work is to proceed is described as follows:

##### **(A) Lump Sum Proposal**

The Contractor will within ten (10) days after receipt of Tishman's communication submit his Lump Sum Proposal. This Proposal will be itemized and segregated by labor and materials for the various components of the work. No aggregate labor total will be acceptable. The Contractor will furnish with his Proposal supporting data consisting of Subcontractor's and vendor's signed proposals. The Contractor will be allowed 10% for overhead and profit on labor performed by his own forces and material purchases.

Subcontractors, likewise, will be permitted an allowance of 15% for overhead and profit on their own work. The Contractor will be further allowed a 5% commission on all of his subcontractor's work, 5% overhead and profit will be allowed on equipment rented by the Contractor or subcontractor. The Contractor may include in his labor proposal only those workmen and foremen directly involved in the work. All other supervision is included in the 10% overhead and profit allowed. Contractor will be entitled to payment for labor, union fringe benefits, insurance, unemployment insurance, social security and taxes paid on labor. No overhead or profit will be allowed on social security, unemployment insurance or other insurances or premium fees. Contractor's material costs will include invoiced costs, transportation, applicable sales or use taxes, actual rental costs or discounted local published rental rates. Use of small tools is included in the Contractor's overhead and profit. Overhead and profit as outlined above includes all other costs whatsoever beyond those enumerated. If any of the extra work included in the Lump Sum Proposal is covered by Contract Unit Prices, Tishman may elect to use these unit prices within the Lump Sum Proposal. No overhead and profit may be applied to these unit prices. The entire value of the change will be the net difference of the work to which will be applied overhead and profit percentages.

##### **(B) Unit Prices:**

The Contractor will submit within ten (10) days after receipt of Tishman's communication submit to written proposal itemizing the quantities of each item of work for which there is an applicable Unit Price contained in the Contract. The quantities must be itemized in relation to each specific contract drawing. Unit prices will be applied to net differences of quantities of the same item.

##### **(C) Time and Material**

Should Tishman elect to have any extra work performed on a time-and-material basis in lieu of Lump Sum Proposal or Unit Prices, and so notifies the Contractor in writing, the Contractor shall perform such work at actual cost (without any charge for administration, clerical expense, supervision or superintendence of any nature whatever, including foreman, or the cost, use or rental of tools or plant) plus 15 percent for overhead and profit. To this figure the Contractor may add Unemployment Insurance and Old Age Retirement Benefits taxes paid on labor required for the extra work. Moreover, if the Contractor procures the performance of extra work by others than its own employees, the Contractor shall not be entitled to greater payment than that to which it would have been entitled if it had itself furnished the labor and materials required in connection with the work to be performed under this provision. The Contractor will submit to Tishman daily time and material tickets. These tickets will include the identification number assigned to this work, the location and description of the work, the classification of labor employed including workmen's names and social security numbers, the material used, the equipment rented (not tools) and any other information ordered by Tishman.

Where any such additional work is ordered as provided in this Contract, the Contractor shall, for such purposes, permit the Owner and Tishman to audit its books. The Contractor shall produce any and all data which the Owner and Tishman may request for the purpose of determining the correctness of the charges. The Contractor shall keep such bill and detailed accounts as may be necessary to reflect its operations with respect to such changes and extras, and the system adopted shall be such as to be satisfactory to the Owner and Tishman. The Owner, Tishman, their agents and employees, shall be afforded access at all reasonable times to the Contractor's, Subcontractor's and Vendor's books, correspondence, instructions, receipts, vouchers, memoranda and records of all kinds, relating to all work under this Contract as well as to such changes and extras, and the Contractor shall preserve the same for a period of six years after final payment hereunder. In regard to the foregoing and generally, the Contractor hereby authorizes the Owner and Tishman to check directly with its suppliers of labor and materials the charges for such labor, materials and other items appearing in the Contractor's bills rendered to Tishman, to confirm balances due and obtain sworn statements and vouchers of lien.

In the case of disagreement as to the amount to be paid or credited the Contractor shall promptly comply with the order and payment to Contractor or credit to Tishman shall be made in accordance with the contract payment provisions up to the reasonable estimated value of the change as determined by Tishman.

Unless and until Tishman shall elect either the lump sum, the unit price method or time and material, the Contractor shall maintain and submit daily records of labor, material and equipment used in the work which have been acknowledged thereon daily by Tishman. In any event, Tishman shall have the right to order such changes in the work to proceed promptly prior to the submission of any proposal and/or Tishman's election.

Any work included in this contract shall be performed by the Contractor at no extra cost despite any order to the Contractor which might contemplate such work as an extra.

#### **NO DELAY BY CONTRACTOR**

37. Notwithstanding the fact that a dispute, controversy or question shall have arisen in the interpretation of any provision of this contract, the performance of any work, the delivery of any material, the payment of any moneys to the Contractor, or otherwise, the Contractor agrees that it will not directly or indirectly stop or delay any work or part of its work on its part required to be performed or stop or delay the delivery of any materials on its part required to be furnished hereunder, pending the determination of such dispute or controversy.

#### **SCHEDULING**

38. The scheduling of construction operations for the project will be monitored by a method to be chosen by Tishman. The Contractor, and its subcontractors, if required, shall furnish all scheduling information requested by the Owner or Tishman at such time and in such form and detail as requested for its particular trade.

Such information shall be furnished within 2 weeks of the request and shall further be revised from time to time when requested either prior to and/or at any time during performance of its work.

Information submitted by the Contractor or others, acceptance or approval by the Owner or Tishman and the scheduling that may be developed and implemented by the Owner or Tishman shall not constitute the basis of any claim by Contractor or its subcontractors for damage or delay nor excuse the Contractor's performance as required herein.

#### **BILLS AND NOTICES**

39. A bill, statement, notice or communication which one of the parties hereto desires to serve upon the other shall be deemed sufficiently given and rendered if sent by registered or certified mail, return receipt requested, addressed to the other party at the address set forth herein. The time of the rendition of such bill, statement, notice or communication shall be deemed to be the time when the same was mailed and each day's notice shall be construed to mean a period of twenty-four (24) hours from the time of mailing.

#### **RIGHTS AND REMEDIES**

40. All rights and remedies of Tishman under this Contract shall be cumulative and shall be in addition to all other rights and remedies of Tishman provided by law.

#### **NO ORAL MODIFICATIONS**

41. This contract constitutes the entire agreement between the parties. The Contractor affirms and agrees and represents and warrants that only the statements, representations and promises expressly contained in this Contract have been relied upon by him and have induced him to enter into this Contract. No provision of this contract shall be changed or modified, nor shall this Contract be discharged, in whole or in part, except by an agreement in writing signed by the party against whom the change, modification or discharge is claimed or sought to be enforced, nor shall any waiver of any of the conditions or provisions of this contract or of any of the rights of either of the parties hereunder be effective or binding unless such waiver shall be in writing and signed by the party claimed to have given, consented to or suffered the waiver. In the event any written change or modification is made as aforesaid, Tishman's rights and remedies under this contract and under any bond given to the Owner or Tishman, in accordance with the requirements of this Contract, shall in no way be prejudiced or impaired, and the bond shall apply and be in full force and effect with respect to this contract as so changed and modified.

#### **SAYING CLAUSES**

42. If any of the provisions hereof shall contravene or be invalid under the laws of the jurisdiction where it is to be performed, such contravention or invalidity shall not invalidate the whole contract or any other provision thereof, but this contract shall be construed as if not containing the provisions held to be invalid, and the rights and obligations of the parties shall be enforced accordingly.

#### **EQUAL OPPORTUNITY CLAUSE**

43. In connection with the execution of this contract, the Contractor shall not discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin. Contractor shall use best efforts to hire both minority and female employees whenever qualified individuals apply for employment. The Contractor shall take affirmative action to ensure that applicants are employed, and that employees are treated during their employment without regard to their race, color, religion, sex or national origin. Such action shall include, but not be limited to the following: employment, upgrading, demotion or

transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In conjunction with this provision, the Contractor shall conduct its business in accordance with all federal, state and local laws and/or ordinances pertaining to programs concerning affirmative action and equal opportunity.

#### **EXculpATION OF PARTNERS**

44. No general or limited partner or shareholder of Tishman or other holder of any equity interest in Tishman shall be personally liable to this agreement or other holder of any equity interest in any such party shall be personally liable for the performance of any such party's obligations under this agreement. The Contractor will not enter into any agreements with third parties without the inclusion of any exculpatory clause similar to that set forth herein, limiting Tishman's obligations to Tishman's interest in the property.

#### **NO RESPONSIBILITY BY OWNER**

45. While Owner is a third party beneficiary of this contract, nothing in this contract shall create or result in any obligation or responsibility from Owner to Contractor and Contractor shall have no rights or remedies under this contract against Owner. Without limitation of the generality of the foregoing, it is specifically understood and agreed that Owner has no obligation under this contract to pay or cause the payment of any sum to Contractor.

#### **HEADINGS**

46. Headings used in this contract are inserted only as a matter of convenience and for reference, and they in no way define, limit or describe the scope or intent of this contract, nor do they in any way affect this contract.

#### **OWNER BENEFICIAL OCCUPANCY**

47. If, before final acceptance the Owner desires to occupy the project or any part thereof which is completed or partly completed, or to place or install therein certain equipment and furnishings; the Owner shall have the right to do so and the Contractor shall in no way interfere with or object to such occupancy by the Owner.

#### **AFFIRMATIVE ACTION**

48. Tishman has a long standing practice of encouraging the participation of Minority and Women owned firms in its business opportunities. Accordingly, the contractor shall make every good faith effort to subcontract with minority and women owned firms in the performance under this contract. Additionally, Tishman is an Equal Employment Opportunity Employer and will expect all the contractors to secure Minorities and Women in the workforce to the maximum extent possible. This policy shall be supplemented by such specific goals and obligations imposed by governmental authorities and/or as otherwise specified in the Contract documents.

#### **CORRELATION AND INTENT OF THE CONTRACT DOCUMENTS**

49. (a) The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work by the Contractor. The Contract Documents are complementary, and what is required by one shall be as binding as if required by all; performance by the Contractor shall be required only to the extent consistent with the Contract Documents and reasonably tolerable from them as being necessary to produce the indicated results. Dimensions shall be figured rather than determined by scale or rule.

(b) In the event of conflicts or discrepancies among the Contract Documents, interpretations will be based on the following priorities: (1) The Agreement, (2) Addenda, with those of later date having precedence over those of earlier date, (3) Rider A of the Contract for Construction, (5) Drawings and Divisions 2 through 7 of the Specifications.

(c) Organization of the specifications into divisions, sections and articles, and arrangement of Drawings shall not control the Contractor in dividing the Work among Subcontractors or in establishing the extent of Work to be performed by any trade.

(d) Unless otherwise stated in the Contract Documents, words which have well-known technical or construction industry meanings are used in the Contract Documents in accordance with such recognized meanings.

#### **OWNERSHIP AND USE OF DRAWINGS, SPECIFICATIONS AND OTHER INSTRUMENTS OF SERVICE**

50. (a) The Drawings, Specifications and other documents, including those in electronic form, prepared by the Architect and the other consultants are Instruments of Service through which the Work to be executed by the Contractor is described. The Contractor may retain one set. Neither the Contractor nor any Subcontractor, Sub-subcontractor or material or equipment supplier shall own or claim a copyright in the drawings, Specifications and other documents prepared by the Architect or the other consultants, and unless otherwise indicated the Architect and the other consultants shall be deemed the authors of them and will retain all common law, statutory and other reserved rights, in addition to the copyrights. All copies of Instruments of Service, except the Contractor's record set, shall be returned or suitably accounted for to the Architect, on request, upon completion of the Work. The Drawings, Specifications and other documents prepared by the Architect and the other consultants, and copies thereof furnished to the Contractor, are for use solely with respect to this Project. They are not used by the Contractor or any Subcontractor, Sub-Subcontractor or material or equipment supplier on other projects or for additions to this Project outside the scope of the Work without the

specific written consent of the Owner, Architect and the other consultants. The Contractor, Subcontractors, Sub-subcontractors and material or equipment suppliers are authorized to use and reproduce applicable portions of the Drawings, Specifications and other documents prepared by the Architect and the other consultants appropriate to and for use in the execution of their Work under the Contract Documents. All copies made under this authorization shall bear the statutory copyright notice, if any, shown on the Drawings, Specifications and other documents prepared by the Architect and the other consultants. Submittal or distribution to meet official regulatory requirements or for other purposes in connection with this Project is not to be construed as publication in derogation of the Architect's or other consultants' copyrights or other reserved rights.

- (b) The Contractor agrees to release, indemnify, defend and hold harmless the Indemnitee, from any and all claims, demands, causes of actions, suits, liabilities, losses, damages, costs, and expenses, including but not limited to attorneys fees, expert witness fees and court costs, arising from or in any way connected with the use, modification, or interpretation of the Instruments of Service provided by the Indemnitee, whether or not caused in whole or in part by the comparative fault of any Indemnitee.
- (c) The Contractor acknowledges that this service is not a sale of goods, that the Instruments of Service are provided "as is", and that the Architect makes no warranties, either express or implied, of merchantability, fitness for any particular purpose in connection with the service of providing the Instruments of Service, or that they will be usable or accurate, which warranties and representations are expressly disclaimed.
- (d) The Contractor agrees that use of Instruments of Service in electronic form a) is not a substitute for Contractor's professional judgment; b) does not relieve the Contractor from applying the appropriate standard of care and skill relevant to the use of the Instruments of Service; c) are only to be used as a tool to assist the Contractor in connection with the Project; and d) the Contractor shall be solely responsible for verifying the accuracy of all results created with the use of the electronic Instruments of Service.

#### **CONFIDENTIALITY AND DOCUMENT SECURITY**

51. (a) In connection with the Project and the work described herein, (i) Owner, Tishman, Skidmore, Owings & Merrill ("SOM") or other persons or entities may disclose to Contractor certain confidential and privileged documents, materials and other information (the "Project Information"), and (ii) Consultant may prepare certain confidential and privileged documents, materials and other information (collectively, the "Work Product"). The Project Information and the Work Product will include any plans, specifications, drawings, data, designs, budgets, products, manuals, reports, analyses, calculations, writings, correspondence, documents, maps, notebooks, tracings, photographs, negatives, computer programs/memories, worksheets, findings, recommendations, memoranda and any other documents, materials or information of any type relating to the Project or the work described herein, whether in draft or in final form, and whether transmitted orally, electronically, in writing, or by any other media, and (x) delivered, provided or made available by (or on behalf of) Owner, SOM or Tishman to Contractor, in the case of the Silverstein Information, and (y) prepared, created or submitted by Contractor in connection with the Project or the work, in the case of the Work Product (the Project Information, together with the Work Product, shall be hereinafter referred to as the "Confidential Information").
- (b) Contractor shall (i) keep the Confidential Information strictly confidential, privileged, and secure, and (ii) in connection with the Project and the work described herein, comply with any policies or procedures adopted by Owner with respect to the security, retention, distribution, labeling and destruction of Confidential Information (the "Security Policies").
- (c) Contractor shall not (i) use the Confidential Information other than directly in connection with the Project and the work described herein, or (ii) issue, make or authorize any disclosure, press statement, press release, correspondence or otherwise participate in any publicity by any other means in connection with the Project or the work without the prior written consent of Owner. In addition, Contractor shall not issue, disclose, disseminate, make available, publish, provide copies or otherwise reveal the Confidential Information to any other third party whatsoever except to (x) its officers, directors, and direct employees, with a specific "need to know", or (y) its subcontractors or other persons or entities (A) with the specific prior written authorization of Owner, and (B) who have executed a Confidentiality Agreement in the form required by Owner.
- (d) Contractor shall (i) exercise its best efforts to inform its employees and its subcontractors' employees of the confidentiality and non-disclosure obligations provided herein, (ii) cause its employees and its subcontractors' employees to follow the Security Policies when handling Confidential Information, and (iii) cause its employees and its subcontractors' employees who shall receive or have access to Confidential Information to (A) receive a copy of this Confidentiality Agreement, including the Security Policies, and (B) sign an Employees' Confirmation in a form required by Owner, acknowledging such employees' understanding of, and agreement to comply with, the confidentiality and document security obligations relating to the Project and the work described herein.

#### **LABOR AND MATERIALS TO BE FURNISHED BY CONTRACTOR**

The Contractor shall furnish all labor, materials, equipment, tools, appliances, services, delivery, hoisting, scaffolding, permits, testing, engineering, layout, supervision, coordination and all other operations required for

the complete performance of all specified and related work stated herein, in accordance with the Contract Drawings, Specifications, Riders and other Contract Documents listed or referenced herein, all of which become part of this Contract.

**CONTRACT PRICE**

This Contractor shall perform all work set forth herein for the contract price of FIVE MILLION FIVE HUNDRED THOUSAND DOLLARS (\$5,500,000.00 ) including all applicable taxes, overhead and profit.

**CONTRACT DOCUMENTS**

Rider "A", General Addendum, dated June 03, 2004  
 Rider "B", List of Drawings & specifications, dated June 02, 2004  
 Rider "C", Alternates & Unit Prices, dated June 03, 2004  
 Rider "E" - MBE/WBE Participation Plan, dated June 03, 2004  
 Insurance Rider, dated June 03, 2004  
 Certificate of Capital Improvement (to be forwarded)  
 Sales Tax Exemption Letter and Certificate of Capital Improvement, (to be forwarded)

**TIME OF PERFORMANCE**

This Contractor represents that he has sufficient manpower, equipment and materials available to expedite all phases of his work schedule. Work in any area shall commence upon 48 hours notice from Tishman. Work shall proceed in sequence and direction as required by Tishman and, TIME BEING OF THE ESSENCE FOR CONTRACTOR'S PERFORMANCE HEREUNDER, as provided for in the Time and Performance Section of Rider "A".

**FEDERAL ACQUISITION REGULATIONS (FAR)**

Contractor shall comply with, and shall cause its subcontractors to comply with, FAR clause 52.203-6, "Restrictions On Subcontractor Sales To The Government (Jul 1985)", FAR clause 52.203-7, "Anti-Kickback Procedures (Oct 1988)", FAR clause 52.203-11, "Certification And Disclosure Regarding Payments To Influence Certain Federal Transactions (Apr 1991)", FAR clause 52.203-12, "Limitation On Payment To Influence Certain Federal Transactions (Jan 1990)", FAR clause 52.219-8, "Utilization Of Small business Concerns and Small Disadvantaged Business Concerns (Feb 1990)", FAR clause 52.219-9, "Small Business And Small Disadvantaged Business Subcontracting Plan (Jan 1991)", FAR clause 52.222-26, "Equal Opportunity (Apr 1984)", FAR clause 52.222-35, "Affirmative Action For Special Disabled And Vietnam Era Veterans (Apr 1984)", FAR clause 52.222-36, "Affirmative Action For Handicapped Workers (Apr 1984)", FAR clause 52.222-37, "Employment Reports On Special Disabled Veterans And Veterans Of The Vietnam Era (Jan 1988)", FAR clause 52.223-2, "Clean Air And Water (1984)". Contractor certifies that neither it nor its principals is debarred, suspended or proposed for debarment by the Federal Government; that it does not and will not maintain or provide for its employees any segregated facilities (i.e., facilities that are segregated on the basis of race, color, religion, or national origin) at any of its establishments, and that it does not permit and will not permit its employees to perform their services at any location under its control where segregated facilities are maintained; and that any facility to be used in the performance of this letter agreement is not listed on the Environmental Protection Agency List of Violating Facilities.

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

**TISHMAN:**  
 Tishman Construction Corporation

By: \_\_\_\_\_  
 William Stanton, Senior Vice President

Date: \_\_\_\_\_

**CONTRACTOR:**

By: \_\_\_\_\_

\_\_\_\_\_  
 (Print Name and Title)

Date: \_\_\_\_\_

and  
 group/purch/Procurement/est-cm.Demo.doc

**INSURANCE RIDER**

**PROJECT: FREEDOM TOWER  
1 WORLD TRADE CENTER  
New York, New York**

**TRADE: Selective Demolition, Structural Bracing, and Temporary Rock Anchors**

**INSURANCE**

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, at its sole expense, maintain the following insurance on its own behalf, and furnish to WTC Redevelopment LLC and Tishman, 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: Insurance 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 Fifty Million (\$50,000,000) Dollars per occurrence and in the aggregate. The general aggregate must be applicable on a per project basis. Coverage must include the following perils:
1. Contractual Liability for liability assumed under this Contract and all other Contracts relative to the project.
  2. Completed Operations/Products Liability with a five (5) year extension beyond completion and acceptance of the project.
  3. Broad Form Property Damage.
  4. "XC&U" Perils, where applicable
  5. Personal Injury Liability (A, B & C)
  6. Independent Contractors.
  7. Endorsement (CG2010 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 indemnitees named in the Contract as Additional Insureds.
  8. 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 and all other indemnitees named in the Contract.

Freedom Tower  
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New York, New York

Labor & Material  
June 3, 2004, 2004

9. 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 WTC Redevelopment LLC and Tishman.
10. 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 Tishman Construction Corporation.
11. The Certificate of Insurance and Liability policies must contain the following endorsement.

"The insurance carrier(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 Port Authority, and immunity of the Port Authority, its commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority."

12. The liability policy(ies) and Certificate of Insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured.
- 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 of at least One Million (\$2,000,000) Dollars. Automobile insurance must include all additional insureds and be scheduled as primary on the Umbrella policy.
  - D. Commercial Professional Liability Insurance (CPLI) covering the design all shoring and temporary structures of at least Five Million (\$5,000,000) Dollars. CPLI must include all additional insureds.
  - E. Railroad Protective Liability Insurance (RPLI) work including all shoring and temporary structures of at least Four Million (\$4,000,000) Dollars per occurrence, with an aggregate of at least Six Million (\$6,000,000) Dollars. RPLI must include all additional insureds.
  - F. Where an Off Project Site property exposure exists, the Contractor at its sole expense shall furnish to WTC Redevelopment LLC and Tishman, 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 indemnities named in the contract.
  - G. The above insurance shall each contain the following wording verbatim:

"WTC Redevelopment LLC and Tishman Construction Corporation 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) day advance written notice to WTC Redevelopment LLC c/o Silverstein Properties, Inc., 830 Fifth Avenue, New York, New York 10036, Attn: David Worsley, Tishman Construction Corporation, 666 Fifth Avenue, New York, New York 10103, Attn: Insurance Department and The Port Authority of NY & NJ, 225 Park Avenue South, 12th Floor, NY, NY 10003 - Attn: Winsen Fung, by certified mail-retained receipt requested."
  - H. 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 their Subcontractors.
  - I. The Contractors shall file certificates of insurance prior to the commencement of work and with WTC Redevelopment LLC and Tishman which shall be subject to WTC Redevelopment LLC and Tishman's approval of adequacy of protection and the satisfactory character of the insurer.

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In the event of failure of the Contractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, WTC Redevelopment LLC and/or Tishman shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Contractor who agrees to furnish all necessary information thereof and to pay the cost thereof to the WTC Redevelopment LLC and/or Tishman immediately upon presentation of a bill.

- J. The Contractors and Subcontractors performing work or services in connection with the project shall maintain "All Risk" Property Insurance for all materials, equipment and supplies located at the project site and for Temporary Structures and Contractor's Tools and Equipment until completion of the project. Coverage is to be provided on a replacement cost basis.
- K. 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.
- L. The carrying of the insurance described shall in no way be interpreted as relieving the Contractor of any responsibility of liability under the Contract.
- M. Any policies effected by the Contractor on their 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., Silverstein Properties Inc., Port Authority of New York & New Jersey, and Tishman Construction Corporation and all other additional insureds and indemnitees named in the Contract.
- N. 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 One 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.
- O. Within five (5) days after the award of this contract and prior to the start of work, the contractor must submit an original Certificate of Insurance, to the Port Authority of NY & NJ, Facility Contract Administrator, at the location where the work will take place. This Certificate of Insurance MUST show evidence of the above insurance policy (ies), stating the agreement/contract number prior to the start of work. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

**Schedule 1 - Additional Insureds:**

WTC Redevelopment LLC  
World Trade Center Properties, LLC  
One World Trade Center LLC  
Two World Trade Center LLC  
Four World Trade Center LLC  
Five World Trade Center LLC  
Net Leases' Association of the World Trade Center  
Silverstein WTC Facility Manager LLC  
Silverstein Properties Inc.  
Silverstein Development Co.  
Larry A. Silverstein (as an individual)  
The Port Authority of New York & New Jersey  
Port Authority Trans Hudson (PATH)  
WTC Retail LLC  
Tishman Construction Corporation  
Tishman Realty & Construction Co., Inc.  
Tishman Construction Corporation of New York and the parents and affiliates of each of them.

Ex. 4

**RIDEA "A"**  
**GENERAL ADDENDUM**  
**FREEDOM TOWER**  
**1 WORLD TRADE CENTER**  
**NEW YORK, NEW YORK**

June 03, 2004

**FIDER "C"  
ALTERNATES AND UNIT PRICES  
FREEDOM TOWER  
1 WORLD TRADE CENTER  
NEW YORK, NEW YORK**

June 03, 2004

**TRADE: DEMOLITION, STRUCTURAL BRACING, AND TEMPORARY ROCK ANCHORS**

At Tishman'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 of all material, labor, trucking, overhead, profit, equipment, hoisting, rigging, engineering, scaffolding, power hookups, protection, shop drawings, applicable taxes, applicable insurances, permits, appliances, storage, delivery and supervision and shall remain in effect until completion of the project. Items covered by these prices shall be furnished in accordance with the Specifications and in quantities and locations as directed by Tishman.

**ALTERNATES**

**ALTERNATE NO. 1**

In the event that the 100% Performance and 100% Labor and Material Payment Bond from a Surety list in the Department of the Treasury's Listing of Approved Sureties is provided by this Contractor

- |  |                   |
|--|-------------------|
| a. Base Contract Amount                      | ADD \$ 123,850.00 |
| b. Bond premium/credit for change order work | ADD/DELETE 2.2%   |

**ALTERNATE NO. 2**

In the event that this Contractor is insured under a wrap-up program, deduct the cost of Contractor provided insurance.  
DEDUCT \$ \_\_\_\_\_

**UNIT PRICES**

1. General Demolition (Removal and disposal)
  - a. Reinforced Concrete Structure \$ \_\_\_\_\_ /ton
  - b. Steel and Structure Steel \$ \_\_\_\_\_ /ton
  - c. Mass Concrete Structure \$ \_\_\_\_\_ /ton
  
2. Protection
  - a. Path track protection and dustproofing \$ \_\_\_\_\_ /ft
  - b. Jersey type concrete barriers \$ \_\_\_\_\_ /ft
  - c. Construction fence, 6'-0" high \$ \_\_\_\_\_ /ft
  - d. Vertical Netting, 5'-0" high \$ \_\_\_\_\_ /ft
  - e. Temporary stairs, 4'-0" wide \$ \_\_\_\_\_ /rise
  - f. Demolition shed, 6'-0" wide x 10'-0" high \$ \_\_\_\_\_ /ft
  - g. Chainlink fence \$ \_\_\_\_\_ /sq ft
  
3. Watchman services
  - a. Straight time rate \$ \_\_\_\_\_ /hr
  - b. Overtime and holiday rate \$ \_\_\_\_\_ /hr
  
4. Spray-on Fireproofing, Z-146 (High Density)
  - a. Columns, trusses and hangers
    1. 2 hr. rating \$ \_\_\_\_\_ /sf
    2. 3 hr. rating \$ \_\_\_\_\_ /sf
  - b. Beams
    1. 2 hr. rating \$ \_\_\_\_\_ /sf
    2. 3 hr. rating \$ \_\_\_\_\_ /sf
  
5. Two (2) person patching crew with equipment and material.
  - a. Spray-on Fireproofing, Z-146 (High Density) \$ \_\_\_\_\_ /sf

**RIDER "C"  
 ALTERNATES AND UNIT PRICES  
 FREEDOM TOWER  
 1 WORLD TRADE CENTER  
 NEW YORK, NEW YORK**

June 3, 2004

**TRADE: DEMOLITION, STRUCTURAL BRACING AND TEMPORARY ROCK ANCHORS**

e. Lift-off Test for temporary rock anchors \$ \_\_\_\_\_/ea

**Labor Rates**

Provide labor rates for union labor of every classification to be employed during the course of the work:

**Labor Classification:**

	Straight Time	Premium Time @ 1.5 times	Overtime
(1) Base Rate			
(1a) Vacation Pay			
(2) Subtotal (1) & (1a)			
(Taxable) Insurable Rate			
(3) Union Benefits			
(complete breakdown below)			
(4) Inc. Work/Comp. from line (3)			
(5) Subtotal			
(6) General Liability			
(7) Subtotal			
(8) Overhead & Profit from line (7)-15%			
(9) P/R Taxes - F.O.A.B.			
Unemployment from Line (2) %			
(10) TOTAL LABOR RATE			
Remarks: Nonworking Foremen not billable			
<b>UNION BENEFIT BREAKDOWN (3 above)</b>			
Welfare			
Pension			
Annuity			
Other (est) vacation			
Holidays			
<b>TOTAL UNION BENEFITS</b>			

**LABOR CLASSIFICATION:**

	Straight Time	Premium Time @ 1.5 times	Premium Time @ 2 times
(1) Base Rate			
(1a) Vacation Pay			
(2) Subtotal (1) & (1a)			
(Taxable) Insurable Rate			
(3) Union Benefits			
(complete breakdown below)			
(4) Inc. Work/Comp. from line (2) %			
(5) Subtotal			
(6) General Liability from Line ( ) %			
(7) Subtotal			
(8) Overhead & Profit from line (7)-15%			
(9) P/R Taxes - F.O.A.B.			
Unemployment from Line (2) %			
(10) TOTAL LABOR RATE			
Remarks: Nonworking Foremen not billable			
<b>UNION BENEFIT BREAKDOWN (3 above)</b>			
Welfare			

**RIDER "C"**  
**ALTERNATES AND UNIT PRICES**  
**FREEDOM TOWER**  
**1 WORLD TRADE CENTER**  
**NEW YORK, NEW YORK**

June 3, 2004

**TRADE: DEMOLITION STRUCTURAL BRACING AND TEMPORARY ROCK ANCHORS**

Pension			
Annuity			
Other (Net)			
<b>TOTAL UNION BENEFITS</b>			

RIDER "D" Intentionally Omitted

**RIDER "E"**  
**THE PORT AUTHORITY OF NEW YORK/NEW JERSEY**  
**MBE/WBE PARTICIPATION PLAN/FREEDOM TOWER**  
**1 WORLD TRADE CENTER**  
**NEW YORK, NEW YORK**

June 03, 2004

Bidder's Proposal must be accompanied by a complete Minority Business Enterprise / Women Business Enterprise (MBE/WBE) Participation Plan. The information must be submitted on the attached Port Authority Tenant MBE/WBE Participation Plan and be approved by The Port Authority before award of a contract. Make sure that proposed MBE/WBE firms are Port Authority approved. Information will be verified during the bid review period.

The Plan should include the following information:

- a) Name and telephone number of designated MBE/WBE contact person.
- b) Names and addresses of proposed MBE/WBE contractors.
- c) Description of work and approximate dollar value of work to be performed by each MWBE contractor.
- d) Percent of participation in relationship to the cost of the overall project for each MWBE contractor.

MBE/WBE participation goals are 12% MBE and 5% WBE of the total A/E and construction project dollars. The submitted participation plan should meet or exceed these goals. If not, Contractor shall be responsible for demonstrating its "good faith" efforts to achieve the goals. In calculating the progress toward meeting the goal, Contractor shall receive credit for only 50% of the amounts paid to materialsmen/suppliers who are MWBE firms, except in the case of firms who themselves manufacture materials. Contractor shall receive 100% credit for suppliers who manufacture products or make material changes to products before sale.

Contractor is expected to take the following "good faith" steps to achieve goals of the Minority and Women-owned Business Enterprise Program:

1. Where feasible, divide the work to be subcontracted.
2. Actively solicit bids from MWBE primes.
3. Provide plans and specifications with sufficient time for review.
4. Use the Port Authority directory of MWBE firms and other resources.
5. Encourage the formation of joint ventures and partnerships.
6. Make provision for timely progress payments to subcontractors.
7. Either do not require bonds and insurance or provide coverage for MWBE firms when appropriate.
8. Follow up on suggestions from Port Authority staff.
9. Direct prime contractors to solicit MWBE subcontractor participation.
10. Establishment of Inpress Funds to facilitate MWBE cash flow.

In order to assure that the planned goals are being met, a monthly Statement of Payments Report, reflecting the actual payments MWBE contractors, must be submitted throughout the construction period.

**Affirmative Action and Monthly Employment Utilization Reports**

In addition to the MWBE Program, it is important that the construction labor force reflect community demographics. All Contractors, therefore, are required to submit a Monthly Employment Utilization Report, which itemizes the minority and female participation in the construction craft work force for the previous month.

The Port Authority's current minority participation goals for the work force are 30% for skilled trades and 40% for laborers. The current female goals for skilled trades and laborers is 6.5%.

**RIDER "E"  
THE PORT AUTHORITY OF NEW YORK/NEW JERSEY  
MBE/WBE PARTICIPATION PLAN**

May 28, 2002

**Definitions:**

**"Minority-Owned Business", or "MBE", is 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 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", is a business which is at least 51 percent owned and controlled by one or more women, or in the case of a publicly held corporation, 51 percent of the stock 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" is any of the following racial or ethnic groups:**

**Black person having origins in any of the black African racial groups not of Hispanic origin; Hispanic persons of Puerto Rican, Mexican, Dominican, Cuban, Central, or South American culture or origin, regardless of race;**

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

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

**"Commercially Useful Function", an MWBE firm performs a commercially useful function when it is responsible for execution of a distinct element of the work of the contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. The MWBE should have the skill and expertise to perform work for which it is being utilized. The MWBE must be responsible for the purchase of, quality of, and payment for materials used to perform its work under the contract.**

**Exhibit B**

**Budget**

**Exhibit C**

**Cost Allocation Agreement**

FINAL EXECUTION COUNTERPART

Cost Allocation Agreement for Demolition Work

**AGREEMENT**, made this 10th day of June, 2004 between WTC Redevelopment LLC, a Delaware limited liability company, with an office at c/o Silverstein Properties, Inc. 530 Fifth Avenue, 18<sup>th</sup> Floor, New York, NY 10036 ("WTC Redevelopment") and The Port Authority of New York and New Jersey, a public agency of the States of New York and New Jersey, with an office at 225 Park Avenue South, New York, New York 10003 (the "Port Authority" and, together with WTC Redevelopment, the "Parties").

**WHEREAS**, in order to proceed with the redevelopment of the World Trade Center ("WTC") site, it is now necessary to remove the remaining subgrade slabs and certain other structures in the northwest corner of the WTC site and to perform certain associated work; and

**WHEREAS**, as the demolition and related work more particularly described in Exhibit A hereto (the "Demolition Project") will overlap the Freedom Tower foundation work in both time and location, it is deemed advantageous by the Port Authority and WTC Redevelopment to undertake the required work utilizing Tishman Construction Corporation ("TCC") pursuant to a General Contractor Agreement, dated as of September 10, 2003 among 1 World Trade Center LLC, 2 World Trade Center LLC, 4 World Trade Center LLC, 5 World Trade Center LLC (collectively, the "Silverstein Net Lessees") and TCC, as amended by a Modification Agreement, dated of even date herewith, pursuant to which TCC has agreed with WTC Redevelopment (as representative for the Silverstein Net Lessees) that TCC shall perform or cause its subcontractors and/or agents to perform the work required to carry out and complete the Demolition Project (such General Contractor Agreement, as so modified, the "TCC Agreement"); and

**WHEREAS**, the Parties to this Agreement desire to define their respective roles and responsibilities in connection with the said Demolition Project and the TCC Agreement;

**NOW, THEREFORE**, the Parties, in consideration of the obligations of the Parties set forth herein below and for other good and valuable consideration, do agree as follows:

1. The Port Authority agrees to provide (at no cost to WTC Redevelopment or the Silverstein Net Lessees or their respective affiliates) drawings and specifications for the Demolition Project work, to perform all design work in connection therewith, and to act as the Engineer of Record in connection with the Demolition Project. The Demolition Project will include, but not be limited to, demolition and removal of approximately 190,000 square feet of subgrade slabs, support columns and associated structures, installation of certain new slurry wall tie-back anchors, replacement of existing damaged anchors, and modifications to the existing structural framing which supports Vesey Street all as more particularly set forth on Exhibit A. The TCC Agreement and the demolition

sub-contract(s) to be prepared by TCC have been reviewed and approved by the Port Authority, and WTC Redevelopment has reviewed the same. The Port Authority, Port Authority Trans-Hudson Corporation ("PATH"), WTC Redevelopment and the Silverstein Net Lessees acknowledge and agree that they are all named insureds on all Demolition Project insurance carried by TCC.

2. Pursuant to the TCC Agreement, TCC is required by the Parties to (a) manage the Demolition Project and (b) act as construction manager, including retaining the trade contractor(s) to perform the work for the Demolition Project, as more particularly set forth therein. The Port Authority hereby confirms to TCC and WTC Redevelopment that all authorizations within its jurisdiction and authority required for the Demolition Project shall be issued prior to commencement of the Demolition Project and that TCC is permitted to commence the Demolition Project upon issuance of the ROD (as defined below) provided that TCC shall be governed by the terms of such approvals.

3. The Port Authority agrees to coordinate site access and TCC work that would impact PATH. The Port Authority's Engineering Department shall (a) review and approve shop drawing submittals and (b) directly or indirectly through an independent testing and inspection agency, perform testing, controlled inspections and certain material inspections that are required by the Engineer of Record. TCC shall be responsible for all environmental monitoring associated with this Project, including, without limitation, vibration at adjacent structures, noise and air quality, the 1/9 subways, during demolition in order to comply with the Construction Environment Plan described in the final version of the Record of Decision and Lead Agency Findings Statement for the World Trade Center Memorial and Redevelopment Plan, dated as of June 2, 2004 (the "ROD"). The Port Authority's Engineering Department will also provide audit inspection services to inspect the work as it is performed based upon inspection reports submitted by TCC on a monthly basis. All of the above services to be performed by the Port Authority shall be performed at no cost to WTC Redevelopment or the Silverstein Net Lessees or their respective affiliates.

4. The Parties shall require TCC to implement, to the extent applicable to the work being carried out hereunder, the Sustainable Design Guidelines for the World Trade Center Redevelopment Projects that are described in Exhibit A-1 which shall be incorporated into the specifications of the construction contract(s), in connection with the Demolition Project. The parties agree and shall instruct TCC that a photographer to be designated by the Port Authority is authorized to photograph throughout the performance of the work to record it for historical purposes, all at no cost to WTC Redevelopment or the Silverstein Net Lessees or their affiliates.

5. (a) The Port Authority shall be responsible for forty-seven (47%) percent of the costs described as "Structural Bracing Work", "Demolition Work", "Concrete Floodwall Work", "Section 106 Historic Preservation Work" and "Traffic Maintenance Work" in the budget for the Demolition Project attached hereto as Exhibit B (as amended, the "Budget") and WTC Redevelopment shall be responsible for fifty-three percent (53%) of such costs.

(b) The Port Authority shall be responsible for one hundred percent (100%) of the cost of installation of the new tie-backs indicated in drawings GT-1 through GT-6 included in Exhibit A and the further specifications included in Exhibit A once tested and approved, and any slurry wall-related work, collectively described as "Rock Anchor Work" in the Budget; provided, however, that 7 World Trade Company L.P. shall be responsible for one hundred (100%) percent of the cost of the testing, repair or replacement of the existing tie-backs which resulted from the construction of new 7 World Trade Center and which are shown on Exhibit A-2 and described as "Damaged Tie-Back & Testing Work" in the Budget.

(c) The Port Authority shall be responsible for 47% and WTC Redevelopment shall be responsible for 53% of the costs described as "General Conditions", Vibration Monitoring" and "Insurance" in the Budget.

6. The cost of removing certain WTC artifacts, identified pursuant to the Programmatic Agreement dated April 22, 2004 and in Exhibit A-3 (the "Historic Artifacts") from the WTC Site to JFK Hangar 17 shall be shared forty-seven (47%) percent by Port Authority and fifty-three (53%) percent by WTC Redevelopment. Notwithstanding anything contained herein to the contrary, the Demolition Project shall not include, and WTC Redevelopment and the Silverstein Net Lessees and their affiliates shall not bear the cost of, the preservation, storage, handling, and transportation of the Historic Artifacts after such items are removed from their current location and delivered to JFK Hangar 17.

7. Recycling credits originating from the performance of the Demolition Project work shall be shared as follows: *fifty-three (53%) percent to WTC Redevelopment; forty-seven (47%) percent to the Port Authority.* The Parties shall require TCC to require in the Demolition Project construction contract(s) that the demolition contractor(s) and/or TCC shall (x) provide for adequate documentation of recycling activities including the providing and execution of suitable manifests, recycling center locations, inserting of quantities, and the like, and (y) stipulate that demolition/construction debris shall in no way be identified with the WTC site.

8. Exhibit B hereto sets forth the current budget for the Demolition Project and an allocation of the budgeted costs pursuant to Sections 5, 6, and 10 hereof. The Parties acknowledge that the actual costs of the Demolition Project might vary from the budgeted costs and agree that any increases or decreases in costs shall be allocated as set forth in this Section 8. The costs described as "Contingency" in the Budget have been allocated according to each party's Shared Percentage (as defined in Exhibit B) for budgeting purposes only and it is agreed that actual increases or decreases in Project costs shall be allocated on a case by case basis as set forth in this Section 8. Contractor claims relating to any changes in the scope of the Demolition Project, extra work or delays that, in any such case, shall have been mutually agreed upon in writing by the Parties shall be shared by the Parties in the same ratio as costs for the related underlying work pursuant to Sections 5, 6, and 10 hereof; provided, however, that, if either WTC Redevelopment or

the Port Authority shall unilaterally cause the scope of the Demolition Project to be changed from that which is set forth in Exhibit A, extra work to be done, delays to have occurred or the cost of the Demolition Project to otherwise exceed the budget set forth in Exhibit B, in any such case without the written agreement and concurrence of the other Party, then the Party which shall have unilaterally caused such change shall bear the related costs.

9. The Parties shall exercise their respective reasonable best efforts not to delay or cause a delay in the commencement date and the scheduled completion date of the Demolition Project.

10. WTC Redevelopment agrees to be responsible for one hundred (100%) percent of TCC's general contractor/construction manager fees under the TCC Agreement.

11. The Port Authority agrees to be responsible for one hundred (100%) percent of any PATH Force Account costs (as further described in Exhibit A), all design and engineering costs, preparation of contract documents, all of its inspection of construction and review of contractor submittals and contract documents costs.

12. The TCC Agreement requires that each requisition for payment submitted by TCC to WTC Redevelopment in connection with the Demolition Project (each, a "Requisition") shall allocate the amount being requisitioned in the manner specified in Sections 5, 6, 7, 8, 10 and 11 above, and that a copy of each such Requisition shall be submitted to the Port Authority and to WTC Redevelopment. The escrow agent for the Demolition Escrow Account (as defined below) will be authorized by the Parties in accordance with the Demolition Escrow Agreement (as defined below) to pay the requisitioned amount (unless the Port Authority and WTC Redevelopment jointly and in good faith reasonably believe that TCC is not entitled to payment of such Requisition) from the Demolition Escrow Account directly to TCC at such time as each Party's share of the requisitioned amount is available in the Demolition Escrow Account for such payment.

Simultaneously with the execution of this Agreement, the Parties shall take the necessary steps to transfer from the Insurance Escrow (as defined in the 12/01/03 Agreement) to the Interim Redevelopment Escrow Account (as defined below), and in turn from the Interim Redevelopment Escrow to the Demolition Escrow Account the amount of \$3,317,777 for the account and benefit of WTC Redevelopment in order to pre-fund WTC Redevelopment's estimated funding obligations under this Agreement (determined based on the estimated budget attached hereto as Exhibit B) (the "Silverstein Pre-Funded Amount"). The Silverstein Pre-Funded Amount shall be used only to pay portions of Requisitions allocated to WTC Redevelopment and shall not under any circumstances be utilized to pay any amounts allocated to the Port Authority or any obligations of the Port Authority. In the event that the aggregate amount of all allocations to WTC Redevelopment in all Requisitions shall exceed the Silverstein Pre-Funded Amount, the Parties shall immediately take the necessary steps to transfer additional amounts from the Insurance Escrow to the Interim Redevelopment Escrow

Account, and in turn from the Interim Redevelopment Escrow to the Demolition Escrow Account to cover such shortfall.

Within 10 days after receipt of any Requisition, the Port Authority shall (unless the Port Authority and WTC Redevelopment jointly and in good faith reasonably believe that TCC is not entitled to payment of such Requisition) deposit into the Demolition Escrow Account the amount set forth in such Requisition that is allocated to the Port Authority (the "Port Authority Deposit"). Each Port Authority Deposit shall be used only to pay the portion allocated to the Port Authority of the Requisition related to such Deposit and shall not under any circumstances be utilized to pay any amounts allocated to WTC Redevelopment or any obligations of the WTC Redevelopment. Funds from the Interim Redevelopment Escrow Account may be utilized to pay any and all costs allocated to WTC Redevelopment pursuant to this Agreement, but shall not be utilized to pay any costs allocated to the Port Authority pursuant to this Agreement, and the TCC Agreement shall provide that TCC shall not have recourse to WTC Redevelopment or to the Port Authority for any costs allocated solely to the other party. The Demolition Escrow Account is being established solely for the benefit of the Port Authority and WTC Redevelopment and none of TCC or any of its subcontractors shall have any rights to make claims against the Demolition Escrow Account. If either the Port Authority or WTC Redevelopment shall dispute the allocation made by TCC to such party in any Requisition, such party shall nonetheless pay the disputed amount into the Demolition Escrow Account (unless such amount has been pre-funded) and the parties shall promptly discuss and, if applicable, renegotiate such allocation, reasonably and in good faith and, if appropriate, make any appropriate adjustment and/or reconciliation to the prior and/or future payments and allocations.

If upon completion of the Demolition Project (as determined in the sole discretion of the Port Authority) any portion of the Silverstein Pre-Funded Amount or other amounts deposited in the Demolition Escrow Account for the account and benefit of WTC Redevelopment shall remain in the Demolition Escrow Account, the Port Authority and WTC Redevelopment shall cause the escrow agent for the Demolition Escrow Account to return such remaining amount to the Interim Redevelopment Escrow Account and such returned amount shall be treated as if it had never been withdrawn therefrom. Any amounts paid from the Demolition Escrow Account to TCC and subsequently reimbursed by TCC shall be deposited into the Demolition Escrow Account and shall be allocated between the Port Authority and WTC Redevelopment based on the allocation that applied to the initial payment of such amounts to TCC. The Port Authority and WTC Redevelopment shall cause the escrow agent to pay any such amounts allocated to the Port Authority from the Demolition Escrow Account directly to the Port Authority and any such amounts allocated to WTC Redevelopment to be returned to the Interim Redevelopment Escrow Account and such returned amount shall be treated as if it had never been withdrawn therefrom.

The term "Demolition Escrow Account", as used herein, shall mean an escrow account established by the Parties at HSBC Bank USA pursuant to that certain Demolition Escrow Agreement among the Parties and HSBC Bank USA, as escrow

agent, dated of even date herewith. The term "Demolition Escrow Agreement", as used herein, shall mean that certain Demolition Escrow Agreement among the Parties and HSBC Bank USA, as escrow agent, dated of even date herewith, pertaining to the Demolition Escrow Account. The term "Interim Redevelopment Escrow Account", as used herein, shall mean the escrow account established pursuant to the 12/01/03 Agreement. The term "12/01/03 Agreement", as used herein, shall mean that certain letter agreement dated December 1, 2003 among the Silverstein Net Lessees, the Port Authority, and WTC Retail LLC (f/k/a/ Westfield WTC LLC).

13. The Port Authority hereby acknowledges that the Demolition Project is to be performed by TCC pursuant to the TCC Agreement and that WTC Redevelopment is not performing any work or providing any services in connection therewith. WTC Redevelopment shall be not responsible or liable to the Port Authority for or in connection with the Demolition Project or the work or services performed by TCC or its subcontractors or agents (collectively, the "Contractors") pursuant to the TCC Agreement, and the Port Authority shall look solely to, and have recourse only to, TCC and the Contractors for such work and any and all related claims. The Port Authority shall be responsible for, and hereby agrees to indemnify, defend and hold harmless WTC Redevelopment from and against (i) any and all costs, expenses, losses, damages or liability (collectively, "Losses") incurred by WTC Redevelopment in connection with this the Demolition Project or the TCC Agreement that arise from or in connection with any action or omission of the Port Authority, and (ii) the Port Authority's Shared Percentage (as established by this Agreement) of any other Losses (excluding Losses recovered by WTC Redevelopment either (A) from insurance proceeds paid to WTC Redevelopment under insurance policies for which WTC Redevelopment, the Silverstein Net Lessees and their affiliates are insured or (B) from TCC or Contractors under indemnifications contained in the TCC Agreement or applicable subcontracts. The Parties acknowledge that the design and engineering work relating to the Demolition Project has been performed solely by, and has been and is the sole responsibility of, the Port Authority, and the Port Authority therefore agrees to indemnify, defend and hold harmless WTC Redevelopment and the Silverstein Net Lessees and their affiliates from and against any and all Losses arising from such design and engineering work, including, without limitation, from any deficiencies or defects in the plans and specifications for the Demolition Project.

14. This Agreement shall extend from its execution until the final reconciliation and discharge of all financial obligations and claims arising out of or in connection therewith.

15. The TCC Agreement requires TCC to set up, keep and maintain records, payroll records and books of account (including records of original entry and daily forms) recording all transactions of TCC with any of the Parties in any way connected with or related to the Demolition Project, including, but not limited to, all matters relating to the charges/costs payable to or by the Parties and TCC hereunder and such additional information relating to performance of the Demolition Project as any of the Parties may from time to time and at any time reasonably require, and also including, if appropriate, recording the actual number of hours of service provided under the Demolition Project

contract(s), and keeping separate records thereof which records and books of account shall be kept at all times in New York. TCC shall be required to permit during ordinary business hours during the term of this Agreement, the examination and audit by the officers, employees and representatives of the Port Authority of such records and books of account. The TCC Agreement shall further require TCC to furnish to the Parties from time to time such written reports in connection with its operations under the TCC Agreement as the Parties may (acting reasonably and in good faith) deem necessary or desirable. The format of all forms, schedules and reports furnished by TCC or its contractors to the Parties shall be subject to the continuing reasonable approval of the Parties. No provision in this contract giving any Party a right of access to records and documents is intended to impair or affect any right of access to records and documents which it would have in the absence of such provision. Any costs or expenses (in excess of those set forth in Exhibit B) charged by TCC for any reports or other matters requested by any Party under this Section 15 shall be borne by such Party.

16. The Parties shall endeavor to resolve all disputes arising out of or in connection with this Agreement through consultation between John N. Lieber, representing WTC Redevelopment, and the Director of Priority Capital Programs acting for the Port Authority. In the event that such dispute resolution procedure is unsuccessful, nothing herein shall prevent either Party from access to a judicial determination.

17. No party shall assign or transfer its rights or obligations under this Agreement without the prior written consent of the other parties hereto, which consent may be granted or denied in the parties' respective sole discretion. This Agreement shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective legal representatives, successors and permitted assigns (including, without limitation, any successor of any party hereto who shall be granted a real property interests in any portion of the Site). No assignment of this Agreement by any party shall relieve such party of its obligations hereunder and, subsequent to any such assignment, the liability of such party shall continue notwithstanding any subsequent modification or amendment hereof or the release of any subsequent party hereunder from any liability.

18. The entire agreement between the Parties with respect to the subject matter hereof is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the Party to be charged therewith.

19. No provision in this contract shall be deemed to be a waiver by any Party of such Party's rights or another Party's obligations under the 12/01/03 Letter Agreement or the Leases or the REOA (as defined in and amended by the 12/01/03 Agreement), except that the Port Authority, in its capacity as landlord under the Leases, hereby confirms that it has lawfully authorized the project to proceed in the locations shown in Exhibit A and that it has all necessary authority to do so. The Parties' agreement to the allocation of the costs of the Demolition Project or to the payment of funds pursuant to this Agreement and/or the TCC Agreement, as applicable, is intended to be without prejudice to, and shall not serve as a precedent for, the allocation among the Parties or others of the costs

of rebuilding the WTC site, it being agreed that such allocation remains to be negotiated among the Parties pursuant to the 12/01/03 Agreement without regard to the allocations set forth herein and that, if appropriate, adjustments (if and to the extent applicable) shall be made to the allocation of the cost of the Demolition Project when such negotiation is completed. The Parties hereby acknowledge that this Agreement is entered into under special circumstances and may or may not serve as a precedent for future contracts to be entered into in connection with the redevelopment of the World Trade Center.

20. Notices hereunder shall be sent as follows:

To: WTC Redevelopment  
c/o Silverstein Properties, Inc.  
530 Fifth Avenue, 18<sup>th</sup> Floor  
New York, NY 10036  
Attention: John N. Lieber

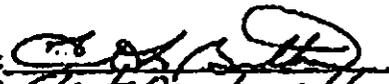
To: The Port Authority  
225 Park Avenue South  
14<sup>th</sup> Floor  
New York, NY 10003-1604  
Attn: Herbert S. Somerwitz, Esq.

21. Nothing contained herein or in the TCC Agreement shall be or be deemed or construed as a submission by any Party to the application to itself of any vendor's, mechanic's, laborer's or materialman's statutory or similar lien. There shall be no third party beneficiaries of this Agreement, and no third party may rely on any of the terms hereof.

22. No Commissioner, Director, officer, agent or employee of any Party or their respective affiliates shall be charged personally with any liability or held liable personally under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.

WHEREUPON, the Parties have affixed their duly authorized signatures to this Agreement as of the date first above written.

**THE PORT AUTHORITY OF  
NEW YORK AND NEW JERSEY**

By:   
Title: Chief Operating Officer

**WTC REDEVELOPMENT LLC**

By:   
Title: \_\_\_\_\_

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**Exhibit D**

**Sustainable Guidelines for the World Trade Center Redevelopment Projects**

**APPENDIX D**  
**COMMERCIAL SUSTAINABLE DESIGN GUIDELINES**

**The Lower Manhattan Development Corporation and the Port Authority of New York and New Jersey acknowledge the following organizations for their input in developing the Commercial Sustainable Design Guidelines for the World Trade Center Redevelopment Projects:**

**Croton Collaborative Architects  
Studio Daniel Libeskind  
New York State Energy Research and Development Authority  
Natural Resources Defense Council  
Environmental Defense  
New York League of Conservation Voters  
Albansse Organization  
Silverstein Properties  
Tishman Construction  
Flack + Kurtz, Inc.  
Steven Winter Associates  
Jonathan Rose & Cos.  
GreenOrder, Inc.  
New Civic Works**

# **Sustainable Design Guidelines Introduction World Trade Center Redevelopment Projects**

## **SUSTAINABILITY POTENTIALS: An Introduction to the Guidelines**

### **Context**

The nature and scope of the redevelopment reaches beyond the traditional boundaries of "building and site" and poses significant challenges and opportunities when framing sustainable potentials.

As a "first order" observation, the entire development is shaped by the "movement infrastructure" of mass transit, roadways, rail, footpaths, escalators and elevators transporting the tens of thousands of people arriving by ferry, rail, subway, bus, car and on foot to and through this unique community of spaces in the heart of the nation's most dense urban center.

This unique urban center in combination with this infrastructure supports very high levels of development density and supporting services. By breaking out of the traditional individual building model, the development creates a wide range of opportunities for shared resources, capitalizing on the opportunities inherent in urban density and adjacency. The redevelopment, in short, has the potential to establish a leadership model of urban sustainability.

The realization of key potentials, fundamental "whole system" strategies such as district heating/cooling, river water cooling and shared service facilities creates an infrastructure and "connective tissue" that points in the direction of a true leadership project. The purpose of the Guidelines is both to establish a new level of environmental/sustainable quality for an urban center model and to identify the "pathways" to higher performance over time.

### **Framework**

Capturing the urban scale, mixed use and whole-system attributes of the redevelopment has led to an expansion of the traditional model for green guidelines. Notably, as an interrelated list of standards, the guidelines overall exceed the objectives of NY State Executive Order 111 (EO-111), which includes meeting the US Green Building Council's (USGBC) Leadership in Energy Efficiency (LEED™) Green Building Rating System's certified level and have been reviewed by the PANYNJ and LMDC.

The challenge then from an environmental sustainable perspective, is to describe a framework of guidelines/metrics, which capture the urban scale/mixed use development, can be applied to purely infrastructure and partial projects over time and can address traditional projects. This objective, which creates a level playing field for assessment and "sustainable" quality has the added advantage of meeting the need for annual reporting and/or audit under the requirements of EO-111. The scope of this effort has allowed the development of a basic framework consisting of a stated "Purpose" and "Action" for each guideline, which will be fully supported by Reference Documentation.

Four basic qualities are unique to these guidelines:

- 1) **Urban Environmental Quality (UEQ)**  
A unique set of large-scale sustainable qualities that the projects bring to the surrounding community and urban context. There are a number of "Green Guidelines" around the United States, including the New York State Green Building Tax Credit (NYSGBTC) and the USGBC's LEED™ Green Building Rating System, which are excellent references and have been selectively incorporated herein. However, these are inherently focused on a specific building type or project. At the project site, there are issues of regional and neighborhood scale – regional transportation systems, relationships to surrounding neighborhoods, as examples – that have informed the development of these strategies and guidelines that go beyond individual buildings.

- 2) **"Whole system" compliance**  
This organizing principle of the guidelines assures that integrated and overlapping qualities of all project elements (and the spaces in between) are accounted for by having a project-wide "basket" of guidelines from which each individual project is custom tailored. Therefore each individual development, by type, will have only the relevant guidelines assigned, and even a small project or renovation will be assigned a short list of relevant guidelines. (Note: See the attached Matrix for examples).
- 3) **Individual projects can draw from a basket of measures with flexible range of scale.**  
As an interrelated list of standards, in addition to 1 and 2 above, the guidelines overall exceed the objectives of EO-111, have been reviewed by the PANYNJ and LMDC and offer flexibility to design teams. Guidelines indicated as "Required" are mandatory and flow directly from the objectives of EO-111, LEED™ certified level requirements and the larger requirements of the PANYNJ and LMDC. Required items are to be implemented. The LEED™ "Roadmap for Silver" creates a pathway for even higher performance. Flexibility is provided through an "Equivalency Option" which allows designers to propose an "equivalent option" for a guideline which is part of the LEED™ Calculation, as long as the number of LEED™ points remains the same or better. Guidelines indicated as "Recommended" are provided to support efforts by teams seeking additional opportunities to improve environmental performance. Guidelines, which include the "Exemplar" as described in item 4 below will also be indicated as part of tenant recommendations. Some of the guidelines include extended considerations and larger scale impacts, important to the realization of the guideline. These "Universal" impacts, for instance the requirement for water management plans, which also benefit the municipal water infrastructure, are indicated. The Implementation Matrix indicates "Required", "Equivalency Option", "Recommended", "Exemplar" and "Universal" designations with a distinct set of symbols.
- 4) **Integrated Building Design and Tenant Spaces**  
There is seldom an integration between the construction of cores and shells, which is the responsibility of the developer, and the fit-out of tenant spaces. This has traditionally been an impediment to achieving an integrated high performance design, particularly in commercial office projects.  
In order to create an integrated project design and capture the maximum performance potentials of such preferred tenant fit-outs, each major office and retail segment will design and build an "exemplar" or model of a typical high performance tenant fit out. The performance attributes (energy savings, daylight, air quality, etc.) of the space will be fully quantified and described in the reference standard: the WTC High Performance Prototype and advocated as the landlord "preferred" standard. Tenants will be encouraged to apply to federal, state, municipal and utility incentive programs for assistance in offsetting initial investment costs.

### Specific Plans

A specific way in which these guidelines are unique is in the requirement for development and implementation of Resource Management Plans and the development of "exemplars", models for integration of commercial and retail, "shell and core" with high performance tenant fit-outs. The 11 Resource Management Plans, required as part of this set of guidelines, go beyond the framework of existing Green Building Rating Systems (LEED™ for instance, only requires 3 of the 11 incorporated here) and clearly demonstrate the broader consideration of sustainability potentials inherent to the development. These plans will be assured through an approval process requiring the submission of compliance templates, calculations and field verification. The exemplars will also be required to meet performance criteria established in a WTC High Performance Prototype.

The following Plans and Studies are required as part of these guidelines. Each plan will require the submission of appropriate documentation such as letter templates, calculations and documentation in the sequence of "Implementation Reviews" running from Conceptual/Schematic to Construction Administration/Signoff (see Implementation Authority)

SEQ-1	Comprehensive Resource Management Plan
SEQ-5	Construction Environment Plan
SEQ-6	Construction Storm Water Pollution Prevention Plan
WEQ-1	Water Management Plan
EEQ-1	Energy Management Plan
EEQ-3	Building Energy Model
EEQ-6	Renewable Energy Transition Plan
MEQ-1	Materials Management Plan
MEQ-2	Construction Waste Management Plan
IEQ-1	Indoor Air Quality Management Plan
IEQ-6	Construction IAQ Management Plan
IEQ-9	Integrated Pest Management Plan

### Structure of Guidelines

The Guidelines will be organized in three basic parts:

- I. **Master Plan Objectives:** A summary of sustainable design objectives organized by general subject headings.
- II. **Master Plan Sustainable Design Guidelines:** A specific listing of Purpose and Action for each guideline organized by subject to facilitate exceeding EO-111 and its related cross-reference to LEED™ Certified level. (Note: Currently being completed are the supporting reference documents, standards and case studies for all non-LEED requirements.
- III. **Guideline Implementation Matrix:** A matrix is provided to describe how each purpose and action would be applied to selected project types.

### Implementation

The Sustainable Guidelines have been developed as an integral part of the Commercial Design Guidelines for WTC Redevelopment Projects. These guidelines reference the current LEED™ 2.1 Building Rating System for new construction. As new versions of LEED™ are adopted by the USGBC in the future, these guidelines will be updated to maintain conformance with EO-111. The projects will exceed the New York State Energy Conservation Construction Code by at least 20%.

The guidelines that are cross-referenced to the USGBC's LEED™ Guidelines, must meet USGBC's requirements, which are supported by a context or background statement. The USGBC has also developed a detailed Reference Manual for these LEED™ Guidelines, which provides specific guidance and case studies to assure clarity and full implementation. As with all codes and reference standards, this supports and facilitates the efficiency/currency of the design team's work. The remaining guidelines herein, that currently consist of only Purpose and Action Statements, will be supported by their own detailed Reference Manuals. The Reference Documentation of USGBC's LEED™, will also be supplemented by some location-specific New York City and World Trade Center Site comments and/or elaboration.

Consistent with the Commercial Design Guidelines process, the implementation of these Guidelines will be accomplished by the review process administered as described in Chapter 10 of the Commercial Design Guidelines. This process will require each project to be reviewed for compatibility and conformance with these Sustainable Design Guidelines, as well as, the Commercial Design

**Guidelines.** The attached "Implementation Matrix" provides clarification of the process by way of a listing of some general building types and their relevant guidelines.

## Sustainable Design Objectives

### DAYLIGHT/SOLAR RESOURCE MANAGEMENT

#### **Maximize Available Outdoor Daylight Resources to Public Spaces**

Design buildings and site structures to optimize available daylight for public open spaces and green areas. Utilize shadow studies to track path of sun and assist in final design of outdoor public spaces. Organize site structures, materials and landscape to improve environmental comfort of outdoor spaces and mitigate the effects of heat islands. Consider site environmental wind conditions. Select and locate materials and landscape features so that thermal properties and shading effects will extend outdoor comfort levels further into the shoulder seasons.

#### **Daylight Harvesting & Views for Tower Interiors**

Maximize daylight harvesting. Design exterior building envelope to facilitate daylight penetration to regularly occupied tenant spaces. A demonstration model of a tenant fit out will be provided to demonstrate these daylighting strategies. This model will provide building occupants with direct line of sight views to the outdoors from the majority of regularly occupied spaces and control glare.

#### **Daylight Harvesting & Views Below Grade**

Maximize daylight penetration to concourse areas and below grade retail areas. Provide views to the outdoors from concourse areas to assist users in wayfinding and orientation.

#### **Heat Island Effect Mitigation**

Reduce site development contributions to "heat island" effects in Lower Manhattan. Provide landscape planting (green infrastructure) coupled with high albedo surfaces at other areas to mitigate thermal gains of site surfaces and building roofs.

### WATER QUALITY AND CONSERVATION MANAGEMENT

#### **Comprehensive Water Management Plan**

Implement a Water Management Plan to optimize use of storm water, waste water and potable water and provide a coordinated management plan in conjunction with full site development. Study on-site reclamation of wastewater.

#### **Storm Water Capture and Reuse**

Capture and utilize storm water flows. Consider towers with ledges, roofs and setbacks, which will assist in capturing water sheeting off buildings at high elevations to reduce water pump energy requirements. Use reclaimed storm water and/or site water for toilet flushing, cooling tower makeup, vehicle maintenance and irrigation needs.

#### **Water Use Efficiency**

Seek highest water efficiency within buildings and reduce the burden on municipal water supply. Design landscape to minimize potable water requirements. Endeavor to utilize waterless urinals and high efficiency fixtures.

## **AIR QUALITY MANAGEMENT**

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### **Site Air Quality**

Work to improve site outdoor and neighborhood air quality. Support and expand pedestrian accessibility and increase bicycle access. Reduce site generated vehicular emissions.

### **IAQ Performance and Monitoring**

Optimize the indoor environment for the comfort, well-being and enhanced productivity of the buildings' occupants by establishing minimum indoor air quality (IAQ) performance and standards. Provide indoor air quality monitoring so that a standard of quality in the overall indoor environment and resulting well-being of the occupants is maintained.

### **100% Outside Air**

Provide capability for 100% outside air where practicable and balanced with energy conservation to support the comfort and well-being of building occupants.

### **Low Emitting Materials**

Minimize indoor air contaminants originating in materials, that are harmful to the comfort and well-being of building occupants and users. Specify materials with no or low volatile organic compounds (VOC's) and other toxic characteristics which affect IAQ.

### **Chemical & Particulate Control**

Minimize sources of chemical and particulate air contamination. Design all major entrances with permanent walk-off grilles. Mitigate health concerns caused by unwanted pests, their excrement and the typical, toxic chemicals used to control them through the development of an integrated pest management plan. Provide high efficiency filtration of all air to occupied areas.

## **ENERGY CONSERVATION**

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### **Comprehensive Energy Management Plan**

Conserve and optimize energy use and minimize air emissions, associated with energy use, through the implementation of a Site/Building Energy Management Plan.

Provide for ongoing verification of optimal operation and energy utilization of building energy systems by providing a computerized, fully-integrated Building Management System (BMS). Provide for full building commissioning with ongoing verification, maintenance and energy systems management.

### **Opportunities for Energy Conservation and Efficiency**

Review large and small scale opportunities for energy conservation and enhanced reliability and capacity. Include exploration of the feasibility and potential benefits and reliability of co-generation, central heating/cooling, river water cooling and recovery of resources.

### **Renewable Energy**

Utilize on-site or purchased renewables for at least 20% of site energy requirements (by 2010 per EO-111) and prepare a plan for further transition to renewable technologies as these become more cost-effective. To the extent practicable, provide pathways, access and space allocation for "near threshold" renewable and clean energy technologies such as solar and fuel cells.

### **Optimize Energy Performance**

Optimize the performance of building energy systems through the utilization of a full DOE-2.1E or Energy Plus building energy model to compare energy conservation, in alternative strategies. Integrate with Site Energy Management Plan and implement strategies for moderating peak power loads. This is to include the full analysis of architectural and mechanical decisions in relationship to building energy expenditures to achieve a minimum 20% decrease in energy consumption from

**ASHRAE 90.1-1999.** This savings reflects both tower and office tenant build-out potentials. Tenant build-out potential (as demonstrated in a typical tenant build-out) will be modeled in the same integrated exercise and the economic results provided to potential tenants in support of the preferred buildout. Information will be provided to tenants.

**Metering at Point of Use**

Implement end-user metering of electricity to maximize tenant incentive for resource conservation.

**Ozone Layer Protection**

Reduce emission of ozone depleting chemicals. Specify building HVAC systems and materials with zero levels of CFC refrigerants.

**Thermal Comfort & Personal Control**

Provide building users with a high level of thermal, ventilation and lighting system control to promote comfort, well-being and enhanced productivity.

**Light Pollution Reduction**

Reduce light pollution to surrounding sites and night sky. Satisfy Illuminating Engineering Society of North America (IESNA) recommended practice per manual (RP-33-99) for exterior illumination. Tower tops to be exempt from these requirements.

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**MATERIAL CONSERVATION**

**Comprehensive Material Management Plan**

The Material Management Plan provides a tool for an optimized utilization of all site material resources. This integrated resource management tool is designed to reduce waste generated by building occupants that would otherwise be hauled to and disposed of in landfills and/or incinerators. Consider potential of "design for disassembly" strategies on IAQ and site material resourcefulness. Encourage the re-use of existing site structures, utilities and foundations. Incorporate previously used building materials and products into new construction where practicable.

**Construction Waste Management**

Reduce the amount of construction and demolition (C&D) waste going to landfills and/or incinerators and conserve resources through reuse and recycling.

**Recovery of Resources**

Study small and large-scale opportunities for recovery of resources along with Energy Conservation measures. Provide space or means for recycling of resources on site during operations.

**Materials with Recycled Content**

Increase markets for building materials and products that incorporate recycled content.

**Material Proximity**

Encourage the use of building materials and products that are extracted and manufactured or assembled within a 500-mile radius of the site.

**Agricultural Materials**

Encourage the specification of materials, which are renewable and are grown in such a way as to support biological diversity and the health of the ecosystem.

Specify lumber, wood and wood products, which have been harvested according to sustainable forest management principles, and have been certified under the Forest Stewardship Council (FSC) guidelines, in conjunction with the Materials Management Plan.

## **CONSTRUCTION ENVIRONMENT**

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### **Construction Environment Pollution Prevention**

Reduce pollution and noise from construction activities and vehicles. Implement a Construction Environment Plan designed to reduce pollution and noise from construction activities and vehicles to adjoining neighborhoods. Develop a materials staging and construction access plan prior to start of construction. Control site erosion, collect and utilize storm water as appropriate, and reduce negative impacts on hydrological and atmospheric systems produced by construction activities, through use of ultra low sulfur fuels as appropriate.

### **Construction IAQ Management Plan**

Implement a Construction Indoor Air Quality Management Plan consistent with EO-111.

### **Phased Development**

Address both the "active" portions of the site under development, as well as, the "inactive" areas of the site, which have a supporting role. These inactive areas will have a smaller, focused list of guidelines to address storm water, heat island mitigation and other site issues applicable to temporary sites with PANYNJ oversight.

## Sustainable Design Guidelines

### URBAN ENVIRONMENTAL QUALITIES

#### **UEQ-1: Support Urban Development**

**Purpose:** Support development in existing urban areas and fully utilize and support existing infrastructure.

**Action:** Channel development to urban areas. Provide development that supports and maximizes the use of existing infrastructure and exceeds a minimum development density of 60,000SF/acre.

#### **UEQ-2: Expanded Public Transit and Bicycle Access**

**Purpose:** Encourage the development of public transportation, address opportunities to connect/cross-connect systems and support and increase bicycle access.

**Action:** Integrate and encourage utilization of public transportation. Follow the recommendations of the NYC Department of City Planning (DCP) 1999 Bicycle Parking Needs Study and the 1997 NYC Bicycle Master Plan. Reduce parking from pre 9/11 levels and implement Parking Management Plan to reduce future parking demands. Site parking for commercial uses is not to exceed 1300 cars..

**Towers:** Support bicycle use by providing bicycle racks or secure and convenient storage.  
**Site:** Support bicycle use by providing bicycle racks near transportation, retail and cultural centers.

#### **UEQ-3: Regional Mass Transit**

**Purpose:** To promote regional mass transit systems.

**Action:** Provide inter-modal connection facilities for regional transportation systems, ferries, subways and buses with clear connections between the various transportation systems. Allow for future integration of other regional transportation systems.

#### **UEQ-4: Pedestrian Movement**

**Purpose:** Support neighborhood, community, visitor and commuter pedestrian pathways and facilitate pedestrian access to and through the site.

**Action:** Diagram anticipated pedestrian pathways that are coordinated with plans for WTC Redevelopment Projects. Enhance pedestrian pathways, both above and below ground, to facilitate and support pedestrian traffic. Describe enhancements including and illustrating connections to buildings, additional pathways and transportation nodes, path size, adjacent area uses, public art, vegetation, access to daylight and direct sun, furnishings, wayfinding, paving materials and patterns and view corridors.

**UEQ-3: Green Infrastructure**

**Purpose:** Support the development of green infrastructure by developing and linking vegetated site areas with existing neighborhood green spaces.

**Action:** Diagram "green" infrastructure within 1000' of site boundary. Create site vegetated areas to enhance site contributions to natural ecological processes, sustain air and water resources, promote biodiversity and reduce heat island effects. Facilitate creation of green infrastructure linkages in conjunction with adjacent neighborhood green spaces.

**UEQ-6: Outdoor Environmental Comfort**

**Purpose:** To facilitate site development that supports outdoor environmental comfort.

**Action:** Design site structures, materials and landscape to enhance comfort and functionality of outdoor spaces and mitigate the effects of heat islands. Extend outdoor comfort levels further into the Spring and Fall seasons with passive strategies that maximize natural assets. Design structures with consideration for site environmental wind conditions where pedestrians would be affected and seek to moderate any such effects.

**UEQ-7: Wayfinding**

**Purpose:** To facilitate both neighborhood and site-user orientation and site readability.

**Action:** Integrate wayfinding as an integral design quality when developing green corridors, visual corridors and memorable place markers in conjunction with surrounding neighborhoods.

**UEQ-8: Vehicular Emissions**

**Purpose:** Reduce back-up of traffic into neighboring streets in order to minimize vehicle emissions and improve neighborhood air quality from pre 9/11 base. Minimize potential idling time for all vehicles.

**Action:** Optimize traffic flow of all vehicles coming to site to reduce the amount of time that vehicles must idle. Seek to reduce traffic backups through scheduling and onsite accommodation. Design bus stops to minimize traffic backups and potential vehicle idling times.

To the extent that there is NY State Agency and/or other governmental presence on site, all least 50% of light duty fleet vehicles will be alternative fuel or hybrid vehicles by 2005 and 100% by 2010.

## **SITE / PARCEL ENVIRONMENTAL QUALITIES**

### **SEQ-1: Comprehensive Resource Management Plan**

**Purpose:** Draft and implement the requirements of the Comprehensive Resource Management Plan.

**Action:** The Comprehensive Resource Management Plan provides a tool for an integrated consideration of water, material and energy resources with the goal of identifying, evaluating and optimizing utilization of all resources on the site. The plan overlays information from the individual water, material and energy management plans and identifies integrated opportunities for resource conservation (i.e. high capture and utilization of stormwater at upper levels of tower reduces pump energy required for lifting equivalent amount of water).

### **SEQ-2: Storm Water Use**

**Purpose:** To capture and utilize site storm water flows, thereby reducing storm water volume and surges through the system.

**Action:** Implement a plan for stormwater management as part of the Water Management Plan that reduces the post-development flow of stormwater from the site (8/11 base). Construct treatment systems to remove 80% of total suspended solids (TSS) and 40% of total phosphorous (TP) per EPA Document (840-B-83-001c) Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters (based on the average annual loadings from all storms less than or equal to the 2 year/24 hour storm).

**Site/Parcel:** Design site surfaces to allow collection of site storm water flows from other than street surfaces. Provide storage and filtration infrastructure. Fully use captured water as appropriate and in conjunction with Water Management Plan.

**Towers:** Consider towers with ledges, roofs and setbacks, which will assist in capturing water sheeting off buildings at high elevations to capture potential energy of water and reduce water pump energy requirements. Provide storage and filtration infrastructure near point of capture. Use water, as appropriate for toilet flushing and as part of building water systems.

### **SEQ-3: Heat Island Effect Mitigation**

**Purpose:** Reduce site development contributions to "heat island" effects in Lower Manhattan. Seek to maximize areas of landscape planting (green infrastructure) coupled with high albedo surfaces at other areas to mitigate thermal loading of site surfaces and building roofs.

**Action:** Provide green infrastructure coupled with high albedo surfaces to mitigate thermal loading of site surfaces and building roofs.

**Site/Parcel:** Provide shade and/or use light-colored/high-albedo materials (reflectance of at least .3) or open reinforced grid pavement for at least 30% of the site's walkways, plazas and open spaces.

**Tower:** Use ENERGY STAR® compliant AND high emissivity roofing (emissivity of at least 0.9 when tested in accordance with ASTM 408) for a minimum of 75% of the roof surface; OR install a "green" (vegetated) roof for at least 50% of the roof area. Combinations of high albedo and vegetated roof can be used providing they collectively cover 75% of the roof area.

**SEQ-4: Light Pollution Reduction**

**Purpose:** To reduce light pollution and glare to surrounding sites and night sky.

**Action:** Satisfy Illuminating Engineering Society of North America (IESNA) recommended practice per manual (RP-33-99) for exterior illumination. Design exterior lighting such that all exterior luminaires with more than 1000 initial lamp lumens are shielded and all luminaires with more than 3500 initial lamp lumens meet the Full Cutoff IESNA Classification. The maximum candela value of all interior lighting shall fall within the building (not out through windows) and the maximum candela value of all exterior lighting shall fall within the property. Tower tops will not be constrained by these requirements. Minimize glare from reflected sunlight by minimizing use of highly reflective materials on building facades. Incorporate lighting controls to minimize energy use during unnecessary periods.

**SEQ-5: Construction Environment**

**Purpose:** To reduce pollution, noise and vibration from construction activities and vehicles.

**Action:** Implement a Construction Environment Plan, which reduces pollution, noise and vibration from construction activities and vehicles to adjoining neighborhoods.

Develop a materials staging and construction access plan prior to start of construction. Truck staging zones are to be placed for minimum disruption and impact. Limit unnecessary idling times on diesel powered engines to 3 minutes. Consider bio-diesel fuel as an alternative to pure diesel.

Non-road construction equipment of 50hp or greater to include diesel emissions control technology according to EPA diesel retrofit recommendations, unless not technically feasible. All non-road diesel equipment to utilize ultra low sulfur diesel fuel (limit sulfur levels to 15ppm). Explore accelerated implementation of proposed EPA emission standards for non-road diesel equipment. Locate fixed diesel powered exhausts away from fresh air intakes.

Reduce noise and vibration impacts through scheduling and coordination with adjacent construction activities. Consider noise barriers where practicable.

Consider condition of surrounding buildings, structures, infrastructure and utilities where appropriate. Coordinate construction activities in adjacent and nearby locations to avoid or minimize impacts and communicate plans with the public.

Prepare contingency measures in the event established limits are exceeded.

**SEQ-6: Construction Storm Water Runoff and Pollution Prevention**

**Purpose:** Control site erosion and reduce negative impacts on hydrological and atmospheric systems produced by construction activities.

**Action:** Provide Construction Storm Water Pollution Prevention Plan conforming to US EPA document 832/R-92-005. Prevent air pollution from dust and particulate matter during the course of construction. Utilize sprayed suppressing agents (nonhazardous, biodegradable) for containment of fugitive dust and adjust strategies per meteorological conditions. Coordinate with SEQ-5 Construction Environment Plan.

**SEQ-7: Use Existing Site Structures**

**Purpose:** Encourage the re-use of existing site structures to conserve resources.

**Action:** Incorporate existing slurry wall, bathtub excavation, elements of Temporary PATH Station and utilities (such as the River Water Pump Station) for re-use in new site development to the extent possible.

**SEQ-8: Plant/Vegetation Selection**

**Purpose:** Use indigenous or acclimatized plants to reduce irrigation and maintenance requirements.

**Action:** Specify naturalized or indigenous plant materials, which will promote biodiversity and support site ecological systems, as well as, reduce maintenance requirements. Use plantings that can be sustained by natural rainfall levels to reduce irrigation requirements.

**SEQ-9: Daylight/Exterior Public Spaces**

**Purpose:** Design buildings and site structures to consider available daylight for public open spaces and green areas (within the context of the established massing guidelines).

**Action:** Determine critical open spaces and green areas. Utilize shadow studies to determine available sunlight. Consider available sunlight in planning outdoor public spaces and site plantings.

**SEQ-10: Solar Access/Harvesting**

**Purpose:** To optimize solar access for utilization of solar energy.

**Action:** Determine maximum available photovoltaic potentials for all building surfaces. Develop strategy for possible future transition to capture this potential. Quantify and document this strategy and any other "near threshold" renewable technologies in the Renewable Energy Transition Plan.

**SEQ-11: Recovery of Resources**

**Purpose:** To optimize utilization of site material resources and to facilitate the reduction of waste generated by building occupants that would otherwise be hauled to and disposed of in landfills and/or incinerators.

**Action:** Study large-scale and small-scale opportunities for on-site recovery of waste. Consider opportunities to recover food, paper, plastic, metal and construction waste. Consider composting, biomethanization and other viable "waste to reuse" strategies. Consider in conjunction with Renewable Energy Transition Plan and Co-generation study.

**SEQ-12: Use of Undeveloped Parcels**

**Purpose:** Utilize inactive and undeveloped site parcels to provide a positive contribution to site environmental qualities.

**Action:** Address both the "active" portions of the site under development, as well as the "inactive" areas of the site, which have a supporting role. Apply guidelines Storm Water Use (SEQ-2) and Heat Island Effect Mitigation (SEQ-3) to "inactive" site areas.

**WATER ENVIRONMENTAL QUALITIES**

**WEQ-1: Comprehensive Water Management Plan**

**Purpose:** To optimize utilization of site water resources.

**Action:** Implement a Water Management Plan to evaluate use of storm water, waste water and potable water resources, study potentials for onsite reclamation of wastewater and provide a coordinated management plan for full site water resources.

Use EPA recommendations per EO 12123 (June 1995) and Federal Energy Management Program (FEMP) Best Management Practices to develop Plan. The Plan must include, at a minimum, information on operation & maintenance, utility information, facility information, emergency response information and planning considerations.

**WEQ-2: Wastewater Reuse**

**Purpose:** To minimize site wastewater outflows.

**Action:** Implement wastewater strategies as required by Water Management Plan. Use reclaimed storm water and/or site water for toilet flushing, cooling tower makeup, vehicle maintenance and irrigation needs. Study additional opportunities to reduce the amount of potable water used in the building for conveying sewage.

**WEQ-3: Water Use Efficiency**

**Purpose:** To maximize water efficiency within buildings and reduce the burden on municipal water systems.

**Action:** Reduce consumption of potable water as required by Water Management Plan. Use 30% less potable water than a baseline building (utilize 1992 Energy Policy Act fixture requirements to determine baseline) would by utilizing efficient water fixtures, automatic controls and/or waterless urinals.

**WEQ-4: Landscape Hydrology**

**Purpose:** To maximize utilization of site water for landscape requirements.

**Action:** Use storm water for landscape irrigation requirements in conjunction with Water Management Plan. Specify plantings requiring low amounts of watering. Use indigenous or acclimatized plants suitable for the current nature of the site. Employ high-efficiency irrigation systems with slow-drip, sub-soil irrigation and computer operation with linkages to meteorological data to optimize water resources.

**ENERGY ENVIRONMENTAL QUALITIES**

**EEQ-1: Comprehensive Energy Management Plan**

**Purpose:** To conserve and optimize building energy use and minimize air emissions, including greenhouse gases, associated with energy consumption at the site.

**Action:** Prepare an Energy Management Plan to conserve and optimize building energy use, minimize air emissions and coordinate and maximize the utilization of any site generated energy resources. The Plan shall include an energy use budget for the project for the first year of operation (building shall be a minimum of 50% occupied with unoccupied areas and building systems normalized for full occupancy) and broken down by major energy consumption category (i.e., heating, cooling, lighting, fan energy, pump energy, etc.). Consider base building systems apart from occupancy with allowances for interconnections. After each year of operation, the actual utilization of energy shall be recorded and compared to this baseline energy use budget with appropriate adjustments for deviations in occupancy, base building conditions and climate norms. Significant deviations shall be evaluated and a detailed explanation for the probable cause of the deviation recorded in the updated plan. Strategies for reducing energy consumption below the first year of operation, as defined above, shall be identified and described.

The Energy Management Plan shall include a similar itemization of any site generated energy resources, including a budget for each component, and annual updates of actual performance. The Plan shall identify measures and strategies for increasing utilization of clean on-site energy above the first year of operation, as defined above.

Review opportunities for coordinated site strategies to conserve energy. Provide matrix outlining additional costs and savings, available incentives, benefits and impacts from, for instance, a co-generation plant, river water cooling, building integrated PV, fuel cells and other strategies.

**EEQ-2: Building Systems Commissioning**

**Purpose:** To implement a Building Commissioning Plan.

**Action:** Engage an independent commissioning authority to prepare and execute a commissioning plan. Implement fundamental, best practice building commissioning procedures. Include design phase reviews, contractor submittal reviews, pre-functional and functional testing (including seasonal testing), training, Operations & Maintenance manuals and post occupancy review. Provide Building Commissioning Plan consistent with the requirements of NY State Green Building Tax Credit (NYSGBTC) 638.6.

**EEQ-3: Optimize Energy Performance**

**Purpose:** To optimize the performance of building energy systems.

**Action:** Optimize the performance of building energy systems through the utilization of a full DOE-2.1E or Energy Plus building energy model to compare alternative strategies for energy efficiency (kwh) peak load reduction (kW) and reduced use of fossil fuels. Integrate with Energy Management Plan. This is to include the full analysis of architectural and mechanical decisions in relationship to building energy expenditures. Achieve a minimum of 20% decrease in energy cost above ASHRAE 90.1-1989. This savings reflects both tower and office tenant build-out potentials. Tenant build-out potential (as demonstrated in a typical tenant build-out) will be modeled in the same integrated exercise and the economic results provided to potential tenants in support of the preferred buildout. Include full list of energy conserving opportunities available to tenants.

*Provide daylight dimming and occupancy sensors on light fixtures where appropriate. All light fixtures to use high efficiency ballasts and low mercury/low lead, long life lamps. Specify recyclable lamps. Utilize energy efficient equipment such as variable speed systems for fans, pumps and motors; motors that meet or exceed NEMA premium efficiency ratings and equipment that meets or exceeds ENERGY STAR® ratings. Comply with FEMP levels for commercial products not rated by ENERGY STAR®. Provide a high performance building envelope, including minimized thermal bridging, superior insulation, air infiltration barrier and insulated wavelength selective glazing (to improve daylight transmission). Provide envelope construction details consistent with NYSGBTC 638.7(d)(2). Use air-side and water-side economizers, as appropriate.*

**EEQ-4: Ozone Layer Protection**

**Purpose:** To reduce emission of ozone depleting chemicals.

**Action:** Specify building HVAC systems with zero levels of CFC refrigerants, and provide plan for future elimination of HCFC's and halon in HVAC and refrigeration equipment and fire suppression systems. Avoid insulation materials that utilize chlorine based gases

**EEQ-5: Renewable Energy Plan**

**Purpose:** To meet a portion of site energy requirements with on site and/or purchased renewable energy sources and institute a plan for transition as renewables become more cost-effective.

**Action:** Utilize site generated and/or purchased renewable energy for a percentage of total building energy use. Provide transition plan for future conversion to renewables. Purchase or generate on-site a minimum of 20% of overall annual electric energy requirements with renewables by 2010 consistent with NY State EO-111's evolving requirements and capabilities. Provide infrastructure to integrate technology into building systems, when possible.

**EEQ-6: Energy Systems Control and Maintenance**

**Purpose:** To provide for ongoing verification of initial operation and energy utilization of building energy systems.

**Action:** Provide a computerized, fully-integrated Building Management System (BMS) with energy and fluid flow measurement capabilities for all major energy consuming systems. Institute a maintenance plan for ongoing measurement, verification and maintenance of equipment efficiencies and resource utilization. Provide programmable controls. Install permanent monitoring systems to track energy performance. Provide for maintenance and operational continuity through manuals and education. Install continuous metering equipment for a representative sample of lighting systems, motors, drives, chiller efficiencies, and trending of economizer and heat recovery equipment cycles, air distribution pressures and volumes and boiler efficiencies. Integrate the above systems into the Building Commissioning Plan.

**EEQ-7: End User Metering**

**Purpose:** Maximize tenant incentives to conserve energy.

**Action:** Include electrical distribution infrastructure required to allow end-user metering of tenants, including electricity use (kWh) and demand (kW) metering. Provide examples of existing incentive programs to tenants.

## **MATERIAL ENVIRONMENTAL QUALITIES**

### **MEQ-1: Comprehensive Material Management Plan**

**Purpose:** To optimize utilization of site material resources and to facilitate the reduction of waste generated by building occupants that would otherwise be hauled to and disposed of in landfills and/or incinerators.

**Action:** Implement a Materials Management Plan, which coordinates and implements material guideline requirements within the Sustainable Design Guidelines. Describe materials utilized, recycled content, location of manufacture/harvest, agricultural content, sustainable harvest certification, expected lifetime, maintenance requirements and recyclable/reuse potential at end of useful life. Minimize travel distance for building products and systems and locate sinks for highest recycled use for 'waste' materials in conjunction with MEQ-2 and MEQ-5. Provide infrastructure necessary to implement the recycling requirements of the plan. A central location for appropriately-sized recycling facilities must be provided for all buildings. Facilities must include, at a minimum, space for the separation, collection and storage for recycling of paper, corrugated cardboard, glass, plastics and metals, and each of these areas should be clearly identified. Provide easy truck access for the pick-up and removal of recyclables.

### **MEQ-2: Construction Waste Management**

**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:** Implement a Construction Waste Management Plan to divert construction, demolition and land clearing debris from landfill disposal to redirect recyclable and/or recovered resources back to the manufacturing process and to redirect salvageable materials to appropriate sites. Recycle and/or salvage a minimum of 80% of construction, demolition and land clearing waste, calculated by weight. Divert a minimum of 50% of construction waste by weight from landfill.

### **MEQ-3: Resource 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, and can contribute to this credit.

**MEQ-4: Materials with Recycled Content**

**Purpose:** To incorporate materials with recycled content and increase market demand for building materials and products that incorporate recycled content.

**Action:** Specify materials with recycled content in conjunction with the Materials Management Plan. The value of the recycled content portion of materials is to be at least 10% of the total project materials value (mechanical and electrical components are not to be included in these calculations).

Determine recycled content value according to the following formula. For post-consumer recycled content determine percentage of recycled content in the material and multiply by value of material. For post-industrial recycled content determine percentage of recycled content in the material, multiply by % and multiply by value of the material.

**MEQ-5: Material Proximity**

**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 building site.

**Action:** Utilize local/regional materials in conjunction with the Materials Management Plan. Use a minimum of 20% of all building materials (based on cost) that are manufactured within a 500 mile radius of the site. Manufactured in this context means the location where 'final assembly' takes place.

**MEQ-6: Wood Certification**

**Purpose:** To specify wood which has been harvested according to sustainable forest management principles.

**Action:** Utilize wood materials certified under the Forest Stewardship Council's Principles and Criteria (FSC) in conjunction with the Materials Management Plan. These materials may include dimensional framing components, flooring, doors, paneling, millwork and furnishings, handrails and trim, etc., as well as, temporary lumber and wood construction materials. Request vendor's chain-of-custody certificate number to verify certification.

**MEQ-7: Agricultural Materials**

**Purpose:** 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.

**Action:** In coordination with the Materials Management Plan use renewable and rapidly renewable building materials and products. Materials with annual growing cycles or which regenerate naturally within a 10-year-cycle are considered to be rapidly renewable materials. These materials include bamboo, poplar, cork, wool, cotton, jute, sisal, and soy-based products. Agricultural 'waste' materials such as wheatgrass, sunflower seed husks, and straw also qualify under this category. Release agents for concrete forms, which are made from plant oils such as corn oil are included. Use agricultural compost for site applications, including, but not limited to, turf, plantings and erosion control.

## INDOOR ENVIRONMENTAL QUALITIES

### IEQ-1: IAQ Performance

**Purpose:** Establish high indoor air quality (IAQ) for the comfort and well-being of the building's occupants by minimizing the potential for poor air quality, and by establishing minimum IAQ performance and standards.

**Action:** Provide an Indoor Air Quality Management Plan which employs architectural and HVAC design strategies to establish minimum outdoor air quantities, chemical, biological and particulate source control and on-going air quality monitoring to achieve a positive impact on the overall indoor environment and well being of the occupants. Meet the requirements of ASHRAE Standard 62-2001: "Ventilation for Acceptable Indoor Air Quality", utilizing the Ventilation Rate Procedure.

Prepare plan in accordance with the requirements of NYSGBTC 638.7(d)(1,2 and 3). Draft the plan in accordance with the EPA "Building Air Quality: A Guide for Building Owners and Facility Managers", 1991 and EPA and National Institute for Occupational Safety and Health, Building Air Quality Action Plan, 1998.

### IEQ-2: Daylight & Views

**Purpose:** Provide building occupants with connections to the outdoors through the introduction of daylight into habitually occupied areas of the building. Provide building occupants with views via direct line of sight to the outdoors from regularly occupied spaces when possible.

**Action:** Towers: Provide a 2% minimum daylighting factor to 75% of regularly occupied tenant spaces. Build a tenant office fit-out (5,000 SF) to demonstrate optimum daylight access, louvers and glare controls, and ceiling geometries intended to optimize daylighting strategies. Quantify performance of integrated curtain wall and tenant fit-out with proposed savings

Retail: Seek to maximize daylight penetration to concourse areas and below grade retail areas. Provide views to the outdoors from concourse areas to assist users in wayfinding and orientation.

### IEQ-3: Air Quality Monitoring

**Purpose:** To retain high indoor air quality standards by establishing monitoring protocols to assist in maintaining appropriate ventilation rates for the comfort and well-being of building occupants.

**Action:** Indoor air quality must be tested annually and must meet minimum criteria for five years in accordance with minimum requirements of NY State EO-111 reference to NYSGBTC 638.7(d)(1). Once radon measurements are found to be satisfactory, subsequent testing for this contaminant is not required. Where concentration levels of noted contaminants exceed the established parameters in any specific area during this 5 year period, seek to locate and remediate/eliminate contaminants, then flush out area with 100% outside air for a minimum of one week and retest until a satisfactory result is achieved.

Consideration should be given to a permanent indoor air quality monitoring system with centralized controls that provides feedback on ventilation performance and contaminant concentrations based on a combined carbon monoxide, carbon dioxide and volatile organic compound monitor.

**IEQ-4: Ventilation Air Quality**

**Purpose:** To provide outside air to all occupied spaces in the building to support the comfort and well-being of building occupants and as an energy conservation measure.

**Action:** Demonstrate that the requirements of Section 5, 'Best Practices for Maintaining IEQ' of the International Performance Measurement & Verification Protocol, Volume II 'Concepts and Practices for Improved Indoor Environmental Quality', March 2002 have been met. Provide capability for system default to 100% outside air at all times where practicable and in balance with energy conservation.

**IEQ-6: Construction IAQ Management Plan**

**Purpose:** To provide minimum standards for the air quality of building areas upon occupancy.

**Action:** Implement a Construction Indoor Air Quality Management Plan in conformance with NY State EO-11 (reference to NYSGBTC 638.7(d)(2) and the USGBC LEED 2.1 Rating System. During construction, meet or exceed the recommended Design Approach of the Sheet Metal and Air Conditioning National Contractors Association (SMACNA) IAQ Guideline for Occupied Buildings under Construction, Chapter 3. Use 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, conduct a two-week flush out with new filtration media using 100% outside air, in accordance with NYSGBTC 638.7(d)(2). Replace all filtration media used with new MERV 13 filters. Alternatively, test indoor air quality at random sampling points for every 20,000 sq ft, or by each floor if smaller, in accordance with recognized national standards, to achieve an air quality profile at 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-11 (reference to NYSGBTC 638.7(d)(2) and include one additional testing procedure for 4-PCh to satisfy all of the Alternate Procedure Requirements for LEED 2.1. 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 weeks and retest until a satisfactory result is achieved.

**IEQ-6: Reduce Contaminants from Materials**

**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 (VOCs) and other toxic characteristics which adversely affect Indoor Air Quality (IAQ). VOC's must meet or be lower than those in the following standards:

- Adhesives and sealants: South Coast Air Quality Management District Rule #1168
- Paints and coatings: Green Seal Standard GS-11
- Carpet and carpet adhesives: Carpet and Rug Institute Green Label Indoor Air Quality Test Program

Where possible use non-urea-formaldehyde-based bonding agents in composite wood and typical millwork applications such as veneer and plastic laminate applications, etc.

Minimize unprotected insulation in ducts, supply plenums and return plenums per NYSGBTC 638.7(f).

**IEQ-7: Chemical & Particulate Control**

**Purpose:** To minimize sources of chemical and particulate air contamination.

**Action:** Design all major entrances with permanent walk-off grates to minimize particulate transfer. Provide MERV 13 air filters for removal of 90% of particulates at air supply systems and provide building owner with a maintenance schedule for filter replacement. Build slab-to-slab partitions and provide negative air pressure of at least 7PA with isolated exhaust systems of at least .5cfm/sf at work rooms with printing and copying equipment, janitorial closets and all chemical use areas. Locate exhausts to ensure that there is no potential for re-entrainment of exhaust air to other supply in-takes. Provide drains for appropriate disposal of liquid waste in spaces where water and chemical concentrate mixing occurs.

**IEQ-8: Thermal Comfort**

**Purpose:** To provide building users with a high level of thermal comfort to promote comfort, well-being and enhanced productivity.

**Action:** Design the building envelope in accordance with ASHRAE Standard 55-2004 to manage the flow of air, moisture and thermal energy in the building. Include capability for adjustments to thermal conditions to address seasonal changes and associated modifications in typical levels of clothing. Design an integrated system (thermal shell and HVAC) that allows building operators to monitor and control air temperature in each zone. To avoid condensation problems, mechanical systems must be designed to deal with part-load cooling conditions so that they are able to maintain appropriate dehumidification levels.

**IEQ-9: Pest Control**

**Purpose:** To mitigate health concerns caused by any unwanted pests, their excrement and the chemicals used to control them.

**Action:** Develop an Integrated Pest Management Plan based on USEPA Best Management Practices, which promotes physical controls and non-pesticide measures over pesticide application. Physical controls include building sealing strategies, improved sanitation, pest-resistant plantings and improved maintenance of wet areas. When necessary, use boric acid or other nontoxic alternatives in lieu of more toxic chemicals to control and eliminate rodent populations from building.

**IEQ-10: Occupant Control**

**Purpose:** To provide building occupants with a high level of thermal, ventilation and lighting system control to promote productivity, comfort and well-being.

**Action:** Provide building occupants with controls over airflow, temperature and lighting systems including individual controls where practicable or feasible. Provide operable windows where practicable and feasible.

**IEQ-11: Acoustics**

**Purpose:** Minimize vibration and noise levels in indoor spaces and at exterior environments to achieve appropriate physical comfort and sound isolation for tasks and speech intelligibility, while contributing to human well-being and productivity.

**Action:** Where practical program locations of mechanical equipment and other sources of noise away from areas of building and exterior spaces designed for use by building tenants and the public. Design separations to minimize transfer of noise. Consider strategies to reduce the transmission of exterior ambient noise. Comply with the recommendations of ASHRAE Applications Chapter 48 Design Guidelines to reduce potential noise and vibration from mechanical equipment, and the Architectural Graphic Standards 8th Edition: Sound Isolation Criteria Table, page 44 to address acoustic criteria for enclosed office space such as offices, meeting rooms and other occupied areas.

**IEQ-12: Lighting Quality**

**Purpose:** Employ advanced lighting design to maximize comfort and productivity of building occupants and enhance the quality and efficiency of electric lighting. Fully coordinate ambient electrical lighting design with daylighting strategies.

**Action:** Design an ambient electrical lighting system that is coordinated with daylighting strategies to provide flexible illumination. Endeavor to meet the recommendations of the Illuminating Engineering Society of North America's (IESNA) 9th Edition Handbook, Chapter 10 Quality of the Visual Environment, and the Lighting Design Guide. Provide high frequency electronic ballasts, recyclable lamps and low mercury/low lead lamps as defined by the US Environmental Protection Agency's Toxicity Characteristic Leaching Procedure (TCLP) testing procedure. Supplement ambient lighting system with multi-level task lighting to maintain a minimum of 35 footcandles (in typical office area) at desk level throughout hours of occupancy.



SITE ENVIRONMENTAL QUALITY	MFR Schedule					
2001	2001	2001	2001	2001	2001	2001
2002	2002	2002	2002	2002	2002	2002
2003	2003	2003	2003	2003	2003	2003
2004	2004	2004	2004	2004	2004	2004
2005	2005	2005	2005	2005	2005	2005
2006	2006	2006	2006	2006	2006	2006
2007	2007	2007	2007	2007	2007	2007
2008	2008	2008	2008	2008	2008	2008
2009	2009	2009	2009	2009	2009	2009
2010	2010	2010	2010	2010	2010	2010
2011	2011	2011	2011	2011	2011	2011
2012	2012	2012	2012	2012	2012	2012

Project No.	Project Name	Project Description	LEADS				Date
			Lead 1	Lead 2	Lead 3	Lead 4	
1001	Water Quality Improvement Program	Implementation of water quality monitoring stations and data collection systems.	●	●	●	●	10/15/2023
1002	Waste Management System Upgrade	Upgrade of existing waste management facilities to meet regulatory requirements.	●	●	●	●	11/01/2023
1003	Air Quality Monitoring Network	Installation of air quality monitoring stations across the industrial zone.	●	●	●	●	11/15/2023
1004	Soil Remediation Project	Remediation of contaminated soil areas through excavation and treatment.	●	●	●	●	12/01/2023
1005	Wastewater Treatment Plant Expansion	Expansion of wastewater treatment capacity to accommodate increased industrial effluent.	●	●	●	●	12/15/2023
1006	Environmental Impact Assessment	Conducting comprehensive EIA for a new industrial facility.	●	●	●	●	01/01/2024
1007	Green Building Initiative	Promoting sustainable construction practices for new industrial buildings.	●	●	●	●	01/15/2024
1008	Community Outreach Program	Engaging local communities in environmental protection efforts.	●	●	●	●	02/01/2024
1009	Regulatory Compliance Audit	Annual audit of industrial facilities for environmental regulatory compliance.	●	●	●	●	02/15/2024
1010	Resource Conservation Program	Implementing energy and water conservation measures in industrial settings.	●	●	●	●	03/01/2024

**WATER QUALITY IMPROVEMENT PROGRAM**

Project Description

Implementation of water quality monitoring stations and data collection systems.

Project No. 1001

Date 10/15/2023

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Waste Management System Upgrade

Project Description

Upgrade of existing waste management facilities to meet regulatory requirements.

Project No. 1002

Date 11/01/2023

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Air Quality Monitoring Network

Project Description

Installation of air quality monitoring stations across the industrial zone.

Project No. 1003

Date 11/15/2023

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Soil Remediation Project

Project Description

Remediation of contaminated soil areas through excavation and treatment.

Project No. 1004

Date 12/01/2023

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Wastewater Treatment Plant Expansion

Project Description

Expansion of wastewater treatment capacity to accommodate increased industrial effluent.

Project No. 1005

Date 12/15/2023

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Environmental Impact Assessment

Project Description

Conducting comprehensive EIA for a new industrial facility.

Project No. 1006

Date 01/01/2024

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Green Building Initiative

Project Description

Promoting sustainable construction practices for new industrial buildings.

Project No. 1007

Date 01/15/2024

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Community Outreach Program

Project Description

Engaging local communities in environmental protection efforts.

Project No. 1008

Date 02/01/2024

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Regulatory Compliance Audit

Project Description

Annual audit of industrial facilities for environmental regulatory compliance.

Project No. 1009

Date 02/15/2024

Lead 1 ●

Lead 2 ●

Lead 3 ●

Lead 4 ●

Project Name

Resource Conservation Program

Project Description

Implementing energy and water conservation measures in industrial settings.

Project No. 1010

Date 03/01/2024

Lead 1 ●

Lead 2 ●

Lead 3 ●

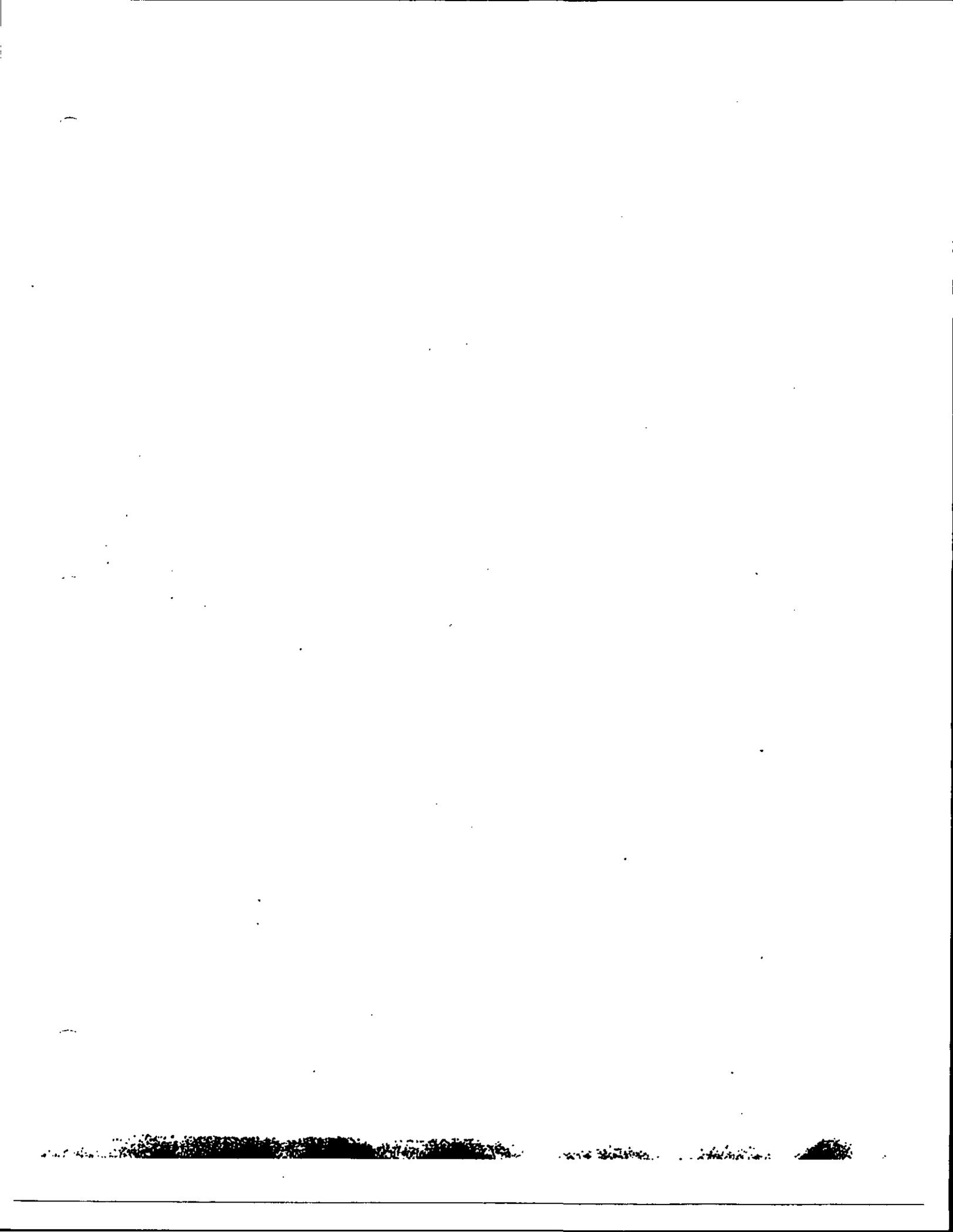
Lead 4 ●

Project Name



No.	Change	Purpose	Description	LSDP
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100	100	100	100	100





**Exhibit E-1**

**Insurance**

**INSURANCE RIDER**

**PROJECT:** FREEDOM TOWER  
1 WORLD TRADE CENTER  
New York, New York

**TRADE:** Selective Demolition, Structural Bracing, and Temporary Rock Anchors

**INSURANCE**

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, at its sole expense, maintain the following insurance on its own behalf, and furnish to WTC Redevelopment LLC and Tishman, 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: Insurance 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 Fifty Million (\$50,000,000) Dollars per occurrence and in the aggregate. The general aggregate must be applicable on a per project basis. Coverage must include the following perils:

1. Contractual Liability for liability assumed under this Contract and all other Contracts relative to the project.
2. Completed Operations/Products Liability with a five (5) year extension beyond completion and acceptance of the project.
3. Broad Form Property Damage.
4. "XC&U" Perils, where applicable
5. Personal Injury Liability (A, B & C)
6. Independent Contractors.
7. Endorsement (CG2010 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.
8. 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 and all other indemnities named in the Contract.

9. 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 WTC Redevelopment LLC and Tishman.
10. 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 Tishman Construction Corporation.
11. The Certificate of Insurance and Liability policies must contain the following endorsement.

"The insurance carrier(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 Port Authority, and immunity of the Port Authority, its commissioners, officers, agents or employees, the governmental nature of the Port Authority, or the provisions of any statutes respecting suits against the Port Authority."
12. The liability policy(ies) and Certificate of Insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured.
- 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 of at least One Million (\$2,000,000) Dollars. Automobile insurance must include all additional insureds and be scheduled as primary on the Umbrella policy.
- D. Commercial Professional Liability Insurance (CPLI) covering the design all shoring and temporary structures of at least Five Million (\$5,000,000) Dollars. CPLI must include all additional insureds.
- E. Railroad Protective Liability Insurance (RPLI) work including all shoring and temporary structures of at least Four Million (\$4,000,000) Dollars per occurrence, with an aggregate of at least Six Million (\$6,000,000) Dollars. RPLI must include all additional insureds.
- F. Where an Off Project Site property exposure exists, the Contractor at its sole expense shall furnish to WTC Redevelopment LLC and Tishman, 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 indemnities named in the contract.
- G. The above insurance shall each contain the following wording verbatim:

"WTC Redevelopment LLC and Tishman Construction Corporation 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) day advance written notice to WTC Redevelopment LLC c/o Sovereign Properties, Inc., 530 Fifth Avenue, New York, New York 10036, Attn: David Worsley, Tishman Construction Corporation, 666 Park Avenue, New York, New York 10103, Attn: Insurance Department and The Port Authority of NY & NJ, 226 Park Avenue South, 12th Floor, NY, NY 10003 - Attn: Winsen Fung, by certified mail-retained receipt requested."
- H. The amount of insurance contained in aforementioned insurance coverage, shall not be construed to be a limitation of liability on the part of the Contractor or any of their Subcontractors.
- I. The Contractors shall file certificates of insurance prior to the commencement of work and with WTC Redevelopment LLC and Tishman which shall be subject to WTC Redevelopment LLC and Tishman's approval of adequacy of protection and the satisfactory character of the insurer.

Freedom Tower  
1 World Trade Center  
New York, New York

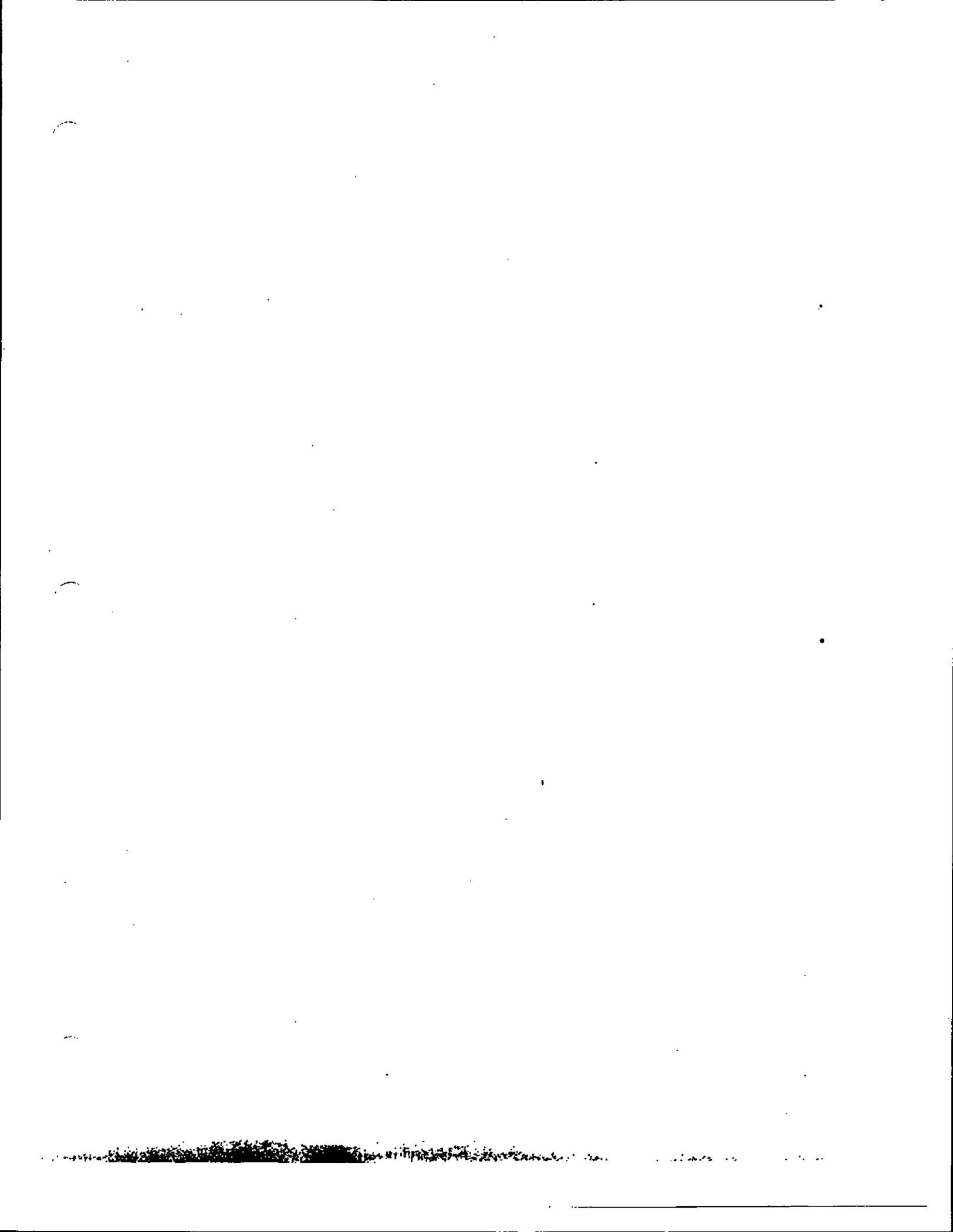
Labor & Material  
June 3, 2004, 2004

In the event of failure of the Contractor to furnish and maintain said insurance and to furnish satisfactory evidence thereof, WTC Redevelopment LLC and/or Tishman shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Contractor who agrees to furnish all necessary information thereof and to pay the cost thereof to the WTC Redevelopment LLC and/or Tishman immediately upon presentation of a bill.

- J. The Contractors and Subcontractors performing work or services in connection with the project shall maintain "All Risk" Property Insurance for all materials, equipment and supplies located at the project site and for Temporary Structures and Contractor's Tools and Equipment until completion of the project. Coverage is to be provided on a replacement cost basis.
- K. 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.
- L. The carrying of the insurance described shall in no way be interpreted as relieving the Contractor of any responsibility of liability under the Contract.
- M. Any policies effected by the Contractor on their 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., Silverstein Properties Inc., Port Authority of New York & New Jersey, and Tishman Construction Corporation and all other additional insureds and indemnitees named in the Contract.
- N. 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 One 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.
- O. Within five (5) days after the award of this contract and prior to the start of work, the contractor must submit an original Certificate of Insurance, to the Port Authority of NY & NJ, Facility Contract Administrator, at the location where the work will take place. This Certificate of Insurance MUST show evidence of the above insurance policy (ies), stating the agreement/contract number prior to the start of work. Upon request by the Port Authority, the Contractor shall furnish to the General Manager, Risk Management, a certified copy of each policy, including the premiums.

Schedule 1 - Additional Insureds:

WTC Redevelopment LLC  
World Trade Center Properties, LLC  
One World Trade Center LLC  
Two World Trade Center LLC  
Four World Trade Center LLC  
Five World Trade Center LLC  
Net Lessees' Association of the World Trade Center  
Silverstein WTC Facility Manager LLC  
Silverstein Properties Inc.  
Silverstein Development Co.  
Larry A. Silverstein (as an individual)  
The Port Authority of New York & New Jersey  
Port Authority Trans Hudson (PATH)  
WTC Retail LLC  
Tishman Construction Corporation  
Tishman Realty & Construction Co., Inc.  
Tishman Construction Corporation of New York and the parents and affiliates of each of them.



**Exhibit E-2**

**Additional Insured Entities**

**WTC Redevelopment LLC**

**World Trade Center Properties, LLC**

**1 World Trade Center LLC**

**2 World Trade Center LLC**

**4 World Trade Center LLC**

**5 World Trade Center LLC**

**Net Lessees' Association of the World Trade Center**

**Silverstein WTC Facility Manager LLC**

**Silverstein Properties, Inc.**

**Silverstein Development Co.**

**Larry A. Silverstein (as an individual)**

**The Port Authority of New York and New Jersey**

**Port Authority Trans-Hudson Corporation**

**WTC Retail LLC**

**Tishman Construction Corporation**

**Tishman Realty & Construction Co., Inc.**

**Tishman Construction Corporation of New York**

**and the parents and affiliates of each of them**

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**SECOND AMENDMENT TO GENERAL CONTRACTOR AGREEMENT**

THIS SECOND AMENDMENT TO GENERAL CONTRACTOR AGREEMENT (this "Second Amendment"), dated as of November 16, 2006, by and among (a) TISHMAN CONSTRUCTION CORPORATION, a Delaware corporation, having an office at 666 Fifth Avenue, New York, N.Y. 10103 ("Tishman"); (b) 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"); (c) 2 WORLD TRADE CENTER LLC ("2 WTC"); (d) 3 WORLD TRADE CENTER LLC, formerly known as 5 World Trade Center LLC ("3 WTC"); and (e) 4 WORLD TRADE CENTER LLC ("4 WTC") (2 WTC, 3 WTC and 4 WTC, collectively, the "SP Lessees", and each a Delaware limited liability company, having an office c/o Silverstein Properties, Inc., 7 World Trade Center, New York, New York 10007) (the SP Lessees, together with 1 WTC, the "Lessees").

**WITNESSETH:**

WHEREAS, the Lessees leases various components of the new World Trade Center site in New York, New York from The Port Authority of New York and New Jersey (the "Port Authority"), and in connection with the redevelopment of the Site, the Lessees and Tishman entered into a General Contractor Agreement, dated as of September 10, 2003 (as amended by that certain Amendment to General Contractor Agreement, dated as of July 1, 2004, the "General Contractor Agreement");

WHEREAS, immediately prior to the execution hereof, the Port Authority has acquired all of the ownership interests in 1 WTC, which entity holds the net leasehold interest in, and other rights to, Site 1;

WHEREAS, 1 WTC may hereafter acquire the net leasehold interest in Site 5, which net leasehold interest may be transferred by 1 WTC to another entity;

WHEREAS, simultaneously with the execution hereof, the Lessees, the Port Authority and WTC Retail LLC (formerly known as Westfield WTC LLC), a Delaware limited liability company, are entering into that certain Master Development Agreement for Towers 2/3/4 of the World Trade Center (as amended, the "Master Development Agreement");

WHEREAS, the parties wish to amend the General Contractor Agreement to clarify the rights and obligations of the Lessees contained therein; and

WHEREAS, the General Contractor Agreement contemplates amendment of, and each of the Lessees and Tishman expect to further amend from time to time, the General Contractor Agreement for purposes of modifying, supplementing or clarifying contractual terms and conditions that apply to each Lessee separately.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. Defined Terms.

(a) Capitalized terms used herein but not defined herein shall have the respective meanings assigned to them in the General Contractor Agreement or on Exhibit A attached hereto, as applicable. For purposes of this Second Amendment, if a capitalized term used herein but not defined herein is defined in both the General Contractor Agreement and Exhibit A, such term shall have the meaning assigned to it in Exhibit A.

(b) Whenever used in the General Contractor Agreement, the term "Lessee" and "Lessees" shall mean: (i) with respect to Tower 1 (also known as Freedom Tower), Site 1 or the Tower 1 Project, "1 WTC" only; (ii) with respect to Tower 2, Site 2 or the Tower 2 Project, "2 WTC" only; (iii) with respect to Tower 3, Site 3 or the Tower 3 Project, "3 WTC" only; (iv) with respect to Tower 4, Site 4 or the Tower 4 Project, "4 WTC" only; and (v) with respect to Tower 5, Site 5 or the Tower 5 Project, "1 WTC" only.

(c) Whenever used in the General Contractor Agreement, the term "Project" shall mean: (i) with respect to Site 1, Tower 1, 1 WTC (in its capacity as the net lessee of Site 1) or the Amended and Restated Lease applicable thereto, the "Tower 1 Project" only; (ii) with respect to Site 2, Tower 2, 2 WTC or the Amended and Restated Lease applicable thereto, the "Tower 2 Project" only; (iii) with respect to Site 3, Tower 3, 3 WTC or the Amended and Restated Lease applicable thereto, the "Tower 3 Project" only; (iv) with respect to Site 4, Tower 4, 4 WTC or the Amended and Restated Lease applicable thereto, the "Tower 4 Project" only; (v) with respect to Site 5, Tower 5, 1 WTC (in its capacity as the net lessee of Site 5) or any other entity that is the net lessee of Site 5, the "Tower 5 Project" only.

2. Lessee Obligations and Rights.

(a) Notwithstanding anything contained in the General Contractor Agreement to the contrary, (i) each Lessee's obligations and liabilities under the General Contractor Agreement shall relate, and be limited solely to, (x) the Project applicable to such Lessee pursuant to Section 1(c) above and (y) any other Work if authorized by such Lessee to be performed directly or indirectly by Tishman pursuant to the General Contractor Agreement (whether or not related to its Project or otherwise), and (ii) no Lessee shall be responsible for, or shall be deemed to have assumed, any obligations or liabilities of any of the other Lessees under, or in connection with, the General Contractor Agreement (whether arising before, on or after the date hereof).

(b) Notwithstanding anything contained in the General Contractor Agreement to the contrary, (i) each Lessee, with respect to its Project, shall possess all rights and remedies of the "Lessee" or "Lessees" under the General Contractor Agreement and, acting individually, has full power and authority to exercise any such right or remedy with respect to its Project (subject to the terms and conditions of Section 17.4 of the General Contractor Agreement with respect to each separate Project), and (ii) no Lessee shall have any right or remedy under the General Contractor Agreement except with respect to its Project. The General Contractor Agreement may be amended further hereafter by each Lessee with respect to its Project, without any consent or other approval by any other Lessee, which further amendment shall not amend the General Contractor Agreement with respect to the rights or obligations of the other Lessees under the General Contractor Agreement.

(c) Notwithstanding anything contained in the General Contractor Agreement to the contrary, Tishman hereby consents to any assignment by 1 WTC of the General Contractor Agreement with respect to Tower 5 and the Tower 5 Project to any entity affiliated with the Port Authority. The right of transfer set forth above is described for purposes of clarification and shall not be construed or interpreted as limiting any other right of transfer of a Lessee under the General Contractor Agreement with respect to its Project.

(d) Tishman shall not be entitled to assert any Claim or request any relief under the General Contractor Agreement with respect to any Project, to the extent such Claim or request arises out of or results from any default or failure to perform by Tishman in connection with any other Project.

3. Amended Provision. Section 4.6 of the General Contractor Agreement is hereby amended and restated in its entirety as follows:

Each of the Lessees shall designate a representative who shall be fully acquainted with the scope of the Work and such Lessee's requirements and objectives and who has full authority to render decisions promptly, furnish information as expeditiously as possible and to act on behalf of the Lessee and bind the Lessee in connection with all aspects of this Agreement and the Project. Until written notice is given to the contrary, (a) Larry A. Silverstein, Michael Levy and Janno Lieber are hereby designated as the representatives of each of 2 WTC, 3 WTC and 4 WTC, each with full power and authority to act on each of such Lessees' behalf as aforesaid, and (b) Milo Rivero is hereby designated as the representative of 1 WTC with full power and authority to act on behalf of 1 WTC as aforesaid. Notwithstanding anything to the contrary contained herein, prior to the commencement of construction of any Sub-Project, the applicable Lessee shall appoint a third-party representative who shall be fully acquainted with the scope of the Work and such Lessee's requirements and objectives and who, subject to such Lessee's approval, shall have full authority to render decisions promptly, furnish information as expeditiously as possible and to act on behalf of such Lessee.

4. Release and Transfer. Notwithstanding anything contained in the General Contractor Agreement to the contrary:

(a) *Release of Silverstein Parties.* The Silverstein Parties are hereby released by Tishman and its past, present and future Affiliates, and they and their Affiliates' respective shareholders, officers, commissioners, directors, members, managers, employees, beneficiaries, successors and permitted assigns, as applicable (collectively, the "Tishman Group") from all Claims that any member of the Tishman Group has or may have against any member of the Silverstein Parties with respect to or arising from, under or out of, otherwise relating to, or based upon the following:

- (1) if Accrued after the date hereof, any obligations or liabilities (i) of 1 WTC or any other entity that is the net lessee of Site 5 or Site 1 (or any of their successors or permitted assigns) under this Second Amendment, or (ii) pertaining to Tower 1, Tower 5, Site 1, Site 5, the Tower 1 Project, or the Tower 5 Project; or
- (2) if Accrued on or before the date hereof, only those obligations and liabilities of 1 WTC under the General Contractor Agreement pertaining to work or services performed under (x) that certain subcontract agreement for World Trade Center – Tower One, dated June 16, 2006 (and signed September 6, 2006), by and between Tishman Construction Corporation and Banker Steel Company and (y) Alternate No. 8 of Rider C to that certain subcontract agreement for World Trade Center – Tower One, dated March 8, 2006 by and between Tishman Construction Corporation and The Laquila Group, Inc. (the obligations and liabilities pertaining to Clauses (x) and (y) are the “Retained Obligations”).

(b) *Release of 1 WTC Group.* 1 WTC and each of its respective past, present and future Affiliates, and they and their Affiliates’ respective members, officers, directors, members, managers, employees, beneficiaries, successors and permitted assigns, as applicable (collectively, the “1 WTC Group”), is hereby released by the Tishman Group from all Claims that any member of the Tishman Group has or may have against any member of the 1 WTC Group with respect to or arising from, under or out of, otherwise relating to, or based upon the following:

- (1) whether Accrued before, on or after the date hereof, any obligations or liabilities (i) of the SP Lessees (or any of their respective successors or permitted assigns) under this Second Amendment, or (ii) pertaining to Tower 2, Tower 3, Tower 4, Site 2, Site 3, Site 4, the Tower 2 Project, the Tower 3 Project or the Tower 4 Project; or
- (2) if Accrued on or before the date hereof, any obligations or liabilities (i) of 1 WTC under the General Contractor Agreement, or (ii) pertaining to Tower 1, Tower 5, Site 1, Site 5, the Tower 1 Project, or the Tower 5 Project; provided, however, that the release set forth above in this Subparagraph 4(a)(2) shall not apply to the Retained Obligations.

(c) *Transfer.* The Tishman Group shall look solely to the Silverstein Parties for payment or recovery of all liabilities and obligations for which the Tishman Group releases the 1 WTC Group under Subparagraph 4(b)(2) (the “Transferred Obligations”). 1 WTC, on behalf of the 1 WTC Group, hereby transfers all of the Transferred Obligations to the Silverstein Parties, and the SP Lessees, on behalf of the Silverstein Parties, accept such transfer and agree to be responsible to the Tishman Group for all of the Transferred Obligations.

(d) *No Waiver/Release.* Nothing in Paragraph 4 of this Second Amendment shall or shall be deemed to be a waiver or release by Tishman of (i) any claim by Tishman related to

or arising from a third party claim made against Tishman in connection with the Demolition Sub-Project if and to the extent that WTC Redevelopment LLC owes Tishman indemnity obligations for any such claim or insurance coverage obligations for any such claim, in each case pursuant to Section 4.9 of the General Contractor Agreement or (ii) any claim arising from, or in connection with, environmental matters existing on the World Trade Center site on or before September 11, 2001, including, without limitation, bodily injury claims arising therefrom

5. Effect of Amendment. Except as amended by this Second Amendment, the terms and provisions of the General Contractor Agreement remain unmodified and in full force and effect. Any future reference to the General Contractor Agreement shall be deemed to be a reference to the General Contractor Agreement, as amended by this Second Amendment, and as same, from time to time, hereafter may be further amended; provided, however, that any such further amendment shall amend the General Contractor Agreement only with respect to the Lessee to which such amendment applies, and shall not amend the General Contractor Agreement with respect to any other Lessee.

6. Not a Waiver. Except as expressly provided in this Second Amendment, nothing contained in or contemplated by this Second Amendment shall constitute, or be construed as (a) the waiver by any party of such party's rights or another party's obligations under the General Contractor Agreement, or (b) the consent or approval by any party of any matter, decision or selection requiring the consent or approval of such party under the General Contractor Agreement.

7. Counterparts. This Second Amendment may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of such counterparts shall together constitute but one and the same instrument.

8. Successors and Assigns. This Second Amendment has been duly authorized by each of by each of the parties hereto, and shall be binding on, and shall inure to the benefit of, the heirs, legal representatives, successors and permitted assigns of the parties hereto

9. Further Assurances. Subject to the terms and conditions of this Second Amendment, each party shall use its commercially reasonable efforts to take, or cause to be taken, all actions and to do, or cause to be done, all things necessary, proper or advisable under applicable laws and orders to consummate or carry out the transactions contemplated by this Second Amendment.

10. Governing Law. This Second Amendment shall be governed by and construed in accordance with the laws of the State of New York.

11. No Amendment. This Second Amendment may not be changed, amended, modified, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of such change, amendment, modification, waiver, discharge or termination is sought.

12. No Liability. No commissioner, officer, director, agent or employee of any party or its respective Affiliates (or any other person authorized to act on behalf of any of the parties) shall be charged personally with any liability or held personally liable under any provision of this Second Amendment or because of any breach hereof.

13. Notices.

To the SP Lessees:

The SP Lessees  
c/o Silverstein Properties, Inc.  
7 World Trade Center  
New York, NY 10007  
Attention: Larry Silverstein

With copies to:

Wachtell, Lipton, Rosen & Katz  
51 West 52<sup>nd</sup> Street  
New York, NY 10019  
Attention: Robin Panovka, Esq.

To I WTC:

c/o The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: Mr. Milo Rivero

With copies to:

The Port Authority of New York and NJ  
225 Park Avenue South  
New York, NY 10003  
Attention: General Counsel

To Tishman:

Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103  
Attention: John T. Livingston, President

With a copy to:

Tishman Construction Corporation  
666 Fifth Avenue

New York, New York 10103

Attention: Michael J. Mennella, Executive Vice President

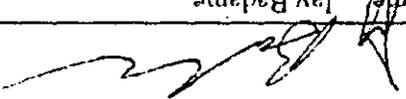
14. Entire Agreement. This Second Amendment (together with the General Contractor Agreement) constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and there are no other agreements, understandings, undertakings, representations or warranties among the parties hereto with respect to the subject matter hereof except as set forth herein.

15. Counterparts. This Second Amendment may be executed in one or more counterparts, each of which shall be deemed to be an original agreement, but all of which shall constitute one and the same agreement.

**[Remainder of Page Intentionally Left Blank]**

IN WITNESS WHEREOF, the parties have caused this Second Amendment to General Contractor Agreement to be duly executed as of the day and year first above written.

**TISHMAN CONSTRUCTION CORPORATION**

By:  \_\_\_\_\_

Name: Jay Badame  
 Title: Chief Operating Officer

**1 World Trade Center LLC**

By: The Port Authority of New York and New Jersey,  
its sole member

By: 

Name: Michael B. Francois

Title: Chief of Real Estate and Development

The Port Authority of New York and New Jersey

**2 WORLD TRADE CENTER LLC**

By:   
Name: Michael Levy  
Title: Senior Vice President

**3 WORLD TRADE CENTER LLC**

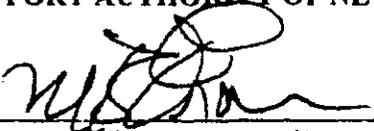
By:   
Name: Michael Levy  
Title: Senior Vice President

**4 WORLD TRADE CENTER LLC**

By:   
Name: Michael Levy  
Title: Senior Vice President

**ACKNOWLEDGED AND AGREED:**

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

By: 

Name: Michel B. Francois

Title: Chief of Real Estate and Development

The Port Authority of New York and New Jersey

## EXHIBIT A

"1 WTC Lease" shall mean the Amended and Restated Agreement of Lease between 1 WTC LLC, as lessee, and the Port Authority, as lessor, as hereinafter amended.

"2 WTC Lease" shall mean the Amended and Restated Agreement of Lease between 2 WTC LLC, as lessee, and the Port Authority, as lessor, as hereinafter amended.

"3 WTC Lease" shall mean the Amended and Restated Agreement of Lease between 3 WTC LLC, as lessee, and the Port Authority, as lessor, as hereinafter amended.

"4 WTC Lease" shall mean the Amended and Restated Agreement of Lease between 4 WTC LLC, as lessee, and the Port Authority, as lessor, as hereinafter amended.

"Accrued" shall mean, with respect to any obligation or liability, the occurrence of the event, act, error, omission or Claim, from which or out of which the obligation or liability results or arises, regardless of when any invoice, bill, notice, demand or claim for such obligation or liability is made, delivered or received.

"Affiliate" and "Affiliates" shall mean, 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 is required in connection with such merger or consolidation with, that Person.

"Claim" shall mean any action, claim, suit, arbitration, inquiry, litigation, proceeding, governmental or regulatory investigation, cause of action, judgment, execution or demand, in each case at law, in equity or otherwise.

"Control" shall mean 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.

"Dimensioned Site Plan" shall mean the color graphic site plan of the World Trade Center attached hereto as Exhibit B.

"East Bathtub" shall mean that portion of the WTC Property depicted on the Dimensioned Site Plan in accordance with the legend set forth therein, and as described (including horizontal and vertical limits) in the East Bathtub space allocation concept design under development for this portion of the WTC Property.

**"East Bathtub Improvements"** shall mean the improvements required to be constructed on and in the East Bathtub, including, without limitation, the portion of each Tower located within the Podium, the below grade and above grade improvements associated with each Tower and The Port-Authority Trans-Hudson Corporation terminal.

**"Person"** shall mean and include an individual, corporation, partnership, limited liability company, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department, authority or agency thereof.

**"Podium"** shall mean the multi-story base structure of each Tower, above which will be located the high-rise multi-story office structure of each Tower and below which will be located structural support for the Towers and subgrade development.

**"Silverstein Parties"** shall mean the SP Lessees, their respective Affiliates or they and their respective Affiliates' officers, members, directors, employees, agents, representatives, contractors, customers, guests, invitees or other third parties authorized to act on behalf of any of the SP Lessees or any of their heirs, executors, successors or assigns, as applicable.

**"Site"** shall mean the applicable portion of WTC Property, as described and depicted on the Dimensioned Site Plan, upon and within which each Tower and associated East Bathtub Improvements are to be located.

**"Site 1"** shall mean the Site, upon and within which, Tower 1 will be located, as depicted and described on the Dimensioned Site Plan and as demised to an SP Lessee under the 1 WTC Lease.

**"Site 2"** shall mean the Site, upon and within which, Tower 2 will be located, as depicted and described on the Dimensioned Site Plan and as demised to an SP Lessee under the 2 WTC Lease.

**"Site 3"** shall mean the Site, upon and within which, Tower 3 will be located, as depicted and described on the Dimensioned Site Plan and as demised to an SP Lessee under the 3 WTC Lease.

**"Site 4"** shall mean the Site, upon and within which, Tower 4 will be located, as depicted and described on the Dimensioned Site Plan and as demised to an SP Lessee under the 4 WTC Lease and as demised under the 1 WTC Lease.

**"Site 5"** shall mean the Site, upon and within which, Tower 5 will be located, as depicted and described on the Dimensioned Site Plan and as demised to 1 WTC under the 5 WTC Lease.

**"Tower"** shall mean the building to be located upon and within an applicable Site pursuant to the provisions of this Agreement including, without limitation, the East Bathtub space allocation concept design under development.

"Tower 1" shall mean the Tower to be located upon and within Site 1, which Tower is also known as Freedom Tower.

"Tower 1 Project" shall mean the development, design and construction of Tower 1.

"Tower 2" shall mean the Tower to be located upon and within Site 2.

"Tower 2 Project" shall mean the development, design and construction of Tower 2.

"Tower 3" shall mean the Tower to be located upon and within Site 3.

"Tower 3 Project" shall mean the development, design and construction of Tower 3.

"Tower 4" shall mean the Tower to be located upon and within Site 4.

"Tower 4 Project" shall mean the development, design and construction of Tower 4.

"Tower 5" shall mean the Tower to be located upon and within Site 5.

"Tower 5 Project" shall mean the development, design and construction of Tower 5.

"WTC Property" the property occupying the World Trade Center.

Ex. 4

**EXHIBIT B**

Dimensioned Site Plan

[To be Attached]

**THIRD FREEDOM TOWER AMENDMENT**

**TO**

**GENERAL CONTRACTOR AGREEMENT**

THIS THIRD FREEDOM TOWER AMENDMENT TO GENERAL CONTRACTOR AGREEMENT (the "Third Freedom Tower Amendment"), dated as of July 13, 2007, is entered into, for purposes of amending the General Contractor Agreement with respect to the Tower 1 Project, by and among (a) TISHMAN CONSTRUCTION CORPORATION, a Delaware corporation, having an office at 666 Fifth Avenue, New York, N.Y. 10103 ("Tishman" or "Construction Manager"); and (b) 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").

**WITNESSETH:**

WHEREAS, 1 WTC, 2 WTC, 3 WTC and 4 WTC (collectively the "Lessees") each lease various portions of the new World Trade Center site in New York, New York (the "World Trade Center") from The Port Authority of New York and New Jersey (the "Authority");

WHEREAS, the Lessees and Tishman entered into a General Contractor Agreement, dated September 10, 2003 (and as amended prior to this Third Freedom Tower Amendment, the "General Contractor Agreement"), in connection with the redevelopment of the World Trade Center;

WHEREAS, the General Contractor Agreement was amended by a "First Amendment to General Contractor Agreement," dated July 1, 2004 (the "First Amendment"), which First Amendment provides for various demolition activities;

WHEREAS, the General Contractor Agreement was amended by a "Second Amendment to General Contractor Agreement", dated November 16, 2006 (the "Second Amendment"), which Second Amendment, among other things, provides that the General Contractor Agreement shall apply separately to each Lessee with respect to the Project of that Lessee contemplated as part of the redevelopment of the World Trade Center under the General Contractor Agreement;

WHEREAS, on November 16, 2006 (the "Closing Date"), the Authority acquired all of the ownership interests in 1 WTC, which holds the net leasehold interest in, and other rights to, Site 1;

WHEREAS, pursuant to the Second Amendment, 1 WTC has the full right and authority, without any notice to or consent or authorization from, any other Lessee, to further amend the General Contractor Agreement with respect to Site 1 and the Tower 1 Project (commonly referred to as the "Freedom Tower");

WHEREAS, 1 WTC and Tishman have agreed that under certain circumstances Tishman will continue to act as a general contractor with respect to the Project, and under other circumstances Tishman will act as an agent construction manager with respect to the Project; and

WHEREAS, 1 WTC and Tishman wish to amend further the General Contractor Agreement in order to modify and clarify the terms and conditions of the General Contractor Agreement that apply to 1 WTC and Tishman with respect to the Tower 1 Project under various circumstances.

NOW, THEREFORE, in consideration of the above premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto mutually agree as follows:

1. Defined Terms. Capitalized terms used but not defined in this Third Freedom Tower Amendment shall have the respective meanings assigned to them in the Schedule of Defined Terms, attached hereto and made part hereof as Exhibit 1.

2. Terms and Conditions of General Contractor Agreement. Tishman has acted as a general contractor under the General Contractor Agreement with respect to all work and services in connection with Site 1 and the Tower 1 Project performed on or before the Closing Date. Prior to the Closing Date, Tishman entered into certain subcontract agreements in connection with Site 1 and the Tower 1 Project (each a "Subcontract"), which Subcontracts are set forth in the Schedule of Subcontracts, attached hereto and made part hereof as Exhibit 2. With respect to work and services in connection with some or all of the Subcontracts performed after the Closing Date, Tishman shall continue to act as a general contractor. With respect to other work and services in connection with Site 1 and the Tower 1 Project performed after the Closing Date, Tishman will act as an agent construction manager. Therefore, because of the different capacities in which Tishman will act and other agreements between 1 WTC and Tishman, the terms and conditions of the General Contractor Agreement with respect to Site 1 and the Tower 1 Project shall be modified by this Third Freedom Tower Amendment, under the circumstances and as described below in this Article 2.

2.1 *Pre-Closing, Non-Retained Obligations.* With respect to all work and services performed by, under or through Tishman in connection with Site 1 or the Tower 1 Project on or before the Closing Date, excepting only the Retained Obligations, the rights and obligations of 1 WTC and Tishman shall remain as set forth in the General Contractor Agreement, and shall not be modified by this Third Freedom Tower Amendment; provided, however, that Tishman confirms that (i) all work and services contemplated under the First Amendment have been performed in full, and (ii) except for the Retained Obligations only, Tishman has released 1 WTC and other persons and entities from, among other things, all obligations and liabilities accruing on or before the

2.4.1 If Tishman, despite its best efforts, is unable to achieve the requirements of both clause (i) and clause (ii) immediately above with respect to a Subcontract to which Paragraph 2.4 applies, then: (a) such Subcontract shall not be terminated; (b) with respect to any work and services performed by, under or through Tishman that pertains directly to such Subcontract, the General Contractor Agreement shall be deemed further modified by the Schedule of GC Terms and Conditions, attached hereto and made part hereof as Exhibit B; and, (c) Tishman shall use best efforts to modify further such Subcontract as requested by 1 WTC.

2.4.2 Anything in this Third Freedom Tower Amendment to the contrary notwithstanding, to the extent that a subcontractor identified in the Schedule of Subcontracts (each a "Subcontractor") refuses to comply with any of the provisions of a trade contract approved by 1 WTC or of the Part B Agreement, as the case may be, to the extent such provisions differ from the current contractual obligations of that Subcontractor under the applicable Subcontract, such refusal shall not be deemed to be a breach by Tishman of this Third Freedom Tower Amendment, provided that Tishman uses its best efforts to cause such compliance.

2.4.3 If requested by 1 WTC in writing, Tishman shall terminate any Subcontract.

### 3. Effect of Third Freedom Tower Amendment.

3.1 This Third Freedom Tower Amendment applies to the General Contractor Agreement with respect to Site 1 and the Tower 1 Project, only.

3.2 For purposes of Paragraphs 2.2 and 2.3 above, the "Terms and Conditions of the General Contractor Agreement" shall be deemed to mean all recitals, provisions, exhibits and text that is contained, or incorporated by reference, in the General Contractor Agreement prior to any amendment. For the avoidance of doubt, any deletion of the Terms and Conditions of the General Contractor Agreement pursuant to Paragraphs 2.2 and 2.3 above does not delete or modify any provision or agreement set forth in the First Amendment or Second Amendment except for only that portion of such provision or agreement in either the First Amendment or Second Amendment that is rendered inapplicable because it is intended to modify a specified provision of the General Contractor Agreement that no longer exists by operation of Paragraph 2.2 or 2.3 above (e.g., the "Release and Transfer" provisions set forth in Paragraph 4 of the Second Amendment remain in full force and effect and are not modified by this Third Amendment).

3.3 Paragraphs 2.2 and 2.3 are deemed to amend and modify the General Contractor Agreement, and do not terminate the General Contractor Agreement. Those terms and conditions applicable to 1 WTC and Tishman in connection with Site 1 or the Tower 1 Project under the General Contractor Agreement as amended and modified by the CM Terms and Conditions pursuant to Paragraphs 2.2 or 2.3, may be referred to as

Closing Date in connection with Site 1 or the Tower 1 Project, as more specifically set forth in the Second Amendment.

2.2 *Retained Obligations.* With respect to all work and services that comprise any of the Retained Obligations, regardless of when such work or services is performed, the Terms and Conditions of the General Contractor Agreement shall be deemed amended and modified as set forth below in this Paragraph 2.2:

2.2.1 For that portion of the Retained Obligations that pertain directly to the LaQuila Subcontract, all Terms and Conditions of the General Contractor Agreement shall be deemed deleted in their entirety and replaced by the Schedule of GC Terms and Conditions, attached hereto and made part hereof as Exhibit B.

2.2.2 For that portion of the Retained Obligations that pertain directly to the Banker Steel Subcontract, all Terms and Conditions of the General Contractor Agreement shall be deemed deleted in their entirety and replaced by the Schedule of CM Terms and Conditions, attached hereto and made part hereof as Exhibit A.

2.3 *Post-Closing, Non-Retained Obligations.* With respect to all work and services performed by, under or through Tishman in connection with Site 1 or the Tower 1 Project after the Closing Date (other than as set forth in Paragraph 2.2 for the Retained Obligations)(the "Post-Closing Work"), the Terms and Conditions of the General Contractor Agreement shall be deemed amended and modified as set forth below in this Paragraph 2.3:

2.3.1 With respect to any Post-Closing Work that pertains directly to the following Subcontracts, all Terms and Conditions of the General Contractor Agreement shall be deemed deleted in their entirety and replaced by the Schedule of GC Terms and Conditions, attached hereto and made part hereof as Exhibit B: (i) that portion of the LaQuila Subcontract that does not comprise any part of the Retained Obligations, (ii) the Petrocelli Subcontract, and (iii) the Ferguson-Neudorf Subcontract.

2.3.2 With respect to all Post-Closing Work, except as set forth in Subparagraph 2.3.1, all Terms and Conditions of the General Contractor Agreement shall be deemed deleted in their entirety and replaced by the Schedule of CM Terms and Conditions, attached hereto and made part hereof as Exhibit A.

2.4 *Termination and Modification of Subcontracts.* To the extent requested by 1 WTC to give effect to the requirements of Paragraphs 2.2 or 2.3 above, Tishman shall use best efforts: (i) to terminate Subcontracts, such termination to be effective as of the Closing Date, and (ii) to cause the subcontractors under such Subcontracts to enter into a trade contract with 1 WTC directly, with Tishman acting as the disclosed agent of 1 WTC (e.g., the Banker Steel Subcontract, the Highland Tank Subcontract, and the Federated Equipment Subcontract). All such trade contracts shall be in form and substance satisfactory to 1 WTC.

11. Notices.

To 1 WTC:

c/o The Port Authority of New York and New Jersey  
225 Park Avenue South  
New York, New York 10003  
Attention: \_\_\_\_\_

With copies to:

The Port Authority of New York and NJ  
225 Park Avenue South  
New York, NY 10003  
Attention: General Counsel

To Tishman:

Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103  
Attention: John T. Livingston, Executive Vice President

With a copy to:

Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103  
Attention: Michael J. Mennella, Senior Vice President

12. Entire Agreement. This Third Freedom Tower Amendment (together with the General Contractor Agreement, as amended previously) and any Exhibit to this Third Freedom Tower Amendment set forth below, constitutes the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and there are no other agreements, understandings, undertakings, representations or warranties among the parties hereto with respect to the subject matter hereof except as set forth herein. The captions to the sections of this Third Freedom Tower Amendment are for convenience only and shall not be deemed part of the text of the respective sections and shall not vary by implication or otherwise any of the provisions hereof.

Exhibit

Title

Exhibit 1	Schedule of Defined Terms
Exhibit 2	Schedule of Subcontracts
Exhibit A	Schedule of CM Terms and Conditions
Exhibit B	Schedule of GC Terms and Conditions

the "Part A Agreement." Those terms and conditions applicable to 1 WTC and Tishman in connection with Site 1 or the Tower 1 Project under the General Contractor Agreement as amended and modified by the GC Terms and Conditions, may be referred to as the "Part B Agreement."

3.4 Subsequent to the date of this Third Freedom Tower Amendment, any reference to the General Contractor Agreement for purposes of Site 1 or the Tower 1 Project shall be deemed to be a reference to the General Contractor Agreement, as amended by this Third Freedom Tower Amendment, and as same, from time to time, hereafter may be further amended.

4. Not a Waiver. Except as expressly provided in this Third Freedom Tower Amendment, nothing contained in or contemplated by this Third Freedom Tower Amendment shall constitute, or be construed as (i) the waiver by any party of such party's rights or another party's obligations under the General Contractor Agreement, or (ii) the consent or approval by any party of any matter, decision or selection requiring the consent or approval of such party under the General Contractor Agreement.

5. Counterparts. This Third Freedom Tower Amendment may be signed in counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of such counterparts shall together constitute but one and the same instrument.

6. Successors and Assigns. This Third Freedom Tower Amendment has been duly authorized by each of by each of the parties hereto, and shall be binding on, and shall inure to the benefit of, the heirs, legal representatives, successors, and permitted assigns of the parties hereto.

7. Further Assurances. Subject to the terms and conditions of this Third Freedom Tower Amendment, each party shall use its commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things necessary, proper, or advisable under applicable law to consummate or carry out the transactions contemplated by this Third Freedom Tower Amendment.

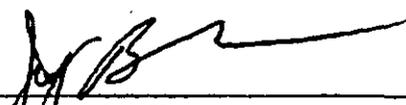
8. Governing Law. This Third Freedom Tower Amendment shall be governed by and construed in accordance with the laws of the State of New York, without reference to rules governing conflicts of law that might direct application of the law of another jurisdiction.

9. No Amendment. This Third Freedom Tower Amendment may not be changed, amended, modified, waived, discharged or terminated, except by an instrument in writing signed by the party against whom enforcement of such change, amendment, modification, waiver, discharge or termination is sought.

10. No Liability. Neither the commissioners of the Authority nor any officer, director, agent or employee thereof, or of 1 WTC, (or any other person authorized to act on their behalf) shall be charged personally with any liability or held personally liable under any provision of this Third Freedom Tower Amendment or because of any breach hereof.

IN WITNESS WHEREOF, the parties have caused this Third Freedom Tower Amendment to General Contractor Agreement to be duly executed as of the day and year first above written.

**TISHMAN CONSTRUCTION  
CORPORATION**

By: 

Name: Jay Badame

Title: Chief Operating Officer

**1 WORLD TRADE CENTER LLC**

By: 

Name:

Title:

## EXHIBIT 1

### SCHEDULE OF DEFINED TERMS

1. 1 WTC. The term "1 WTC" shall have the meaning set forth in the preamble to the Third Freedom Tower Amendment.
2. 2 WTC. The term "2 WTC" shall mean 2 World Trade Center LLC.
3. 3 WTC. The term "3 WTC" shall mean 3 World Trade Center LLC, formerly known as 5 World Trade Center LLC.
4. 4 WTC. The term "4 WTC" shall mean 4 World Trade Center LLC.
5. Authority. The term "Authority" shall have the meaning set forth in the first paragraph of the Recitals to the Third Freedom Tower Amendment.
6. Banker Steel Subcontract. The term "Banker Steel Subcontract" shall have the meaning set forth in Paragraph 6 of Exhibit 2.
7. Closing Date. The term "Closing Date" shall have the meaning set forth in the fifth paragraph of the Recitals to the Third Freedom Tower Amendment.
8. Construction Manager. The term "Construction Manager" shall have the meaning set forth in the preamble to the Third Freedom Tower Amendment.
9. Federated Equipment Subcontract. The term "Federated Equipment Subcontract" shall have the meaning set forth in Paragraph 3 of Exhibit 2.
10. Ferguson-Neudorf Subcontract. The term "Ferguson-Neudorf Subcontract" shall have the meaning set forth in Paragraph 2 of Exhibit 2.
11. First Amendment. The term "First Amendment" shall have the meaning set forth in the third paragraph of the Recitals to the Third Freedom Tower Amendment.
12. Freedom Tower. The term "Freedom Tower" shall have the meaning set forth in the sixth paragraph of the Recitals to the Third Freedom Tower Amendment.
13. General Contractor Agreement. The term "General Contractor Agreement" shall have the meaning set forth in the second paragraph of the Recitals to the Third Freedom Tower Amendment.
14. Highland Tank Subcontract. The term "Highland Tank Subcontract" shall have the meaning set forth in Paragraph 5 of Exhibit 2.

15. LaQuila Subcontract. The term "LaQuila Subcontract" shall have the meaning set forth in Paragraph 4 of Exhibit 2.
16. Part A Agreement. The term "Part A Agreement" shall have the meaning set forth in Paragraph 3.3 of the Third Freedom Tower Amendment.
17. Part B Agreement. The term "Part B Agreement" shall have the meaning set forth in Paragraph 3.3 of the Third Freedom Tower Amendment.
18. Lessees. The term "Lessees" shall have the meaning set forth in the first paragraph of the Recitals to the Third Freedom Tower Amendment.
19. Petrocelli Subcontract. The term "Petrocelli Subcontract" shall have the meaning set forth in Paragraph 1 of Exhibit 2.
20. Post-Closing Work. The term "Post-Closing Work" shall have the meaning set forth in Paragraph 2.3 of the Third Freedom Tower Amendment.
21. Project. The term "Project" shall have the same meaning as the term "Tower 1 Project."
22. Retained Obligations. The term "Retained Obligations" shall have the meaning set forth in Section 4(a) of the Second Amendment.
23. Schedule of Subcontracts. The term "Schedule of Subcontracts" shall have the meaning set forth in the first paragraph of Article 2 of the Third Freedom Tower Amendment.
24. Second Amendment. The term "Second Amendment" shall have the meaning set forth in the fourth paragraph of the Recitals to the Third Freedom Tower Amendment.
25. Site 1. The term "Site 1" shall have the meaning set forth in Exhibit A to the Second Amendment.
26. Subcontract. The term "Subcontract" shall have the meaning set forth in the first paragraph of Article 2 of the Third Freedom Tower Amendment.
27. Subcontractor. The term "Subcontractor" shall have the meaning set forth in Subparagraph 2.4.2 of the Third Freedom Tower Amendment.
28. Sub-Projects. The term "Sub-Projects" shall mean specifically identified and apportioned components of the entire Project.
29. Terms and Conditions of the General Contractor Agreement. The phrase "Terms and Conditions of the General Contractor Agreement" shall have the meaning set forth in Paragraph 3.2 of the Third Freedom Tower Amendment.
30. Third Freedom Tower Amendment. The term "Third Freedom Tower Amendment" shall have the meaning set forth in the preamble to the Third Freedom Tower

Amendment.

31. Tishman. The term "Tishman" shall have the meaning set forth in the preamble to the Third Freedom Tower Amendment.

32. Tower 1. The term "Tower 1" shall mean the building to be located upon and within Site 1.

33. Tower 1 Project. The term "Tower 1 Project" shall mean the development, design and construction of Tower 1.

34. World Trade Center. The term "World Trade Center" shall have the meaning set forth in the first paragraph of the Recitals of the Third Freedom Tower Amendment.

## EXHIBIT 2

### SCHEDULE OF SUBCONTRACTS

1. That certain subcontract agreement by and between Tishman Construction Corporation and Petrocelli Electric, dated January 19, 2006, pertaining to utility relocation (the "Petrocelli Subcontract").
2. That certain subcontract agreement by and between Tishman Construction Corporation and Ferguson-Neudorf, dated April 24, 2006, pertaining to curtain wall mock-up (the "Ferguson-Neudorf Subcontract").
3. That certain subcontract agreement by and between Tishman Construction Corporation and Federated Equipment, dated June 16, 2006, pertaining to Tower Cranes (the "Federated Equipment Subcontract").
4. That certain subcontract agreement by and between Tishman Construction Corporation and LaQuila Group, dated June 16, 2006, pertaining to excavation and foundation work (the "LaQuila Subcontract").
5. That certain subcontract agreement by and between Tishman Construction Corporation and Highland Tank, dated September 11, 2006, pertaining to base building fuel oil tanks (the "Highland Tank Subcontract").
6. That certain subcontract agreement by and between Tishman Construction Corporation and Banker Steel, dated September 11, 2006, pertaining to structural steel and metal deck (the "Banker Steel Subcontract").

**EXHIBIT A**

**SCHEDULE OF CM TERMS AND CONDITIONS**

**EXHIBIT A**  
**TO**  
**THIRD FREEDOM TOWER AMENDMENT**

THIS EXHIBIT A TO THE THIRD FREEDOM TOWER AMENDMENT TO GENERAL CONTRACTOR AGREEMENT (this "Agreement"), dated as of July 13, 2007, by and among (a) TISHMAN CONSTRUCTION CORPORATION, a Delaware corporation, having an office at 666 Fifth Avenue, New York, NY 10103 ("Construction Manager"); and (b) 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, NY 10003 ("1 WTC").

WITNESSETH

**WHEREAS**, the World Trade Center Site – Freedom Tower Project involves the design, permitting, approval, construction, and construction administration of World Trade Center Tower One on the World Trade Center site in New York City ("Property"). The World Trade Center Site – Freedom Tower Project will incorporate approximately 3.5 million gross square feet of new construction both above and below grade in a Class A office building complex which, in addition to sixty-nine (69) office tenant floors, includes specialty components such as an observation deck, retail space, two-level restaurant, three-level broadcast facility, core and shell spaces for PATH and support spaces, and an iconic top rising at the peak to the broadcast antennae (specifically excluding the broadcast antennae themselves). Below grade, the World Trade Center Site – Freedom Tower Project will incorporate storage, service areas, a car parking area, building and tenant mechanical facilities, loading docks, and other key building functions which lie beneath portions of the Freedom Tower, the open space between the Freedom Tower and the Performing Arts Center (PAC), Fulton Street, West Street-Route 9A and Vesey Street. All of the descriptions of the World Trade Center Site – Freedom Tower Project in this paragraph shall be referred to in this Agreement as the "Project," the "Freedom Tower Project," or "Freedom Tower." This Agreement between 1 WTC and Construction Manager is made in connection with such professional services and in consideration of the mutual covenants contained herein.

**WHEREAS**, pursuant to that certain Third Freedom Tower Amendment to General Contractor Agreement dated July 13, 2007 (the "Third Freedom Tower Amendment") 1 WTC and Tishman have agreed that under certain circumstances Tishman will act as a general contractor with respect to the Freedom Tower Project and under other circumstances Tishman will act as an agent construction manager with respect to the Freedom Tower Project;

**WHEREAS**, this Agreement sets forth terms and conditions that shall apply to the relationship between 1 WTC and Tishman when Tishman acts as an agent construction manager with respect to the Freedom Tower Project under the circumstances more specifically described in the Third Freedom Tower Amendment;

WHEREAS, 1 WTC and Tishman wish to set forth in this Part A Agreement the terms and conditions that shall apply to the relationship between 1 WTC and Tishman when Tishman acts as general contractor with respect to the Freedom Tower Project, under the circumstances more specifically described in the Third Freedom Tower Amendment; and

NOW THEREFORE, in consideration of the payments hereinafter specified to be made by 1 WTC to Construction Manager, and in consideration of the agreements and mutual covenants of the parties herein contained, the parties hereto hereby agree as follows:

1. **DEFINED TERMS.**

1.1 All terms initial capitalized in this Agreement are defined below or, to the extent not listed below, are as defined in other Contract Documents for the Project.

1.2 **1 WTC Representative.** The term "1 WTC Representative" shall have the meaning set forth in Section 4.2.3 of the Agreement.

1.3 **1 WTC.** The term "1 WTC" shall have the meaning set forth in the preamble to the Agreement. Any reference to 1 WTC's approval, discretion, consent, action, review, or otherwise, shall be performed by 1 WTC Representative, regardless of whether 1 WTC is explicitly stated in such reference.

1.4 **Affiliate.** The term "affiliate" shall mean as follows: two or more firms are affiliates if a parent owns more than fifty percent (50%) of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than fifty percent (50%) of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

1.5 **Agency or Governmental Agency.** The term "agency" or "governmental agency" shall mean any federal, state, city or other local agency, including departments, offices, public authorities and corporations, boards of education and higher education, public development corporations, local development corporations and others.

1.6 **Agreement.** The term "Agreement" shall have the meaning set forth in the first paragraph of this Exhibit A to the Third Freedom Tower Amendment.

1.7 **Anything of Value.** The term "anything of value" shall have the meaning set forth in Section 29.2 of the Agreement.

1.8 **Architect Agreement.** The term "Architect Agreement" shall mean the agreement between 1 WTC and Skidmore, Owings & Merrill LLP.

1.9 **Authority.** The term "Authority" shall have the meaning set forth on the first, page, second paragraph, of the Third Freedom Tower Amendment. The Authority is the ownership entity of 1 WTC.

1.10 **Authority's Small Business Program.** The term "Authority's Small Business Program" shall mean the Authority's program known as the Small Business Program.

1.11 **Burden Rate.** The term "Burden Rate" shall have the meaning set forth in Section 9.2.2.1 of the Agreement.

1.12 **Capitalization Payment.** The term "Capitalization Payment" shall have the meaning set forth in Section 10.1.2 of the Agreement.

1.13 **Certificate for Payment** The term "Certificate for Payment" shall have the meaning set forth in 2.3.13.4 of Attachment 1 to Exhibit A (Scope of Services).

1.14 **Change Orders.** The term "Change Order" shall mean a written modification to a Contract impacting the monetary value of or time requirements set forth in the Contract.

1.15 **CGL Policy.** The term "CGL Policy" shall have the meaning set forth in Section 19.4.1 of the Agreement.

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

1.17 **Confidentiality Agreement.** The term "Confidentiality Agreement" shall have the meaning set forth in Section 22.1 of the Agreement.

1.18 **Construction Change Directives.** The term "Construction Change Directive" shall mean a writing from Construction Manager, as authorized by 1 WTC, directing a Contractor to modify its scope of work without an agreement on the cost or time impact of such change.

1.19 **Contract Drawings.** The term "Contract Drawings" shall mean those drawings and specifications, completed in sufficient detail by Design Team, used by Contractors to perform the Work.

1.20 **Construction Manager.** The term "Construction Manager" shall have the meaning set forth in the preamble to the Agreement.

1.21 **Construction Manager's Fee.** The term "Construction Manager's Fee" or "Fee" shall have the meaning set forth in Section 9.1.1 of the Agreement.

1.22 **Contract Documents.** The term "Contract Documents" shall include the Third Freedom Tower Amendment, including all of the exhibits and attachments thereto; the Contract Drawings; and the Contracts, including all of the exhibits and riders to the Contracts, all as may be amended in writing by the parties from time to time.

1.23 **Contractors.** The term "Contractors" shall mean those trade contractors contracting directly with 1 WTC by executing Contracts as defined in this Section 1 to perform a portion of the Work for the Project, and all subcontractors of such Contractors of whatever tier.

1.24 **Contracts**. The term "Contracts" shall mean those executed contracts between Contractors and 1 WTC, signed on 1 WTC's behalf by Construction Manager, defining the rights and responsibilities of the respective Contractor and 1 WTC for the execution of a portion of the Work for the Project by the Contractor.

1.25 **Cost of the Work**. The term "Cost of the Work" shall have the meaning set forth in Section 9.2 of the Agreement.

1.26 **Deductible Expenses**. The term "Deductible Expenses" shall have the meaning set forth in Section 19.4.4 of the Agreement.

1.27 **Design Team**. The term "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, Skidmore, Owings & Merrill LLP.

1.28 **Emergency Costs**. The term "Emergency Costs" shall have the meaning set forth in Section 9.2.2.4(iii) of the Agreement.

1.29 **Excess General Conditions Costs**. The term "Excess General Conditions Costs" shall have the meaning set forth in Section 10.1.3.2 of the Agreement.

1.30 **Excluded Emergency Costs**. The term "Excluded Emergency Costs" shall have the meaning set forth in Section 9.2.2.4(iii) of the Agreement.

1.31 **Final Completion**. The term "Final Completion" shall mean the date or number of calendar days after bid award as set forth in Rider T (Milestone Dates) to each Contract by which a Contractor shall have completed its Work in accordance with all applicable requirements in its Contract.

1.32 **Freedom Tower**. The term "Freedom Tower" shall have the meaning set forth in the first paragraph of the recitals to the Agreement.

1.33 **Freedom Tower Agreements**. The term "Freedom Tower Agreements" shall have the meaning set forth in Section 33.3 of the Agreement.

1.34 **Freedom Tower Project**. The term "Freedom Tower Project" shall have the meaning set forth in the first paragraph of the recitals to the Agreement.

1.35 **General Conditions Costs**. The term "General Conditions Costs" shall have the meaning set forth in Section 9.2.2 of the Agreement.

1.36 **General Contractor Agreement**. The term "General Contractor Agreement" shall have the meaning set forth in the second recital of the Third Freedom Tower Amendment.

1.37 **Hazardous Materials**. The term "Hazardous Materials" shall have the meaning set forth in Section 12.1 of the Agreement.

1.38 **Indemnitees**. The term "Indemnitees" shall have the meaning set forth in Section 18.1 of the Agreement.

1.39 **Insurance Escrow Account**. The term "Insurance Escrow Account" shall have the meaning set forth in Section 19.4 of the Agreement.

1.40 **Insurance Program**. The term "Insurance Program" shall have the meaning set forth in Section 19.1 of the Agreement.

1.38.5 **Insurance Requisition**. The term "Insurance Requisition" shall have the meaning set forth in Section 19.4.6 of the Agreement.

1.41 **Integrity Monitor**. The term "Integrity Monitor" shall have the meaning set forth in Section 32.9 of the Agreement.

1.42 **Intellectual Property Rights**. The term "Intellectual Property Rights" shall have the meaning set forth in Section 21.4 of the Agreement.

1.43 **Investigation**. The term "investigation" shall mean any inquiries made by any federal, state or local criminal prosecuting agency 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.

1.44 **IP Claims**. The term "IP Claims" shall have the meaning set forth in Section 21.3 of the Agreement.

1.45 **Legal Requirements**. The term "Legal Requirements" shall have the meaning set forth in Section 31.1 of the Agreement.

1.46 **Master Redevelopment Agreement**. The term "Master Redevelopment Agreement" shall mean the agreement entered into on November 16, 2006, between Authority; 1 WTC; PATH; WTC Retail, LLC; 2 World Trade Center LLC; 3 World Trade Center LLC; and 4 World Trade Center LLC, for the redevelopment of the Property.

1.47 **Maximum Capitalization**. The term "Maximum Capitalization" shall have the meaning set forth in Section 10.1.2 of the Agreement.

1.48 **Milestone Dates**. The term "Milestone Dates" shall have the meaning set forth in Section 6.3 of the Agreement.

1.49 **Minority-Owned Business**. The term "minority-owned business" or "MBE" shall have the meaning set forth in Section 14.1 of the Agreement.

1.50 **Mobilization Account.** The term "Mobilization Account" shall have the meaning set forth in Section 10.1.1 of the Agreement.

1.51 **Mobilization Account Expenses.** The term "Mobilization Account Expenses" shall have the meaning set forth in Section 10.1.1 of the Agreement.

1.52 **Mobilization Requisition.** The term "Mobilization Requisition" shall have the meaning set forth in Section 10.1.3.

1.53 **OCIP.** The term "OCIP" shall mean the Owner Controlled Insurance Program, if any, as provided for in the Insurance Program.

1.54 **Officer.** The term "officer" shall mean any individual who serves as chief executive officer, chief financial officer, or chief operating officer of the Construction Manager by whatever titles known.

1.55 **Parent.** The term "parent" shall mean an individual, partnership, joint venture or corporation that owns more than 50% of the voting stock of the Construction Manager.

1.56 **PATH.** The term "PATH" shall mean the Port Authority Trans-Hudson Corporation.

1.57 **Personnel.** The term "Personnel" shall have the meaning set forth in Section 7.1 of the Agreement.

1.58 **Project Schedule.** The term "Project Schedule" shall have the meaning set forth in Section 6.2 of the Agreement.

1.59 **Project.** The term "Project" shall have the meaning set forth in the first paragraph of the recitals to the Agreement and shall include all references to the World Trade Center site, Freedom Tower Project, World Trade Center Site-Freedom Tower Project, or Freedom Tower.

1.60 **Property.** The term "Property" shall have the meaning set forth in the first paragraph of the recitals of the Agreement.

1.61 **Reimbursable Expenses.** The term "Reimbursable Expenses" shall have the meaning set forth in Section 9.2.2.4 of the Agreement.

1.62 **Remediation Contractor.** The term "Remediation Contractor" shall have the meaning set forth in Section 12.1 of the Agreement.

1.63 **Repayment Date.** The term "Repayment Date" shall have the meaning set forth in Section 10.1.3.3 of the Agreement.

1.64 **Services.** The term "Services" shall have the meaning set forth in Section 3.1 of the Agreement.

1.65 **Shop Drawings**. The term "Shop Drawings" shall mean drawings, diagrams, schedules and other data specially prepared for the Work by a Contractor, subcontractor of any tier, manufacturer, supplier or distributor to illustrate some portion of the Work.

1.66 **Standard of Care**. The term "Standard of Care" shall have the meaning set forth in Section 2.1 of the Agreement.

1.67 **Subconsultant**. The term "Subconsultant" shall have the meaning set forth in Section 8.1 of the Agreement.

1.68 **Submittals**. The term "Submittals" shall mean Shop Drawings, samples, product data, supplementary product literature, mockups, calculations, statements of manufacturer's review, or other information for specific portions of the Work as required by the Contract Drawings.

1.69 **Third Freedom Tower Amendment**. The term "Third Freedom Tower Amendment" shall refer to the Third Freedom Tower Amendment to the General Contractor Agreement.

1.70 **Tishman**. The term "Tishman" shall have the meaning set forth in the preamble of the Third Freedom Tower Amendment.

1.71 **Trade Account**. The term "Trade Account" shall have the meaning set forth in Section 10.2.1 of the Agreement.

1.72 **Trade Costs**. The term "Trade Costs" shall have the meaning set forth in Section 9.2.1 of the Agreement.

1.73 **Women-Owned Business**. The term "women-owned business" or "WBE" shall have the meaning set forth in Section 14.1 of the Agreement.

1.74 **Work**. The term "Work" shall mean the construction and services required by the Contract Documents and the Contract Drawings, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by each of the Contractors to fulfill their respective obligations. The Work may constitute the whole or a part of the Project.

1.75 **Works for Hire**. The term "works for hire" shall have the meaning set forth in Section 20.1 of the Agreement.

1.76 **Works**. The term "Works" shall have the meaning set forth in Section 20.1 of the Agreement.

1.77 **World Trade Center Construction Department**. The term "World Trade Center Construction Department" shall mean the Authority's World Trade Center Construction Department, which is principally responsible to represent the Authority with respect to the design and construction of the World Trade Center Transportation Hub project (WTC/HUB).

## 2. STANDARD OF CARE AND EXPERTISE.

2.1 Construction Manager acknowledges that the Freedom Tower Project is a project of symbolic and commercial importance that has local, regional, national, and international significance and visibility. Construction Manager represents and warrants that it has expert experience in the construction management and project management of projects with similar prominence and prestige located in comparable urban locations. Construction Manager shall perform its duties under this Agreement in conformance with its expert experience and with the very highest standard of care practiced by construction managers with substantial and noteworthy experience successfully managing major multi-use, high-rise, high-profile projects in excess of \$700 million in highly dense urban areas ("Standard of Care"). Nothing to the contrary herein shall erode the Standard of Care, including a requirement that Construction Manager use its best efforts to comply with the provisions in this Agreement.

2.2 Construction Manager represents that it has reviewed and is familiar with the Property and with terms and conditions of the relevant agreements that 1 WTC has entered into with respect to this Project.

2.3 Construction Manager accepts the relationship of trust and confidence established between Construction Manager and 1 WTC by the Agreement.

2.4 Construction Manager shall do the following:

2.4.1 Construction Manager shall perform its Services under this Agreement and, consistent therewith, shall furnish the very highest professional skill and judgment necessary to fulfill its duties under this Agreement and maintain the Standard of Care set forth in Section 2.1 above;

2.4.2 In performing its Services, Construction Manager shall furnish professional business administration and superintendence by the best, most efficient, and most economical method, all in a manner consistent with the Contract Documents, the Standard of Care set forth in Section 2.1 above, and the best interests of 1 WTC;

2.4.3 Construction Manager shall contract as 1 WTC's disclosed agent the Work in accordance with all requirements in, reasonably inferable from, and consistent with the Contract Drawings;

2.4.4 Construction Manager shall furnish at all times an ample supply of workers and materials necessary to meet the requirements of the Contract Documents. Construction Manager shall manage the workers, materials, and Project in such a manner that the Project can be safely and successfully completed within the Project Schedule and the Project budget; and

2.4.5 Construction Manager shall manage, direct, supervise, coordinate, and cooperate with all of 1 WTC's Contractors, agents, and other contractors in furthering the best interests of 1 WTC with respect to the Project; and shall cause the entire Work described in the Contract Documents to be executed in accordance with the very highest Standard of Care and

skill for trade contractors experienced and specialized in the construction of major, superior facilities operated in comparable settings.

2.5 Construction Manager represents to 1 WTC that Construction Manager understands the complexity involved and has the ability to meet the standards of performance required by this Section 2.

### 3. CONSTRUCTION MANAGER'S RESPONSIBILITIES.

3.1 Construction Manager shall perform professional construction management services ("Services") as set forth in and in accordance with the provisions of this Agreement, the Contract Documents, and as otherwise requested by 1 WTC.

3.2 Construction Manager shall comply with all of the obligations and provisions set forth in the riders listed on **Attachment 2 to Exhibit A (Riders for Contract)** to this Agreement, as such riders may be amended unilaterally by 1 WTC from time to time, in the sole discretion of 1 WTC. The riders listed on Attachment 2 are incorporated by reference as though set forth at length and are expressly made a part hereof.

3.3 Construction Manager shall provide sufficient organization, personnel, and management to carry out the requirements of this Agreement in an expeditious and economical manner consistent with the interests of 1 WTC and the Standard of Care set forth in the Agreement. 1 WTC acknowledges and agrees that any legal services or advice provided by the Legal Department of Construction Manager in connection with the Project are being provided to Construction Manager only and that no attorney-client relationship will be deemed to exist between any member of the Legal Department of Construction Manager and 1 WTC.

3.4 A description of the Services is set forth in **Attachment 1 to Exhibit A (Scope of Services)**, attached hereto and made a part hereof; provided, however, 1 WTC, in its sole discretion, may direct Construction Manager to render other professional construction management services in furtherance of the Project, which professional construction management services shall be included in the Services, notwithstanding that such professional construction management services do not appear on the Scope of Services attached hereto at the time of execution of the Third Freedom Tower Amendment. Nothing contained in this Agreement shall be deemed to require or authorize Construction Manager to perform with its own forces any act which would constitute the rendering of professional architecture or engineering services or laboratory testing. The reviews, recommendations and advice to be furnished by the Construction Manager hereunder shall not be deemed to be warranties or guaranties with respect to professional architecture or engineer services or laboratory testing or constitute the performance of such services, it being understood that any such recommendation or advice pertaining to engineering or architectural matters shall only be considered as a recommendation by Construction Manager which is subject to the review and approval of 1 WTC and/or Design Team.

3.5 Construction Manager shall be responsible for coordinating the activities of all persons or entities hired by 1 WTC regarding the Project. Construction Manager shall

synchronize the performance of its Services with the performance of activities of such other persons or entities, each with the other, so that all are performed in a harmonious manner. Construction Manager, when requested, shall review the contract schedules of others or facilitate a joint review among relevant parties and shall provide that the activities of all shall be carried out in a proper and appropriate sequence for the best interests of the Project. Construction Manager shall cooperate fully with other persons or entities performing services for or working on behalf of the Project.

3.6 Construction Manager shall promptly give notice to 1 WTC upon becoming aware of the following:

3.6.1 Any act, omission, event, or occurrence that might reasonably be anticipated to result in the allegation of a claim, lien, or other demand against 1 WTC, Authority, Construction Manager, or any of the Contractors arising out of the execution of the Project;

3.6.2 Any claim, demand, or request asserted, filed, or made, or that Construction Manager anticipates may be asserted, filed, or made, for extensions to time or for additional money with respect to work or services rendered on the Project.

#### **4. CONSTRUCTION MANAGER'S AUTHORITY.**

4.1 Notwithstanding anything in this Agreement to the contrary, each Contract to be executed in connection with the Project (i) shall be between Contractor and 1 WTC, and (ii) shall be signed on behalf of 1 WTC by Construction Manager, as disclosed agent for 1 WTC.

4.2 Construction Manager shall assume and perform all duties of 1 WTC as set forth in the Contracts and shall act on behalf as 1 WTC as its disclosed agent with all Contractors; provided, however:

4.2.1 Construction Manager shall not have authority to enter into any Contracts, Change Orders, or Construction Change Directives for any Contract without prior written approval from 1 WTC;

4.2.2 Construction Manager shall not take any action that may result in additional time or money to any Contract, a modification to the quality of the Work or Project or a change in the safety or security requirements without obtaining prior written approval from 1 WTC as set forth below in this Section 4.2; and

4.2.3 For purposes of this Agreement, approval of 1 WTC means approval of 1 WTC Representative or its designee(s). The term "1 WTC Representative" shall mean (i) an officer of 1 WTC, or (ii) the Director of the World Trade Center Construction Department or his designee(s). 1 WTC Representative is the only authorized representative of 1 WTC to act, or receive, on behalf of 1 WTC with respect to any duty, obligation, notice, or other action set forth in this Agreement.

4.2.4 1 WTC Representative's authority with respect to the quality of Work includes, without limitation:

4.2.4.1 interpreting the Contract Documents;

4.2.4.2 determining the amount, quality, acceptability, and fitness of all parts of the Work;

4.2.4.3 altering the Contract Documents; requiring performance of Work not required by such Contract Documents in their present form, even though the Work is of a totally different character from that now required; and varying, increasing, or diminishing the character, quantity, and quality of, or countermanding, any Work now or thereafter required, whether such variation, increase, diminution, or countermand is based on need or convenience;

4.2.4.4 objecting to the employment of any equipment, materials, methods, men, or workers used in performance of the Work; and

4.2.4.5 withholding permission to remove materials, equipment, or other facilities from the Project site, which permission Construction Manager must seek prior to any such removal.

4.3 In no event shall this be considered an agreement of employment or partnership between 1 WTC and Construction Manager.

4.4 1 WTC shall have the right, but shall not be obligated, to control or supervise the particular manner or method by which Construction Manager accomplishes the performance of the Services. Such right shall in no event relieve Construction Manager of any duty, responsibility, or obligation whatsoever under this Agreement.

## 5. **ADDITIONAL SERVICES.**

1 WTC may authorize additional services for the Project to be performed by Construction Manager, which additional services may increase the scope of Services set forth in **Attachment 1 to Exhibit A (Scope of Services)**. All such Construction Manager duties for the Project shall be part of the Services compensated in accordance with Section 9 (Compensation) of this Agreement.

## 6. **TIME.**

6.1 Time is of the essence with respect to Construction Manager's performance of Services under this Agreement.

6.2 Without limiting the foregoing, Construction Manager shall perform its Services under this Agreement so as to permit 1 WTC, Design Team, Contractors and other Project participants to perform their services and Work in accordance with the overall construction

schedule for the Project ("Project Schedule"), consistent with the Contract Documents, and achieve Final Completion of each Contractor's Work in accordance with the dates set forth in the Contracts and the Project Schedule.

6.3 The Project Schedule shall provide for certain planned dates of completion for key interim and final construction events as identified in **Attachment 9 to Exhibit A** (Milestone Dates), which dates are contractual and may be changed only by approval of 1 WTC Representative ("Milestone Dates").

6.4 Construction Manager shall perform its Services as expeditiously as possible and at the time or times required by 1 WTC Representative.

## **7. APPROVAL OF PERSONNEL.**

7.1 Construction Manager shall hire and assign sufficient number of appropriately experienced (a) full-time personnel, and (b) part-time personnel based at the Construction Manager's home office, to carry out the duties under this Agreement and in accordance with the terms of such Agreement; provided, however, that (i) Construction Manager shall assign personnel to the Project only after such personnel are approved by 1 WTC in writing; and (ii) such personnel assigned to the Project shall begin performing Services and bill time to the Project only after 1 WTC has so approved in writing ("Personnel"). Subject to Section 7.2 below, Personnel, who are dedicated to the Project on a full-time basis, shall continue performing Services on a full-time basis for the Project unless a member of such Personnel becomes deceased, goes on medical leave, voluntarily leaves the employment of Construction Manager, or is terminated for a violation of Construction Manager's sexual harassment, drug, or violence in the workplace policies or such other similar bad acts. Construction Manager shall not terminate the employment of full-time Personnel nor reassign full-time Personnel to work on any other project other than the Freedom Tower for any other reason without the prior written consent of 1 WTC.

7.2 1 WTC shall have the right in its sole and absolute discretion to direct Construction Manager to remove from or replace any Personnel on the Project.

7.3 With respect to vacation leave, sick days, and personal days:

7.3.1 Personnel shall be entitled to use only those vacation days, sick days, and personal days that have been earned (i) during execution of the Project and (ii) while carrying out such Personnel's duties under this Agreement. For the avoidance of doubt, vacation days, sick days, and personal days earned by Personnel on a project other than the Freedom Tower Project may not be used during execution of the Freedom Tower Project.

7.3.2 Personnel must use each of their vacation days, sick days, and personal days within the calendar year such days are earned.

7.4 Construction Manager shall require that each individual Personnel member comply with the provisions of Section 32.9 of this Agreement, as set forth in Rider K (Project Prevention Corruption Program) to the Contract, which Contract is referenced in **Attachment 2**

as Rider V (Form of Trade Contract, dated January 19, 2007), and Construction Manager shall obtain from each individual Personnel member the certifications and all necessary disclosure forms.

## 8. SUBCONSULTANTS.

8.1 Construction Manager may contract with entities to perform a portion of Construction Manager's Services, which entities may be retained only upon the prior written approval of 1 WTC ("Subconsultant"). Such approval, to be effective, must authorize the following: (i) the Subconsultant; (ii) the form of the contract with the Subconsultant, which form must be pre-approved by 1 WTC; and (iii) the amount of compensation to be paid to the Subconsultant. No changes may be made to a pre-approved form of Subconsultant agreement except as thereafter approved in writing by 1 WTC, which authorization and approval must be obtained prior to execution of such agreement by Construction Manager and Subconsultant.

8.2 This Agreement is based upon Construction Manager's special qualifications for the Services herein contemplated; accordingly, any assignment, subletting, or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the prior express consent in writing of 1 WTC shall be void and of no effect.

8.3 All persons to whom Construction Manager sublets Services shall be deemed to be Construction Manager's agents, and no subletting or approval thereof shall be deemed to release Construction Manager from its obligations under this Agreement or to impose any obligation on 1 WTC to such Subconsultant or give the Subconsultant any rights against 1 WTC.

8.4 For each agreement entered into by Construction Manager with a Subconsultant, or by a Subconsultant with a subconsultant of any tier, Construction Manager shall (i) for each contract in an amount greater than \$100,000, obtain the certifications and all necessary disclosure forms from each such Subconsultant and its subconsultants of any tier, and (ii) require that all Subconsultants and their subconsultants of any tier comply with the provisions of Section 32.9 of this Agreement, all as set forth in Rider K (Project Corruption Prevention Program) to the Contract.

## 9. COMPENSATION.

### 9.1 Construction Manager's Fee.

9.1.1 As full compensation to Construction Manager for performance of its Services and all of its obligations in connection with this Agreement, 1 WTC, subject to Section 23 (Suspension and Termination), shall pay Construction Manager a fee, which fee shall be calculated as set forth below in Section 9.1.2 ("Construction Manager's Fee" or "Fee").

9.1.2 Construction Manager's Fee shall be equivalent to 1.5% of the Cost of the Work, as set forth in Section 9.2 below, provided, however:

9.1.2.1 Except as provided in Section 7.1 hereof, or except to the extent 1 WTC gives its prior written consent, the Fee shall be reduced to 1.375% of the Cost of the Work for the entire Project should Mel Ruffini cease full-time service for the Project anytime during execution of the Project; and

9.1.2.2 In no event shall a Change Order that increases the Cost of the Work be subject to the Fee unless the Change Order is for a cardinal change, as that term is commonly understood.

9.2 The term "Cost of the Work" shall mean and include: i) Trade Costs, as set forth in Section 9.2.1 below; and ii) General Conditions Costs, as set forth in Sections 9.2.2.1 through 9.2.2.4 below;

9.2.1 The term "Trade Costs" shall mean and include the money due and owing Contractors in accordance with the Contracts for Work on the Project, including without limitation the procurement of required insurance set forth in the Contracts.

9.2.2 The term "General Conditions Costs" shall mean and include the costs set forth in Sections 9.2.2.1 through 9.2.2.4 below:

9.2.2.1 Personnel Salaries. General Conditions Costs shall include the actual salaries of Personnel for full-time service on the Project, calculated monthly based on one-twelfth (1/12) of such Personnel's annual salary, multiplied by 1.5 to reflect the agreed-upon non-auditable burden rate of 50% ("Burden Rate"). The Burden Rate shall be applied to such actual salaries and shall represent reimbursement to Construction Manager for all other costs incurred by Construction Manager for such Personnel, subject to the provisions of Subsections (i) through (vi) immediately below; provided, however, for purposes of this Section 9.2.2.1 only, Personnel shall exclude any non-exempt personnel eligible to receive overtime pay who belong to a labor union, perform work on the Project under the terms of a collective bargaining agreement and in accordance with the Contract Documents, and are paid wages for such work. General Conditions Costs for such excluded Personnel are to be calculated in accordance with Section 9.2.2.2 below (Costs of Non-Exempt Union Labor). For the avoidance of doubt, the term "Personnel" for purposes of this Section 9.2.2.1 shall include members of a labor union who are exempt from receiving overtime pay and render superintendence services on the Project.

(i) Burden Rate includes applicable taxes, employee benefits, insurance payments, maternity leave, paternity leave, medical leave, family leave, disability benefits, bonuses, overtime pay, premium pay, parking and car allowance, fringe benefits, retirement plans, union dues, contributions and assessments required by law, collective bargaining agreements, or amounts which are customarily paid to or on behalf of Personnel of Construction Manager.

(ii) Burden Rate shall not apply to Non-Exempt Union Labor described in Section 9.2.2.2 below.

(iii) Burden Rate shall not apply to partners, principals, or temporary employees of Construction Manager, including without limitation Jay Badame, John Livingston, Dan Tishman, and Michael Mennella; provided, however, if Mike Mennella spends fifty percent (50%) or more of his time working on the Freedom Tower Project, as determined on a monthly basis, then the Burden Rate shall apply to his time during each such month.

(iv) For the entire duration of this Agreement, the Burden Rate shall be fixed and not subject to increase for the performance of Services and all other contemplated services hereunder.

(v) Attached hereto as **Attachment 4 to Exhibit A** (Schedule of Annual and Hourly Personnel's Salaries) is a schedule of actual salaries and titles of all Construction Manager's Personnel assigned to the Project who have been approved by 1 WTC.

(vi) With respect to Personnel who bill time on an hourly basis for Services performed, 1 WTC reserves the right to conduct an audit to determine the salary rate applicable to any such employee in order to verify the salary rate and time billed for the Services of each such employee. It is understood that such employee shall not bill time to the Project for holidays, vacation days, sick leave, or personal days, maternity, medical, or family leave, nor for any other item included in the Burden Rate in Section 9.2.2.1(i) above.

(vii) With respect to Personnel who do not bill time on an hourly basis for Services performed, 1 WTC reserves the right to conduct an audit to determine the salary rate applicable to any such employee in order to verify the salary rate and the time allocated to the Project of each such employee.

(viii) 1 WTC adopts the Authority's policy on increases in pay. It is the intention of 1 WTC to grant an increase if Construction Manager demonstrates compliance with all of the following conditions: that an increase in salary is (a) in accordance with the program of periodic merit and cost of living increases normally administered by the Authority; (b) warranted by increased costs of providing Services under this Agreement; (c) based upon increases in salaries and billing rates which are generally applicable to all of Construction Manager's clients; and (d) in accordance with the Authority's salary rate increase policy for the current year for Authority employees possessing comparable skills and experience. If, during any calendar year, the Authority limits are not available to Construction Manager in a timely fashion, increases falling within such limits may be approved retroactively, as appropriate.

9.2.2.2 Costs of Non-Exempt Union Labor. General Conditions Costs shall include the actual wages plus actual fringe benefits paid by Construction Manager to a worker for work performed on the Project, where such worker is (i) non-exempt and eligible to receive overtime pay, and (ii) a member of a labor union; provided, however, that such work is performed and payment made under the terms of an applicable collective bargaining agreement and in accordance with the Contract Documents.

9.2.2.3 Costs of Subconsultants. General Conditions Costs shall include an amount equivalent to the aggregate amount actually paid to Subconsultants by Construction Manager.

9.2.2.4 Reimbursable Expenses. The following out-of-pocket costs to the extent such costs are (i) necessarily and reasonably incurred by Construction Manager in the reasonable opinion of 1 WTC, and (i) actually paid by Construction Manager in its performance of the Services hereunder, as follows ("Reimbursable Expenses"):

(i) Reasonable expenses necessary for the operation and furnishing of Construction Manager's field office, including but not limited to rent, field office fit out, furniture, computer and telefax equipment, equipment, stationery, supplies, telefax, telegrams, long distance telephone calls, telephone service at the Project, express mail, messenger delivery, postage, pest control, and similar petty cash items in connection with the Services; provided, however, that such field office it utilized solely for the Freedom Tower Project. Reasonable expenses of and usage charges for cell phones, walkie-talkies, and Blackberry® devices for those Personnel for whom 1 WTC has pre-approved in writing such expenses and charges. In the event any work occurs or services are rendered from this field office for work other than the Freedom Tower Project, then the field offices and all of the expenses set forth in this Subsection (i) shall be excluded from Reimbursable Expenses as though such expenses were set forth in Section 9.2.3 below. In the event the Authority purchases any equipment pursuant to this Subsection (i), such equipment will belong to the Authority. In the event Construction Manager purchases any equipment pursuant to this Subsection (i), the purchase of such equipment must be pre-approved in writing by 1 WTC. In the event Construction Manager owns existing equipment that it moves to the field office pursuant to this Subsection (i), 1 WTC will approve payment for such existing equipment on a case by case basis.

(ii) Costs of removal of all debris from the Project, except as to contaminated soils being removed in accordance with any remediation agreement, subject to Section 12 (Hazardous Materials) of the Agreement.

(iii) Costs incurred due to an emergency affecting the safety of persons and property ("Emergency Costs"), unless such Emergency Costs are due to Construction Manager's willful misconduct or negligence ("Excluded Emergency Costs"); Excluded Emergency Costs shall be reimbursed only to the extent 1 WTC receives reimbursement for such Excluded Emergency Costs from insurance proceeds. For purposes of this Section 9.2.2.4(iii), the term "emergency" means the occurrence of an event requiring immediate action by Construction Manager to protect persons or property such that insufficient time exists to enable Construction Manager to seek prior approval from 1 WTC for the expenditure of the costs.

(iv) Costs of the necessary printing of all drawings, specifications, and other approved reproductions.

(v) Costs of photos of the construction, if required by 1 WTC.

(vi) Costs of meals for field office working meetings and for meals of Personnel working overtime after 8:00 p.m. or working on weekends, limited to \$25.00 per diem, per person, for weekends and overtime.

(vii) Costs of mileage for local travel undertaken by superintendence Personnel (a) traveling after 8:00 p.m. while performing Services or from Project site to home at 8:00 p.m. or later after performing Services, or (b) traveling between home and the Project site during a weekend or holiday in order to perform Services, all in accordance with the Authority's guidelines with respect to same; provided, however, that such local travel is by personal vehicle, taxi, bus, or rail service; and that such local travel involves an out-of-pocket expense for the specific travel authorized by this Subsection (vii) and is not undertaken using a pass obtained by such Personnel for periodic travel (i.e., a monthly or weekly pass) such that no actual out-of-pocket expense is incurred for such individual trip.

(viii) Costs of final cleaning of windows, interior areas and curtainwall, if required by 1 WTC.

(ix) Costs for flagpersons and street cleaning, if required by 1 WTC.

(x) Costs for temporary barricades and Project fence.

(xi) Costs incurred in connection with security Personnel.

(xii) Costs for surveys.

(xiii) Costs for trailers, temporary toilets.

(xiv) Costs incurred for pre-approved reasonable coach travel associated with the Project.

(xv) Costs for winter heat as mutually agreed upon by Construction Manager and 1 WTC; Construction Manager shall submit a plan for winter heat to 1 WTC prior to each winter season.

9.2.2.5 Other Reimbursable Costs. The following costs shall be reimbursed by 1 WTC to Construction Manager but shall not be part of the Cost of the Work subject to a Construction Manager's Fee. Such reimbursable costs shall include an amount equal to the out-of-pocket expenses of Construction Manager (i) necessarily and reasonably incurred by Construction Manager in the reasonable opinion of 1 WTC, and (ii) actually paid by Construction Manager in its performance of the Services hereunder, as follows:

(i) Insurance premiums, deductibles, any self-insured retention for the benefit of 1 WTC with respect to any insurance or retention not provided by 1 WTC, and any required taxes on all such costs; but only to the extent reimbursement for any cost set forth in

this clause (i) is not otherwise provided for in the Agreement; and only if such cost is (a) required by the terms of the Agreement, and (b) beyond the scope of the OCIP;

(ii) Direct costs in connection with the administration of warranty work by Construction Manager after Final Completion;

(iii) Reasonable legal fees and costs pre-approved in writing (a) to prosecute a default under a Contract, (b) to enforce a Contract provision, or (c) to enforce 1 WTC's rights under the Contract; provided, however, it shall not be the responsibility of Construction Manager to pursue any such legal process for the benefit of 1 WTC unless 1 WTC authorizes same and agrees to reimburse Construction Manager for its out-of-pocket costs.

9.2.3 Excluded Expenses. Construction Manager agrees that the following expenses, even if incurred in furtherance of its Services, shall not be Reimbursable Expenses and shall be paid for, to the extent incurred, by Construction Manager:

9.2.3.1 Construction Manager's overhead, including, without limitation, expenses necessary for the operation and furnishing of Construction Manager's principal office, such as furniture, equipment, stationery, supplies, telefax, telegrams, long distance telephone calls, telephone service, express mail, messenger delivery, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies and similar petty cash items in connection with the Services.

9.2.3.2 Salaries or other compensation of Construction Manager's Personnel at Construction Manager's principal office and branch offices, unless Construction Manager obtains prior written approval from 1 WTC, in which case such salaries or other compensation will be subject to the terms of Section 9.2.2.1 above.

9.2.3.3 Expenses of Construction Manager's branch offices except as explicitly allowed in Section 9.2.2.4 above.

9.2.3.4 Meals for Construction Manager's Personnel, subject to Section 9.2.2.1(iv).

9.2.3.5 Any part of Construction Manager's capital expenses, including interest on Construction Manager's capital employed for the Services.

9.2.3.6 Rental or depreciation costs.

9.2.3.7 General expenses of any kind, except as may be expressly included in Section 9.2.2.4 above or approved in writing by 1 WTC, in accordance with Section 9.2.3.17 below.

9.2.3.8 Costs incurred due to the willful misconduct or negligence of, or breach of the Agreement by, Construction Manager, any Subconsultant, anyone

directly or indirectly employed by any of them (other than the Contractors), or for whose acts any of them may be liable.

9.2.3.9 Except as set forth herein, costs incurred by reason of Construction Manager's membership in, or fees paid by Construction Manager, to trade or professional organizations.

9.2.3.10 Workers' compensation costs and any other costs covered under the OCIP with respect to Construction Manager's field office supervisor and field office staff.

9.2.3.11 All fees for obtaining building permits shall be paid directly by 1 WTC, but Construction Manager shall provide any services reasonably necessary to assist 1 WTC in obtaining any permits.

9.2.3.12 Construction Manager's federal, state, or local income taxes.

9.2.3.13 Indirect costs and expenses of Construction Manager in connection with the administration of the warranty after Final Completion.

9.2.3.14 Costs for subcontracts entered into by Construction Manager prior to the date of this Agreement pursuant to the authority granted to Construction Manager in the General Contractor Agreement, which costs shall be reimbursed and associated fees shall be paid to Construction Manager in accordance with the General Contractor Agreement.

9.2.3.15 Other than for non-exempt union labor who shall be billed at cost, overtime or hazardous pay, including, without limitation, overtime work or night work or pay for performing hazardous duties.

9.2.3.16 Any tax paid with respect to any purchase or rental charge, including, without limitation, New York State or New York City sales tax, where the purchase or rental charge is exempt from such tax pursuant to Section 32.11 of this Agreement.

9.2.3.17 The cost of any item not specifically and expressly included in the items described in Section 9.2.2.4 above, unless Construction Manager obtains prior written approval from 1 WTC for each reimbursement of a specific, extraordinary, single, and non-reoccurring item of expense, which approval shall be granted or denied at 1 WTC's sole, subjective, and absolute discretion.

## **10. PROGRESS PAYMENTS.**

### **10.1 Payments Via Mobilization Account.**

10.1.1 Tishman shall establish a separate non-interest bearing checking account ("Mobilization Account"), which Construction Manager shall use for the payment of (i) General Conditions Costs; and (ii) Deductible Expenses paid after April 1, 2008 (subject to the provisions set forth in Sections 19.4.1 and 19.4.9) (collectively, General Conditions Costs and Deductible Expenses paid after April 1, 2008, shall be referred to in this Agreement as "Mobilization Account Expenses"). Construction Manager shall not earn any Fee on any Deductible Expense, including Deductible Expenses paid via the Mobilization Account. Construction Manager shall use the funds in the Mobilization Account to pay for Mobilization Account Expenses in accordance with this Section 10.

10.1.2 1 WTC shall fund the Mobilization Account in accordance with (i) the Mobilization Account Funding Schedule per the column in such schedule labeled "Payment Amount" ("Capitalization Payments"), as set forth in **Attachment 11 to Exhibit A** (Mobilization Account Schedules), and (ii) the provisions of this Section 10. The first Capitalization Payment to the Mobilization Account shall be the Initial Working Capital as set forth in the Mobilization Account Funding Schedule.

10.1.3 Construction Manager shall requisition 1 WTC monthly to replenish funds in the Mobilization Account for Mobilization Account Expenses that have been incurred by Construction Manager and paid for with funds drawn from the Mobilization Account during the previous calendar month ("Mobilization Requisition"). The Mobilization Requisition shall be submitted to 1 WTC no later than the first day of each calendar month (or, if such day is not a business day, then the first business day thereafter) and shall include only Mobilization Account Expenses incurred and paid by Construction Manager with funds drawn from the Mobilization Account during the immediately preceding calendar month. In no event shall such Mobilization Requisition contain Mobilization Account Expenses forecast rather than those incurred and paid. As a precondition to replenishment of the Mobilization Account, Construction Manager shall provide all payment documentation requested by, and in form and substance satisfactory to, 1 WTC.

10.1.3.1 After review and approval of a Mobilization Requisition, 1 WTC shall replenish the Mobilization Account for all approved items in that Mobilization Requisition with the following exception: in no event shall any amount deposited by 1 WTC into the Mobilization Account cause the balance of such account, as of the last day of the month in which the Mobilization Account Expenses are being requisitioned, to have exceeded the applicable cumulative amount as set forth in the column labeled "Cumulative Amount" in the Mobilization Account Funding Schedule of Attachment 11, taking into consideration any Capitalization Payment that is due and owing at the time of payment of an approved Mobilization Requisition.

10.1.3.2 If in any month Construction Manager properly incurs Mobilization Account Expenses that exceed the Cumulative Amount that applies to that month ("Excess Mobilization Account Expenses"), Construction Manager shall be responsible to pay such Excess Mobilization Account Expenses with its own funds. Construction Manager may include the Excess Mobilization Account Expenses in its Mobilization Requisition for Mobilization Account Expenses that apply to the month in

which the Excess Mobilization Account Expenses were incurred; provided, however, that to the extent 1 WTC approves the Excess Mobilization Account Expenses, such approved amount shall be reimbursed separately from, and not as part of, the replenishment payment that restores the balance of the Mobilization Account to the required Cumulative Amount. Such reimbursement of Excess Mobilization Account Expenses approved by 1 WTC shall be made at approximately the same time that the replenishment payment is made pursuant to this Section 10.1.3 for the time period to which such Excess Mobilization Account Expenses are allocable.

10.1.3.3 The Cumulative Amount required to be maintained in the Mobilization Account pursuant to this Section 10.1 shall decrease, commencing in April 2012, in accordance with the Mobilization Account Repayment Schedule, as set forth in the Mobilization Account Schedules in Attachment 11 to Exhibit A. Each amount by which the required balance of the Mobilization Account is reduced as set forth in the Mobilization Account Repayment Schedule is a "Repayment Amount." Upon each date set forth in the first column of the Mobilization Account Repayment Schedule (a "Repayment Date"), Construction Manager shall make payment to 1 WTC from the Mobilization Account of an amount equal to the corresponding Repayment Amount set forth in the same line as that Repayment Date. If Construction Manager fails to make such payment timely, 1 WTC may deduct or withhold an amount equal to that Repayment Amount from any amount subsequently due Construction Manager under the Agreement. During the time period to which the Mobilization Account Repayment Schedule applies, Construction Manager shall continue to make monthly requisitions, and 1 WTC shall continue to make payments, with respect to Mobilization Account Expenses, as set forth above in this Section 10.1.3; provided, however, that any replenishment of funds in the Mobilization Account shall not cause the balance of the Mobilization Account to exceed the Cumulative Amount that applies under the Mobilization Account Repayment Schedule.

10.1.3.4 If 1 WTC disapproves of an item in the Mobilization Requisition for causes set forth in either clause (i) or (ii) immediately below, then Construction Manager shall return the amount of the disapproved item to the Mobilization Account within five (5) business days after 1 WTC issues a notice of disapproval of such item to Construction Manager:

(i) Construction Manager used funds in the Mobilization Account to pay for a Mobilization Account Expense that required 1 WTC's pre-approval, approval, discretion, consent, action, or review prior to payment, including, but not limited to, those described in Section 10.1.3.8; and 1 WTC had not pre-approved, had disapproved, had exercised its discretion to the contrary, had withheld its consent, had not consented to, had not performed the required action, had not conducted the required review, or otherwise had not performed or conveyed the required pre-approval, approval, discretion, consent, action, or review; or

(ii) Construction Manager used funds in the Mobilization Account to pay for an item that was not an allowable Mobilization Account Expense.

10.1.3.5 If 1 WTC issues Construction Manager a notice of disapproval in accordance with Section 10.1.3.4 above, then Construction Manager may appeal 1 WTC's disapproval in accordance with the dispute resolution provisions set forth in Section 24 of this Agreement. Notwithstanding any such appeal, Construction Manager remains obligated to return the amount of the disapproved item to the Mobilization Account within five (5) business days after issuance of the notice of disapproval to Construction Manager, pending outcome of the appeal.

10.1.3.6 If Construction Manager fails to return any funds to the Mobilization Account within five (5) business days after a notice of disapproval is issued to Construction Manager in accordance with Section 10.1.3.4 above, and fails to furnish 1 WTC promptly, within same five (5) business days, with reasonable evidence that such funds have been returned, then 1 WTC, at its sole and absolute discretion, may issue to Construction Manager a notice of termination of the Mobilization Account. Upon issuance to Construction Manager of such notice of termination of the Mobilization Account, Construction Manager immediately and automatically forfeits the use of the funds in the Mobilization Account. Construction Manager immediately shall cease writing checks and drafts or withdrawing any funds in any manner from the Mobilization Account and immediately shall return the balance of funds in the Mobilization Account to 1 WTC, such balance to be calculated in accordance with Section 10.1.3.7 below.

10.1.3.7 The balance of funds to be returned to 1 WTC from the Mobilization Account in the event a notice of termination of the Mobilization Account is issued to Construction Manager shall be calculated as follows: the balance in the Mobilization Account at the close of business on the date of the notice of termination of the Mobilization Account, as such balance is reported by the banking institution where the funds are on deposit, less: (a) the aggregate amount of checks or drafts not yet presented for payment that, prior to receipt of the notice of termination of the Mobilization Account, either had been deposited for mailing with the United States postal service or otherwise had been delivered to and received by the payee, and (b) the aggregate amount of checks or drafts (i) payable to the order of Construction Manager or its affiliates (ii) for amounts approved pursuant to a Mobilization Requisition (iii) that had not cleared the Mobilization Account as of the close of business on the day before the date of the notice of termination of the Mobilization Account.

10.1.3.8 Construction Manager expressly represents, warrants, and certifies that it shall obtain any required approval in accordance with the provisions of this Agreement, including, without limitation, Section 7 (Approval of Personnel) and Section 8 (Subconsultants), prior to using the funds in the Mobilization Account to pay for the (i) the salary of any Personnel; (ii) the applicable Burden Rate, (iii) the cost of any non-exempt union labor, or (iv) the cost of any Subconsultant.

10.1.4 1 WTC shall not withhold retainage for approved Mobilization Account Expenses appearing on the requisition described in Section 10.1.3 above.

10.1.5 In no event shall Construction Manager withdraw funds from or use funds in the Mobilization Account to pay for any expense or item other than Mobilization Account Expenses incurred by Construction Manager. For the avoidance of doubt, Construction Manager shall not use funds in the Mobilization Account to pay for Trade Costs, the Construction Manager's Fee, or for items to be paid from the Insurance Escrow Account, except for payments of Deductible Expenses after 1 WTC's obligation to fund or replenish the Insurance Escrow Account ceases on April 1, 2008.

10.2 Payment for Contractors' Applications and Construction Manager's Fee Via Trade Account.

10.2.1 Construction Manager shall establish a separate non-interest bearing checking account which Construction Manager shall use for payment of Contractors' applications for payment for progress and final payment requests, excluding General Conditions Costs ("Trade Account"). Construction Manager shall use the funds in the Trade Account to make such payments to Contractors in accordance with the requirements set forth in this Agreement.

10.2.2 1 WTC shall deposit into the Trade Account such amount that will enable the Construction Manager to pay the Contractors those amounts that have been approved and certified for payment by 1 WTC Representative in accordance with this Section 10.2. Construction Manager shall pay each Contractor its respective approved amount no later than three business (3) days after such deposit, or later if directed by 1 WTC in writing.

10.2.3 Construction Manager shall submit to 1 WTC by the first of each month one integrated progress payment request (i) for payment of all Contractors currently on the Project, which request shall be in accordance with the provisions set forth in the respective Contracts, for Work performed during the previous month, and (ii) for payment of Construction Manager's Fee as set forth in Section 10.3. Construction Manager shall submit in such request only those payments that Construction Manager recommends for payment and has certified properly as due and owing. As a precondition to any deposit into the Trade Account, Construction Manager shall provide all payment documentation requested by, and in form and substance satisfactory to, 1 WTC Representative.

10.3 Progress Payment of Construction Manager's Fee.

10.3.1 As part of the integrated progress payment request, Construction Manager shall submit to 1 WTC monthly an invoice for Construction Manager's Fee, stating in detail the portion of the Construction Manager's Fee that has been earned based on the Cost of the Work necessarily incurred; provided, however, all of the amounts comprising such Cost of the Work shall have been completed, approved and certified by 1 WTC Representative.

10.3.2 Construction Manager shall provide all documentation requested by 1 WTC in form and substance satisfactory to 1 WTC as a precondition to any payment.

10.3.3 After the invoice for the Construction Manager's Fee has been approved and certified for payment by 1 WTC Representative, 1 WTC shall pay such invoice in a reasonable time.

#### 10.4 Payments Withheld.

10.4.1 1 WTC, at its discretion, may withhold an appropriate portion or all of (i) any progress or final payment, (ii) the Construction Manager's Fee, or (iii) any payment, reimbursement, or disbursement from; deposit into; or replenishment of, the Mobilization Account, Trade Account, or Insurance Escrow Account, for any of the following reasons: (1) a lien or other claim made, asserted, or filed, or reasonable evidence indicating such a lien or claim may be asserted, regarding the Project for payments made to or authorized by Construction Manager; (2) failure of Construction Manager to properly make a payment to a Subconsultant or Contractor, or, only in the case where Construction Manager is not acting as agent of 1 WTC but rather is acting as a general contractor pursuant to Exhibit B, failure of a Contractor (first-tier Subcontractor) to properly make a payment to a Subcontractor or Materialman (as the terms "Subcontractor" and "Materialman" are defined in the Contract, which Contract is referenced as Rider V (Form of Trade Contract)); (3) improper, erroneous, or incomplete invoices from Construction Manager; (4) unauthorized deviation by Construction Manager from performance of its Services in accordance with the Standard of Care; (5) disbursements from the Mobilization Account for costs other than General Conditions Costs, or Deductible Expenses paid after April 1, 2008; or (6) breach of this Agreement by Construction Manager.

10.4.2 Notwithstanding the above, 1 WTC may dispute any payment, deposit, or disbursement, and deduct from future payment requests the amount in dispute until such time as the dispute is resolved in accordance with the Contract Documents.

10.4.3 If 1 WTC withholds reimbursement to Construction Manager for Excluded Emergency Costs, as set forth in Section 9.2.2.4(iii), then (a) Construction Manager agrees to pay promptly such Excluded Emergency Costs, and (b) Construction Manager shall pay all costs and expenses incurred by any Contractor arising out of or resulting from such emergency. 1 WTC's sole obligation prior to withholding funds in accordance with this Section 10.4 will be to file a claim with the appropriate insurance carrier. In the event the insurance carrier refuses to accept a claim, or 1 WTC is unable to determine the appropriate insurance carrier or manner in which to file a claim, 1 WTC's good faith effort to comply with this Section 10.4.3 will suffice.

10.4.4 1 WTC may collect or recover, in any manner permitted by law, in equity, or by the Contract Documents, any amount to which it is entitled from the Mobilization Account, from the Trade Account, from the Insurance Escrow Account, or to which it is entitled as otherwise provided in the Contract Documents.

10.5 1 WTC may perform an audit or otherwise independently verify any payment request or certification by Construction Manager.

#### 11. INTENTIONALLY OMITTED.

## 12. HAZARDOUS MATERIALS.

12.1 Anything in this Agreement to the contrary notwithstanding, except as otherwise provided in Section 12.2, Construction Manager shall not have any duties or obligations regarding the existence, remediation or removal of any hazardous waste, hazardous material, toxic substance, asbestos-containing material, petroleum product, or related materials, including, but not limited to, substances defined as "hazardous substances" or "toxic substances" as defined in the following: Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended, 42 U.S.C. Sec. 9061 *et. seq.*; Hazardous Materials Transportation Act, as amended, 49 U.S.C. Sec. 1802; and the Resource Conservation Act and Recovery Act, as amended, 42 U.S.C. Sec. 6901 *et. seq.*; and the corresponding regulations (as amended) issued pursuant to these acts (collectively, "Hazardous Materials"); provided, however, that Construction Manager will assist 1 WTC in the procurement of Contracts with remediation trades to perform any needed remediation work. It is 1 WTC's responsibility to directly contract with remediation contractors for the removal, transport, and disposal of all asbestos and hazardous waste from the site (each such contractor, hereinafter a "Remediation Contractor"). At 1 WTC's request, Construction Manager shall bid at 1 WTC's request and recommend to 1 WTC an award for both the asbestos and hazardous waste survey and monitoring firm as well as the Remediation Contractor(s). The Remediation Contractor(s) shall be directly responsible to 1 WTC for the monitoring and supervision of all asbestos and hazardous waste removal/remediation. Construction Manager shall in no way be responsible for supervision of the work of remediating, removing, transporting, or disposing of the asbestos or hazardous waste as performed by 1 WTC's Remediation Contractor. 1 WTC shall, in its contract(s) with Remediation Contractors, use reasonable efforts to, and where possible, require each such Remediation Contractor to: (i) name 1 WTC and Construction Manager as additional insureds on all relevant insurance policies relating to work on the Project; and (ii) defend, indemnify and hold harmless in connection with the Remediation Contractor's work the following entities: 1 WTC, Construction Manager, Authority, Silverstein Freedom Tower Development LLC, WTC Redevelopment LLC, World Trade Center Properties, Two World Trade Center LLC, Four World Trade Center LLC, Five World Trade Center LLC, Net Lessees' Association of the World Trade Center, Silverstein WTC Facility Manager LLC, Silverstein Properties Inc., Silverstein Development Co., Larry A. Silverstein (as an individual), Port Authority Trans Hudson (PATH), NYS Department of Transportation, WTC Retail LLC, Tishman Realty & Construction Co., Inc., Tishman Construction Corporation of New York, and the parents and affiliates, successors and permitted assigns of each of the foregoing entities and the officers and directors of each of them. To the extent 1 WTC incurs costs for naming Construction Manager as an additional insured, Construction Manager shall reimburse 1 WTC for such costs.

12.2 Notwithstanding anything to the contrary herein, Construction Manager shall be responsible for the existence, remediation, removal or damages arising from the following: (i) any Hazardous Material introduced to the Project by Construction Manager or its Subconsultants, or anyone for whom either or both are responsible; (ii) any Hazardous Material handled either improperly or unsafely or not in keeping with the Legal Requirements setting forth the requirements for handling or disposing of such Hazardous Materials; and/or (iii) any condition arising from the existence, remediation, removal or damages of a Hazardous Material

that is exacerbated by Construction Manager or its Subconsultants. Construction Manager shall ensure that both Construction Manager and 1 WTC are listed as additional insureds on any remediation contractor's environmental and Comprehensive General Liability policies hired with respect to this Section 12.2.

### **13. PUBLIC RELATIONS.**

Construction Manager shall not communicate with the media regarding the Project without the prior written approval of 1 WTC and shall comply with the requirements of Section 22 (Confidentiality) below at all times with respect to any communication whatsoever.

### **14. EMPLOYMENT PROVISIONS.**

14.1 Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities within Authority, either directly or as Contractors and subcontractors. The Authority's policy is articulated in Section 8 of the Contract. 1 WTC hereby adopts such policy in regards to Construction Manager's Services and in regards to the Work performed by Contractors.

14.2 To ensure maximum participation in the Project, to the extent feasible and consistent with the exercise of good business judgment, 1 WTC adopts Authority's overall contract goal of twelve percent (12%) participation by MBEs and five percent (5%) participation by WBEs for (i) all procurement, subcontracting, and ancillary service opportunities for the Construction Manager's Services and the Work performed by Contractors. 1 WTC also adopts Authority's goals that the construction labor force reflect the minority and female participation goals set forth in Section 35 of the Contract titled "Affirmative Action Requirements - Equal Employment Opportunity" for Construction Manager's Services and the Work performed by Contractors.

14.3 Construction Manager shall use its best efforts to achieve the goals and policies described in Section 14.2 above for Construction Manager's Services. Construction Manager shall facilitate, oversee, and scrutinize achievement of the goals and policies described in Section 14.2 above for Contractor's Work. Construction Manager also shall report monthly to 1 WTC regarding progress and issues with respect to compliance and progress regarding the provisions of this Section 14 and Sections 8 and 35 of the Contract.

14.4 The provisions of Sections 8 and 35 of the Contract shall be available to all bidders and those selected to be Contractors, both during the bidding process and at time of execution of each respective Contract; and to all Subconsultants and their subconsultants of any tier.

14.5 In order to facilitate meeting the MBE/WBE goals, Construction Manager shall use every good faith effort, to the maximum extent feasible, to utilize Contractors and Subconsultants who are certified MBEs or WBEs.

14.5.1 1 WTC has a list of certified MBE/WBE service firms, which list is available to Construction Manager at its request.

14.5.2 Construction Manager will be required to submit to Authority's Small Business Program for certification the names of MBE/WBE firms that Construction Manager proposes to use who are not on the list of certified MBE/WBE firms.

14.5.3 In order for a firm to be "certified" as an MBE or WBE, Authority's Small Business Program must make the determination and so certify.

## **15. PREPARATION OF DOCUMENTS AND GRAPHICS.**

15.1 When Services to be performed by Construction Manager include the preparation of Contract Documents, or the performance of post-award Services, Construction Manager shall submit a specific quality control/quality assurance program to 1 WTC prior to the performance of said Services. When Construction Manager has completed preparation of any Contract Documents required hereunder, Construction Manager shall submit a letter to 1 WTC certifying Construction Manager's conformance with the aforementioned quality control/quality assurance program.

15.2 When Services to be performed by Construction Manager include the preparation of computer aided design and drafting (CADD) documents, Construction Manager shall submit said documents in the format of the latest available version of AutoDesk's design CADD software (.dwg), or as directed by 1 WTC prior to performance of specific Services, and such documents shall be submitted to 1 WTC on compact disks or as otherwise required by 1 WTC.

15.3 When Services to be performed by Construction Manager include the preparation of architectural graphics, Construction Manager shall prepare said graphics using a system fully compatible with 1 WTC's standard computer system. The graphics shall be prepared using the latest revision of the following software packages, as required by 1 WTC: Adobe Illustrator; Quark Xpress; Microsoft Word, and Microsoft PowerPoint. Such graphics shall be submitted to 1 WTC on compact disk or as otherwise required by 1 WTC.

## **16. 1 WTC REVIEW.**

16.1 Construction Manager shall meet and consult with 1 WTC Representative no less than once per week in connection with the Services to be performed herein.

16.2 Any deliverable, such as Project Schedule, to be submitted or prepared hereunder by Construction Manager shall be subject to review or, where applicable, approval by 1 WTC.

16.2.1 1 WTC may disapprove, if, in 1 WTC Representative's sole opinion, any deliverable is not in accordance with the requirements of this Agreement, all applicable jurisdictional codes, 1 WTC's standards, sound engineering practices, or are impractical, uneconomical, or unsuitable for the purpose for which the construction is intended.

16.2.2 If any deliverable is so disapproved, Construction Manager shall forthwith revise said items until approved by 1 WTC, but Construction Manager shall not be compensated under any provision of this Agreement for performance of such revisions.

16.3 No approval or disapproval by 1 WTC shall relieve Construction Manager of its responsibilities under this Agreement.

## 17. RECORDKEEPING.

17.1 Construction Manager shall keep, and shall cause each Subconsultant under this Agreement to keep, daily records of the time spent in the performance of Services by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement, as well as records of the amounts of such salaries and amounts actually paid for the performance of such Services, and records and receipts of the Cost of the Work, Reimbursable Expenses, or other expenditures hereunder.

17.2 Notwithstanding any other provision of this Agreement, failure to comply with Section 17.1 shall be a conclusive and final waiver of any right to compensation for such Services or expenses that are otherwise compensable hereunder.

17.3 1 WTC shall have the right to audit all of the records of Construction Manager and Subconsultants of any tier with respect to the Project.

17.4 1 WTC shall have the right to inspect Construction Manager's records, and those of Construction Manager's Subconsultants of any tier, pertaining to any compensation payable or to be paid hereunder.

17.5 Construction Manager's files and records with respect to the Project must be maintained by Construction Manager and its Subconsultants for a period of four (4) years after completion of Services to be performed under this Agreement.

## 18. INDEMNIFICATION.

18.1 Construction Manager shall defend, indemnify and hold 1 WTC, Authority, and their respective affiliates, officers, directors, employees, agents, successors, and assigns ("Indemnitees") harmless from all claims, damages, losses, and expenses to the extent such claims, damages, losses, and expenses arise out of, or in connection with, failure of Construction Manager to act in accordance with the Standard of Care in connection with performance of Construction Manager's Services, including those of its Subconsultants.

## 19. INSURANCE.

19.1 1 WTC, at its sole and absolute discretion, may provide an insurance program ("Insurance Program") in accordance with the provisions of the first paragraph, including subparagraphs (a) through (g), of **Attachment 6 to Exhibit A (Insurance)**.

19.2 Construction Manager shall procure, and cause its Subconsultants to procure, the insurance in accordance with the requirements set forth in **Attachment 6 to Exhibit A (Insurance)** other than those described in Section 19.1 above.

19.3 Construction Manager shall cooperate with the Insurance Program insurers, if any, and shall respond timely to all reasonable requests from same.

19.4 Construction Manager shall establish a separate non-interest bearing checking account in order to pay Deductible Expenses, as such term is defined in Section 19.4.4 below, with respect to certain claims under a general liability insurance policy described in Section 19.4.1 below ("Insurance Escrow Account"). The Insurance Escrow Account is applicable only to claims under such general liability insurance policy described in Section 19.4.1 below and is not applicable to claims under the OCIP or to any other claim.

19.4.1 As part of an interim insurance program expected to be approximately one year in length, Construction Manager has obtained an insurance policy on behalf of itself, 1 WTC, and others, from Illinois Union Insurance Company, policy number G22046214001, for certain commercial general liability insurance coverage with respect to the Freedom Tower Project during a one-year period beginning February 15, 2007 ("CGL Policy"). The CGL Policy names Construction Manager, 1 WTC, and the Authority as named insureds. Construction Manager shall ensure that all entities identified as Additional Insureds on **Schedule 1 of Attachment 6 to Exhibit A** are named as additional insureds to the CGL Policy. This primary CGL Policy provides for a deductible in the amount of \$25,000 per occurrence applicable to each claim under the CGL Policy, with a single claim limit of \$1,000,000 per occurrence and a total limit of \$2,000,000. Excess coverage is provided through a variety of insurance policies to achieve a total CGL limit of \$200,000,000 for the term of the interim insurance program. The CGL Policy obtained by Construction Manager is dedicated solely to the Freedom Tower Project, and the limits as set forth in this Section 19.4.1 are applicable solely to the Freedom Tower Project.

19.4.2 1 WTC shall be responsible for the payment of the premiums with respect to the CGL Policy and any stamping fee, premium tax, required excise tax, or other required tax thereon as a reimbursable cost in accordance with Section 9.2.2.5 of this Agreement; provided, however, that if the CGL Policy is cancelled or terminated within six months of commencement of the one-year period beginning February 15, 2007, then 1 WTC shall be entitled to reimbursement of the premium costs as set forth in Section 19.4.2.2 hereof.

19.4.2.1 With respect to Section 19.4.2 above, Construction Manager acknowledges and agrees that the CGL Policy was cancelled or terminated within six months of commencement of the one-year period beginning February 15, 2007, and, accordingly, that 1 WTC will receive reimbursement of the premium costs as set forth in Section 19.4.2.2; and

19.4.2.2 Construction Manager acknowledges and agrees that 1 WTC paid a total of \$3,140,881 for the premiums with respect to the CGL Policy for the one-year period and that 1 WTC is due and owing a pro rata reimbursement in the amount of \$1,228,243.75. Construction Manager shall pay 1 WTC such aggregate amount of \$1,228,243.75 by the earlier of (i) within five (5) days of Construction Manager's receipt of the premium reimbursement from the insurer, or (ii) by September 1, 2007. In the event Construction Manager receives a partial reimbursement from the

insurer prior to September 1, 2007, then Construction Manager shall pay 1 WTC an amount equal to such partial reimbursement within five (5) days of Construction Manager's receipt of the partial reimbursement from the insurer but in no event later than September 1, 2007.

19.4.3 Construction Manager shall administer all of the claims under the CGL Policy.

19.4.3.1 Construction Manager shall give written notification to 1 WTC and its designees (i) promptly upon receipt of any claim, and (ii) five (5) business days prior to any withdrawal by Construction Manager from the Insurance Escrow Account. For purposes of this Section 19.4.3.1, the term "withdrawal" means any withdrawal, disbursement, or debit of any kind from the Insurance Escrow Account.

19.4.3.2 Construction Manager shall consult with 1 WTC regarding any settlement under the CGL Policy and give written notification to 1 WTC and its designees five (5) business days prior to settlement of any claim. With respect to a final decision regarding settlement within the limits of the CGL Policy, Construction Manager shall make such final decision where the settlement amount exceeds the deductible amount but remains within CGL policy limits; 1 WTC shall make the final decision where the settlement amount is within the deductible amount.

19.4.3.3 1 WTC will pay Construction Manager a claims administration fee of \$1,500 for each claim filed against the CGL Policy. This claims administration fee shall cover all costs and expenses incurred by Construction Manager with respect to administration of the claim for which such fee was paid, including all costs and expenses for or incurred by any of Construction Manager's staff or by any third party, including a third party claims administrator. If the costs and expenses incurred by Construction Manager in the administration of a claim exceed the claims administration fee of \$1,500 for such claim, then Construction Manager shall be responsible for any excess amount, and the claims administration shall be carried out by Construction Manager without further cost or expense to 1 WTC. 1 WTC shall have no financial responsibility to any third party claims administrator engaged by Construction Manager, and Construction Manager is responsible to pay for the services and expenses of such third party claims administrator, regardless of the amounts charged and whether or not such amounts exceed or can be covered by the \$1,500 claims administration fee.

19.4.3.4 Construction Manager shall bill 1 WTC for a \$1,500 claims administration fee with respect to each claim filed against the CGL Policy that Construction Manager administers.

19.4.4 Construction Manager shall use the funds in the Insurance Escrow Account for the sole purpose of paying the deductibles under and as defined by the CGL Policy ("Deductible Expenses").

19.4.5 1 WTC shall fund the Insurance Escrow Account with an initial deposit of \$300,000 to the Insurance Escrow Account and, thereafter, in accordance with the provisions of this Section 19.4.

19.4.6 Whenever the balance in the Insurance Escrow Account falls below \$200,000, Construction Manager may requisition 1 WTC to replenish the funds in the Insurance Escrow Account in order to restore the balance to \$300,000 ("Insurance Requisition"); provided, however, an Insurance Requisition shall be submitted to 1 WTC no more than once per calendar month and shall include only funds withdrawn from the Insurance Escrow Account for Deductible Expenses incurred in the prior month. In no event shall the Insurance Requisition include any item forecast rather than paid. As a precondition to replenishment of the Insurance Escrow Account, Construction Manager shall provide all payment documentation requested by, and in form and substance satisfactory to, 1 WTC.

19.4.7 If 1 WTC disapproves of any item in Construction Manager's Insurance Requisition, whether or not such item is a Deductible Expense, 1 WTC shall notify the Construction Manager in writing of 1 WTC's disapproval. Construction Manager shall return the cost of any disapproved item to the Insurance Escrow Account within five (5) business days of receiving such notice of disapproval. The amount of funds to be returned to the Insurance Escrow Account shall be the amount stated in the notice of disapproval. If the total amount of such funds is not returned to the Insurance Escrow Account upon the expiration of five (5) business days after receipt of such notice of disapproval, then 1 WTC, at its sole and absolute discretion, may deduct the amount of such item from the Construction Manager's Fee.

19.4.8 After 1 WTC has approved Construction Manager's Insurance Requisition, 1 WTC will deposit the amount approved with respect to the Insurance Requisition into the Insurance Escrow Account within thirty (30) days.

19.4.9 Any obligation of 1 WTC to fund or replenish the Insurance Escrow Account ceases on April 1, 2008. The balance of funds in the Insurance Escrow Account are immediately due and owing to 1 WTC as of such date, and Construction Manager immediately shall return such funds to 1 WTC. Anything in this Agreement to the contrary notwithstanding, any Deductible Expense paid after April 1, 2008, will be reimbursed to Construction Manager from the Mobilization Account, as set forth in Section 10.1 hereof, to the extent that payment for such Deductible Expense is the responsibility of 1 WTC under this Agreement and subject to the per-occurrence limit set forth in Section 19.4.1 above.

19.4.10 Construction Manager shall cause the banking institution to forward each month directly (i) to 1 WTC, in accordance with Section 11 (Notices) of the Third Freedom Tower Amendment, (ii) to the Authority, addressed as follows: The Port Authority of NY & NJ, c/o Treasury Department, 225 Park Avenue South, 12th Floor, New York, New York 10003, Attn: Cash Management, and (iii) to any of 1 WTC's or the Authority's designees as communicated to Construction Manager from time-to-time, the monthly statement produced by the institution where the Insurance Escrow Account funds are on deposit. Construction Manager

shall provide 1 WTC with any supporting documentation 1 WTC requests after reviewing the monthly statement.

19.4.11 Prior to paying any Deductible Expense from the Insurance Escrow Account, Construction Manager shall provide evidence satisfactory to 1 WTC that the insurer has requested that such Deductible Expense be paid and that such Deductible Expense is currently due and owing.

19.4.12 1 WTC may perform an audit or otherwise independently verify any claim, Insurance Requisition or other requisition, payment, cost, or bank statement under this Section 19.4.

19.4.13 Construction Manager acknowledges and agrees that 1 WTC paid a total of \$359,975 for premiums with respect to an insurance policy for terrorism coverage and that such terrorism coverage shall remain in full force and effect for the entire policy period. Construction Manager agrees to provide 1 WTC with the policy number and a complete and accurate copy of each such policy evidencing the terrorism coverage prior to execution of this Agreement.

19.4.14 Prior to execution of the Agreement, Construction Manager agrees to provide 1 WTC with the policy number and a complete and accurate copy of each such policy for all insurance coverages purchased or obtained by Construction Manager for or on behalf of 1 WTC with respect to the Project.

## **20. OWNERSHIP OF WORK PRODUCT.**

20.1 Mylars of the Contract Drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes and disks, and other documents of any type whatsoever (collectively, "Works") and mechanical or electronic copies of the Works, whether in the form of writing, figures, or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of 1 WTC, and 1 WTC 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. For purposes of copyright creation and ownership, such Works shall be considered "works for hire" and shall be deemed created and owned by the 1 WTC; Construction Manager shall otherwise assign such rights to 1 WTC and execute such documents and undertake such actions to effectuate such assignments and ownership.

20.2 Construction Manager hereby warrants and represents that 1 WTC will have at all times the ownership and rights provided for in Section 20.1 above, 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 to this Agreement or not. This Agreement shall not be construed, however, to require Construction Manager to obtain for 1 WTC the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent is owned by Construction Manager or one of its employees, or by Construction

Manager's Subconsultant or one of Subconsultant's employees, in which case such right shall be obtained by the 1 WTC under an irrevocable, non-exclusive, royalty free and worldwide license to make, have made, and use, either by itself or by anyone on 1 WTC's behalf, without additional compensation by the 1 WTC in connection with any activity now or hereafter engaged in or permitted by 1 WTC under this Agreement.

20.3 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 Construction Manager, its officers, agents, employees, or Subconsultants, then 1 WTC, without cost or expense to it, shall have an irrevocable, non-exclusive royalty-free and worldwide license to make, have made, and use, either by itself or by anyone on 1 WTC's behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by 1 WTC under this Agreement.

20.4 With respect to any license 1 WTC may be entitled to pursuant to this Section 20, promptly upon request by 1 WTC, Construction Manager shall furnish or obtain from the appropriate person a form of license satisfactory to 1 WTC, but it is expressly understood and agreed that, as between 1 WTC and Construction Manager, 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.

20.4.1 Any license agreement obtained pursuant to this Section 20 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, and such license may be otherwise transferable at 1 WTC's sole discretion.

## 21. PATENTS.

21.1 Construction Manager shall promptly and fully inform 1 WTC in writing of any patents or patent disputes, whether existing or potential, of which Construction Manager has knowledge, relating to any idea, design, method, material, equipment, or other matter related to the subject matter of this Agreement or coming to Construction Manager's attention in connection with this Agreement.

21.2 Construction Manager hereby acknowledges that, except as set forth herein, all Intellectual Property Rights (as such term is defined in Section 21.4 below) necessary for the development, construction, and marketing of the Freedom Tower Project are owned by, licensed to, or have been otherwise secured by 1 WTC, its Contractors, Subconsultants, and employees and agents thereof, and that any uses by Construction Manager and its agent, employees, and Subconsultants are incidental and for the benefit of 1 WTC as part of the Project.

21.3 In the event that 1 WTC is accused of infringing any Intellectual Property Rights, including, but not limited to, those rights set forth in Section 20.1, as a result of any action taken by the Construction Manager, its Subconsultants, officers, employees, or agents thereof, the Construction Manager shall defend, indemnify, and hold harmless, and hereby does indemnify

and hold harmless the Indemnitees from and against any and all claims, demands, suits, causes of action, damages, losses, costs, and expenses, including reasonable attorneys' and experts' fees and costs, arising directly or indirectly from or out of the design, creation, manufacture, advertising, promotion, distribution, sale, use, or misuse of any third-party Intellectual Property Rights or any alleged action or omission by Construction Manager, its Subconsultants, or their respective officers, directors, employees, agents, successors, assigns, or customers (collectively, "IP Claims"), including, but not limited to, any IP Claims that may be asserted by customers, suppliers, Contractors, Subconsultants, manufacturers, sales representatives (independent and otherwise), employees, and all other persons and entities which may assert any such claims. Construction Manager shall not settle or otherwise compromise any IP Claims naming 1 WTC without 1 WTC's prior written consent, which shall not be unreasonably withheld. 1 WTC shall have the option to assume the defense of any IP Claims and to hire counsel of its choice, at Construction Manager's expense. Construction Manager shall give immediate notice to 1 WTC of any occurrence that might reasonably be expected to result in any IP Claim against any one or more of the Indemnitees. All of Construction Manager's indemnification obligations hereunder shall survive the expiration or termination of this Agreement.

21.4 For purposes of this Agreement, "Intellectual Property Rights" shall be defined as patents, unpatented inventions, patent applications in process, rights in expired patents, designs, processes, know-how, inventions, mask works, common law trademarks and service marks, active, expired or cancelled trademark or service mark registrations, trade names, slogans, unregistered trade dress, registered and unregistered copyrights, agreements, licenses, trade secrets, rights of publicity, and any tangible media (including film negatives and electronic files) embodying the same.

## 22. CONFIDENTIALITY.

22.1 Construction Manager has entered into a Confidentiality Agreement with 1 WTC and other parties ("Confidentiality Agreement"), a copy of which is attached hereto as **Attachment 10 to Exhibit A (Non-Disclosure and Confidentiality Agreement, World Trade Center, Tower One, New York, New York)** and made a part hereof. Construction Manager acknowledges and agrees that such Confidentiality Agreement is applicable to both the Project and the Third Freedom Tower Amendment. Construction Manager shall obligate its Subconsultants and their employees in accordance with the requirements of Section 25 (Security Requirements) and shall require in all Contracts that Contractors comply with such requirements and require the Contractor's employees to do the same. A breach of the Confidentiality Agreement by Construction Manager or its Subconsultants shall be a material breach of this Agreement.

22.2 In addition to the obligations set forth in Section 22.1 above, Construction Manager shall comply with Sections 22.3 through 22.7 below, unless a requirement of any such provision conflicts with a requirement set forth in the Confidentiality Agreement. In the event of such a conflict, the most stringent requirement upon Construction Manager shall apply. In the event there is a dispute or it cannot be determined which provision is most stringent upon Construction Manager, then 1 WTC shall select the requirement with which Construction Manager must comply.

22.3 Without the express written approval of 1 WTC, Construction Manager shall keep confidential, and shall require its Subconsultants and employees to keep confidential, the information set forth in Sections 22.3.1 and 22.3.2 below. Disclosure of any such information shall constitute a material breach of the Agreement.

22.3.1 all information identified as confidential, or some other similar identifying mark or statement indicating that such item is confidential, privileged, sensitive security, and/or proprietary information, disclosed to Construction Manager by 1 WTC or PATH or their respective contractors, consultants, or construction managers, if any; or

22.3.2 all information developed by Construction Manager or its Subconsultants in the performance of Services.

22.4 Construction Manager shall execute, and shall cause its employees and its Subconsultants, and the Subconsultant's respective employees, to execute non-disclosure agreements as directed by 1 WTC concerning intellectual property and proprietary information of 1 WTC, PATH, and any third person. Disclosure of any information covered under such non-disclosure agreements shall constitute a material breach of the Agreement.

22.5 The obligation of confidentiality under this Section 22 shall not pertain to:

22.5.1 information in the public domain;

22.5.2 information lawfully received from a third party;

22.5.3 information independently developed or obtained by Construction Manager or its Subconsultants prior to any disclosure or development contemplated in Sections 22.3.1 or 22.3.2, above; or

22.5.4 information that must be disclosed under law, provided 1 WTC is given reasonable notice of the legal obligation or legal process to disclose the same and provided Construction Manager is permitted to give such notice by applicable law.

22.6 Construction Manager shall not issue or permit to be issued any press release, advertisement, or literature of any kind that refers to 1 WTC or the Services performed in connection with this Agreement, unless Construction Manager obtains prior written approval from 1 WTC. Such approval may be withheld at the sole discretion of 1 WTC if, for any reason, 1 WTC believes that publication of such information could or would be harmful to the public interest or is in any way undesirable.

22.7 Under no circumstances shall Construction Manager or its Subconsultants communicate in any way with any contractor, department, board, agency, commission, or other organization, or any person, whether governmental or private, in connection with the Services unless required by law, except upon prior written approval and instruction of 1 WTC; provided, however, that data from manufacturers and suppliers of material shall be obtained by Construction Manager when Construction Manager finds such data necessary, unless otherwise instructed by 1 WTC.

## **23. SUSPENSION AND TERMINATION.**

23.1 If, at any time, it is impracticable or undesirable from the viewpoint or judgment of 1 WTC to proceed with or continue the performance of the Agreement or any part thereof, whether or not for reasons beyond the control of 1 WTC, then 1 WTC shall have authority to suspend performance of any part or all of the Agreement until such time as 1 WTC may deem it practicable or desirable to proceed.

23.2 This Agreement may be terminated by 1 WTC without cause for any reason whatsoever upon thirty (30) days' prior written notice from 1 WTC, in which event 1 WTC shall pay Construction Manager the amounts calculated in Sections 23.2.1 through 23.2.4, as follows:

23.2.1 Construction Manager's Fee for the Cost of the Work executed through the date of termination;

23.2.2 Plus General Conditions Costs incurred up to thirty (30) days from the date of termination except to the extent Construction Manager has written Contracts that extend beyond thirty (30) days from the termination date, which shall be transferred to 1 WTC. These obligations, where possible, shall carry a 30-day cancellation clause and to the extent they do not, such longer obligations shall require 1 WTC's written pre-approval.

23.2.3 Plus, 1 WTC shall pay Construction Manager for staff and related expenses for up to sixty (60) days to allow for transfer of such personnel except to the extent Construction Manager has written obligations beyond sixty (60) days, which shall be transferred to the Authority. Provided, however, that the General Conditions Costs for Personnel beyond the date of termination shall not exceed an average of thirty (30) days in the aggregate for all Personnel;

23.2.4 Less any back charges resulting in incurred or anticipated damages from Construction Manager's breaches of this Agreement, which amounts shall be determined by 1 WTC in its sole and absolute discretion.

23.3 In no event shall Construction Manager be entitled to anticipated or unearned Fee or profits for (i) Services not executed, or (ii) Cost of the Work (a) to be incurred or (b) incurred after the date of termination.

23.4 Construction Manager shall assign all of the Subconsultants' contracts to 1 WTC by the effective date of termination.

23.5 If this Agreement is terminated or cancelled, 1 WTC shall have no further obligation to fund or replenish the Mobilization Account, Trade Account, or Insurance Escrow Account, and any funds in such accounts (a) not actually expended in connection with performance of the Work, or (b) not irrevocably committed by Construction Manager's written agreement with a third party in connection with performance of the Work, shall be immediately due and owing to 1 WTC.

## **24. DISPUTE RESOLUTION.**

24.1 To resolve all disputes and to prevent litigation, the parties to this Agreement authorize Authority's 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 Agreement (including claims in the nature of breach of contract or fraud or misrepresentation before or subsequent to acceptance of Construction Manager's proposal and claims of a type that are barred by the provisions of this Agreement).

24.2 Chief Engineer's decision with respect to any question or dispute under this Section 24 shall be conclusive, final, and binding on the parties. The decision may be based on such assistance as Chief Engineer may find desirable.

24.3 The effect of Chief Engineer's decision with respect to any question or dispute under this Section 24 shall not be impaired or waived by any negotiations or settlement offers in connection with the question or dispute decided, whether or not Chief Engineer participated therein, or by any prior decision of 1 WTC or others, which prior decisions shall be deemed subject to review, or by any termination or cancellation of this Agreement.

24.4 All such questions or disputes under this Section 24 shall be submitted in writing by Construction Manager or 1 WTC to Chief Engineer for decision, together with all evidence and other pertinent information in regard to such question or dispute, in order that a fair and impartial decision may be made. The other party shall have a reasonable time to respond. 1 WTC may join any other entity to the dispute that has a valid dispute resolution agreement with 1 WTC. In any action against 1 WTC relating to any such question or dispute, Construction Manager must allege in its 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 Chief Engineer.

## **25. SECURITY REQUIREMENTS.**

25.1 The Confidentiality Agreement entered into by Construction Manager (**Attachment 10** hereto) contains a Security Program Handbook for the Project. Although Construction Manager acknowledges in Section 22.1 above Construction Manager's prior and continuing agreement to comply with the provisions of the Confidentiality Agreement, which agreement includes the Security Program Handbook for the Project, for the avoidance of doubt, Construction Manager acknowledges and agrees that such Security Program Handbook is applicable to both the Project and the Third Freedom Tower Amendment and Construction Manager shall: (i) cause its Subconsultants, Contractors, and employees of such entities performing work or services on the Project to execute the Confidentiality Agreement and Security Program Handbook, (ii) cause Subconsultants and their employees to comply with the provisions therein, and (iii) use best efforts to cause Contractors and their employees to comply with the provisions therein. A breach of the Security Program Handbook for the Project by Construction Manager or its Subconsultants shall be a material breach of this Agreement.

25.2 Construction Manager acknowledges and agrees that Authority and 1 WTC each have facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. 1 WTC reserves the right to impose multiple layers of security requirements on Construction Manager, its staff, Subconsultants and their staffs, Contractors and their staffs, and all others participating in the Project, depending upon the level of security required, as determined by 1 WTC in its sole, absolute, and subjective discretion. Accordingly, Construction Manager, if requested after execution of this Agreement, shall execute and comply with any security agreement or new security provision required by 1 WTC or Authority or with any new governmental regulation; or with any modification, increase, and/or upgrade to existing security requirements or governmental regulation, which modification, increase, and/or update is imposed after execution of this Agreement; and Construction Manager shall create an obligation and require that all Subconsultants and Contractors, and their respective staffs, shall do the same and Construction Manager shall cause its Subconsultants to comply with the provisions therein and shall use best efforts to cause its Contractors to comply with the provisions therein.

25.3 Security requirements include, but are not limited to, those attached hereto as **Attachment 7 to Exhibit A (Security Requirements)**.

25.4 In addition to the obligations set forth in Sections 25.1 through 25.3 above, Construction Manager shall comply with Sections 25.5 through 25.7 below unless a requirement of any such provision conflicts with a requirement set forth in the security requirements described in Section 25.3 above. In the event of such a conflict, the most stringent requirement upon Construction Manager shall apply. In the event there is a dispute or it cannot be determined which provision is most stringent upon Construction Manager, then 1 WTC shall select the requirement with which Construction Manager must comply.

25.5 In accordance with Section 25.4 above, security requirements include as follows:

25.5.1 Construction Manager, Subconsultant, and Contractor criminal background checks, performed by firms acceptable to 1 WTC, and identity checks and background screening, including, but not limited to, inspection of not less than two (2) forms of valid/current government-issued identification (at least one having an official photograph) to verify person's name and residence;

25.5.2 Screening federal, state, and/or local criminal justice agency information databases and files; screening of any terrorist identification files;

25.5.3 Multi-year check of personal, employment, and/or credit history;

25.5.4 Access identification to include some form of biometric security methodology such as fingerprint, facial or iris scanning, or the like;

25.5.5 Issuance of photo identification cards; and

25.5.6 Access control, inspection, and monitoring by security guards.

25.6 Construction Manager shall require that its staff and Subconsultants, and the staff of such Subconsultants, 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 Construction Manager or any Subconsultant will be permitted to perform Services under this Agreement without proof that such check has been performed and submission of the results to 1 WTC.

25.7 Construction Manager shall enforce the security provisions provided for in this Section 25 with all of its Subconsultants, Personnel, and the staff and employees of all foregoing persons and entities, and Construction Manager shall use best efforts to enforce the security provisions provided for in this Section 25 with all of the Contractors and their subcontractors of any tier.

**26. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION AND DISCLOSURE OF OTHER INFORMATION.**

26.1 By signing this Agreement, Construction Manager and each person signing on behalf of Construction Manager certifies, and in the case of a joint proposal that resulted in formation of this Agreement, each party to such proposal certifies, as to its own organization, that Construction Manager and each parent and/or affiliate of Construction Manager has not:

26.1.1 been indicted or convicted in any jurisdiction;

26.1.2 been suspended, debarred, found not responsible, or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of Construction Manager;

26.1.3 had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;

26.1.4 ever used a name, trade name, or abbreviated name, or an employer identification number (other than in connection with Construction Manager's reorganization in 1998) different from those inserted in any such proposal or furnished to 1 WTC;

26.1.5 had any business or professional license suspended or revoked or, within the five (5) years prior to submission of any proposal or execution of this Agreement, whichever occurred earlier, had any sanction imposed in excess of Fifty Thousand Dollars (\$50,000) as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state, or local law, rule, or regulation, including environmental laws, rules, and regulations;

26.1.6 had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation, or anti-trust, regardless of the dollar amount of the any sanction or the date of its imposition; and

26.1.7 been and is not currently, or been and is 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.

## **27. CODE OF ETHICS.**

27.1 By signing this Agreement, Construction Manager and each person signing on behalf of Construction Manager certifies that:

27.1.1 the prices proposed or quoted have been arrived at independently and without collusion, consultation, communication, or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other Construction Manager or with any competitor;

27.1.2 the prices proposed or quoted have not been and will not be knowingly disclosed, directly or indirectly by Construction Manager or any person identified in Section 26.1 above prior to the official opening of any such proposal, to any other Construction Manager or to any competitor;

27.1.3 no attempt has been made and none will be made to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition;

27.1.4 Construction Manager or any person identified in Section 26.1 above has not made any offer or agreement or taken any other action with respect to any 1 WTC employee or former employee, or immediate family member of either, that would constitute a breach of ethical standards under the Code of Ethics dated April 11, 1996 (a copy of which is available upon request), nor does such Construction Manager or person have any knowledge of any act on the part of an 1 WTC employee or former 1 WTC employee relating either directly or indirectly to Construction Manager or such person that constitutes a breach of the ethical standards set forth in said Code; and

27.1.5 no person or selling agency, other than a bona fide employee or bona fide established commercial or selling agency maintained by Construction Manager for the purpose of securing business, has been employed or retained by Construction Manager to solicit or secure this Agreement on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency.

27.2 The certifications in this Section 27 shall be deemed to be made by Construction Manager as follows:

27.2.1 if Construction Manager is a corporation, such certification shall be deemed to have been made not only with respect to Construction Manager itself, but also with respect to each parent, affiliate, director, and officer of Construction Manager, as well as, to the best of the certifier's knowledge and belief, each stockholder of Construction Manager with an ownership interest in excess of ten percent (10%);

27.2.2 if Construction Manager is a partnership, such certification shall be deemed to have been made not only with respect to Construction Manager itself, but also with respect to each partner.

27.2.3 if Construction Manager is a corporation, such certification shall be deemed to have been authorized by the board of directors of Construction Manager, and such authorization shall be deemed to include the signing and submission of any proposal and the inclusion therein of such certification as the act and deed of the corporation.

27.3 If Construction Manager cannot make every certification required under this Section 27, Construction Manager shall so state and shall furnish to 1 WTC prior to executing this Agreement a signed statement that sets forth in detail the reasons therefor. If Construction Manager is uncertain as to whether it can make the foregoing certifications, it shall so indicate to 1 WTC in a signed statement furnished to 1 WTC prior to executing this Agreement, setting forth in such statement the reasons for its uncertainty.

27.4 Notwithstanding that Construction Manager may be able to make the certifications required under this Section 27 prior to or at the time of executing this Agreement, Construction Manager shall immediately notify 1 WTC in writing during the term of this Agreement of any change of circumstances that might make Construction Manager unable to continue to make such certifications or require disclosure.

27.5 Certifications or signed statements made pursuant to this Section 27 shall be deemed to have been made by Construction Manager with full knowledge that they shall become a part of the records of 1 WTC and that 1 WTC shall rely on their truth and accuracy in awarding this Agreement.

27.6 If 1 WTC determines at any time prior or subsequent to the award of this Agreement that Construction Manager has falsely certified as to any material item in such certifications or statements, or has willfully or fraudulently furnished a certification or signed statement that is false in any material respect, or has not fully and accurately represented any circumstance with respect to any item in the certifications and statements required to be disclosed, then 1 WTC may determine that Construction Manager is not a responsible Construction Manager with respect to its proposal regarding the Services or the Agreement or with respect to future proposals for Services or 1 WTC agreements, and 1 WTC may exercise such other remedies as are provided to it by the Third Freedom Tower Amendment or Agreement with respect to these matters.

27.7 Construction Manager acknowledges that knowingly providing a false certification or statement in any proposal for Services or under this Agreement 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.). Construction Manager also acknowledges that the inability to make such certification will not in and of itself disqualify a Construction Manager, and that in each instance, 1 WTC will evaluate the reasons therefor provided by such Construction Manager.

## **28. CONSTRUCTION MANAGER ELIGIBILITY.**

28.1 Construction Manager acknowledges and shall abide by any determination with respect to 1 WTC's policy to honor any determination by any agency of either the State of New York or New Jersey that a Construction Manager is not eligible to submit a proposal or be awarded a public agreement because such Construction Manager has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.

28.2 Construction Manager acknowledges that with respect to the policy set forth in Section 28.1 above, such policy permits a Construction Manager whose ineligibility has been so determined by an agency of either the State of New York or New Jersey to submit a proposal with respect to an 1 WTC agreement and then to establish that Construction Manager is eligible to be awarded an agreement because (i) the state agency determination relied upon does not apply to the Construction Manager; or (ii) the state agency determination relied upon was made without affording the Construction Manager the notice and hearing to which the Construction Manager 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 violation of a prevailing rate of wage law.

28.3 The full text of the resolution adopting the policy described in this Section 28 may be found in the Minutes of Authority's Board of Commissioners meeting of September 9, 1993.

## **29. NO GIFTS / GRATUITIES / OFFERS OF EMPLOYMENT.**

29.1 During the term of this Agreement, Construction Manager shall not offer, give, or agree to give anything of value either to an 1 WTC employee, agent, job shopper, Construction Manager, or other person or firm representing 1 WTC, nor to a member of the immediate family (i.e., spouse, child, parent, brother, or sister) of any of the foregoing, in connection with the performance by such employee, agent, job shopper, Construction Manager, or other person or firm representing 1 WTC of duties involving transactions with Construction Manager on behalf of 1 WTC, whether or not such duties are related to this Agreement or any other 1 WTC agreement or matter. Any such conduct shall be deemed a material breach of this Agreement.

29.2 As used herein, the phrase "anything of value" shall include, but not be limited to, any (a) favor, such as meals, entertainment, transportation, etc., (other than that contemplated by the Agreement) that might tend to obligate an Authority or 1 WTC employee to Construction Manager, 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 phrase shall not include compensation contemplated by this Agreement. For purposes of this provision in Section 29, the term "1 WTC" shall be deemed to include all subsidiaries of the Authority.

29.3 Construction Manager shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by Construction Manager or by its personnel for any reason whatsoever from any passenger, tenant, customer, or other person with whom

Construction Manager comes in contact during the course of performing the Services and shall so instruct its personnel.

29.4 During the term of this Agreement, Construction Manager shall not make an offer of employment or use confidential information in a manner proscribed by the Code of Ethics and Financial Disclosure dated April 11, 1996 (a copy of which is available upon request to the Office of the Secretary of Authority).

29.5 Construction Manager shall include the provisions of this Section 29 in each subcontract it enters into under this Agreement and shall cause its Subconsultants and their Subconsultants of any tier to so include such provisions.

### **30. CONFLICT OF INTEREST.**

30.1 During the term of this Agreement, Construction Manager shall not do any of the following:

30.1.1 participate in any way in the preparation, negotiation, or award of any contract (other than a contract for Construction Manager's own services or for those of potential Contractors to 1 WTC) to which it is contemplated 1 WTC may become a party;

30.1.2 participate in any way in the review or resolution of any claim under any contract described in Section 30.1.1 above if Construction Manager has a substantial financial interest in the contractor or potential contractor of 1 WTC or if Construction Manager has an arrangement for future employment or for any other business relationship with said contractor or potential contractor; or

30.1.3 take any other action that might be viewed as or give the appearance of a conflict of interest on the part of Construction Manager.

30.2 If any of the following situations exist, then Construction Manager shall inform 1 WTC immediately in writing of such situation, giving the full details thereof:

30.2.1 if the possibility of an arrangement for future employment or for another business arrangement has been or is the subject of a previous or current discussion between Construction Manager and a contractor or construction manager that has a business relationship with or has entered into a contract with 1 WTC;

30.2.2 if Construction Manager has reason to believe an arrangement as described in Section 30.2.1 above may be the subject of future discussion;

30.2.3 if Construction Manager has any financial interest, substantial or not, in a construction manager (other than Construction Manager), potential construction manager, Contractor, or potential Contractor of 1 WTC; or

30.2.4 if Construction Manager has reason to believe any situation exists that might be viewed as or give the appearance of a conflict of interest.

30.3 Unless Construction Manager gives 1 WTC (i) specific prior written advice of Construction Manager's intent to take any action that might be viewed as or give the appearance of a conflict of interest, including, without limitation, performing any work or services for any of the other projects involving the reconstruction of the area surrounding the Freedom Tower Project, and (ii) a mitigation plan acceptable to 1 WTC, Construction Manager shall not take any such action.

30.4 If 1 WTC determines that Construction Manager's performance of a portion of its Services (a) is precluded by any provision of this Section 30, or (b) is no longer appropriate because of such preclusion, then 1 WTC shall have full authority on behalf of Construction Manager and 1 WTC to order that such portion of Construction Manager's Services not be performed by Construction Manager; provided, however, that 1 WTC reserves the right to have the Services performed by others, and any compensation payable hereunder that is applicable to the deleted work shall be equitably adjusted as agreed to by both Construction Manager and 1 WTC.

30.5 Construction Manager's execution of this Agreement shall constitute a representation by Construction Manager that, at the time of such execution, except as set forth in Section 26.1.4 and in other written disclosures by Construction Manager, Construction Manager knows of no circumstances, present or anticipated, that come within the provisions of this Section 30 or that might otherwise be viewed as or give the appearance of a conflict of interest on Construction Manager's part.

30.6 Construction Manager acknowledges that 1 WTC may preclude Construction Manager from involvement in certain disposition/privatization initiatives or transactions that result from the findings of 1 WTC's evaluations hereunder or from participation in any agreements that result, directly or indirectly, from Services provided by Construction Manager.

30.7 Construction Manager acknowledges that it is the opinion of 1 WTC that any entity performing construction management or general contracting services for 1 WTC or other stakeholders in the Project or development of the World Trade Center site (such as LMDC, NYSDOT, WTC Net Lessee), where such entity is responsible for building portions of the World Trade Center site, has a potential conflict of interest with Construction Manager under this Agreement during its pendency, except as expressly disclosed in writing and approved by 1 WTC.

30.7.1 If Construction Manager desires to enter into a third-party relationship with an entity described in Section 30.7 above, and Construction Manager believes it can provide a mitigation plan that addresses 1 WTC's perceived conflict of interest, then Construction Manager, before entering into such relationship, shall give written notice of Construction Manager's interest to 1 WTC and submit such plan for evaluation to 1 WTC.

30.7.2 1 WTC will evaluate the mitigation plan submitted under the provisions of Section 30.7.1 above and will notify Construction Manager of 1 WTC's decision as to whether 1 WTC will permit Construction Manager to enter into the third-party relationship described in such mitigation plan. If 1 WTC determines that a conflict of interest exists that, in 1 WTC's sole

opinion, makes such third-party relationship inappropriate, then Construction Manager agrees not to enter into such relationship. This provision is of the essence of this Agreement.

### **31. LEGAL REQUIREMENTS.**

31.1 Construction Manager's Services, the Contract Drawings, and all Work performed by Contractors shall comply with all provisions of federal, state, and local laws, ordinances, codes, rules, regulations, and orders that would affect or control the designs, concepts, and construction of the Project as if the Project were being performed for a private corporation; provided, however, that if Authority's standards which are hereby adopted by 1 WTC, are more stringent, then Authority's standards shall prevail and be followed, unless Construction Manager receives written notification to the contrary signed by Authority, in which case the requirements of said notification from Authority shall apply ("Legal Requirements").

### **32. MISCELLANEOUS.**

32.1 No certificate, payment (final or otherwise), acceptance of any Work nor any other act or omission of 1 WTC or 1 WTC Representative shall operate to release Construction Manager from any obligations under or upon this Agreement, or to estop 1 WTC from showing at any time that such certificate, payment, acceptance, act, or omission was incorrect or to preclude 1 WTC from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by 1 WTC.

32.2 This Agreement, and any exhibits, riders, and annexes attached hereto or referenced herein, and any written amendments entered into from time to time, constitute the entire agreement between the parties. No change in or modification, termination, or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or such party's duly authorized representative; provided, however, that termination in a manner expressly provided for in this Agreement shall be effective as so provided.

32.3 No officer, director, agent, or employee of either party to the Agreement shall be charged personally by the other party with any liability or held liable to the other party under any term or provision of this Agreement, or because of the execution or attempted execution by any officer, director, agent, or employee of either party or because of any breach hereof by any of them.

32.4 This Agreement shall be governed by and construed in accordance with the laws of the State of New York.

32.5 This Agreement shall be binding and inure to the benefit of the respective heirs, executors, administrators, and successors of the parties hereto.

32.6 Construction Manager shall not assign or transfer any interest in this Agreement without the prior written consent of 1 WTC.

32.7 No consent or waiver by 1 WTC shall be effective unless it is in writing and then only to the extent specifically stated. Failure on the part of any party to enforce any act or failure to act of the other party or to declare the other party in default hereunder, irrespective of how long such failure continues, shall not constitute a waiver of any right hereunder. 1 WTC's payment for Services shall not be deemed an approval of Construction Manager's Services or a waiver of any rights 1 WTC may have.

32.8 If any inconsistency or contradiction exists within the Agreement and the remaining Contract Documents, this Agreement shall govern.

32.9 In the event that the Authority hires an integrity monitor in connection with the Property ("Integrity Monitor"), then the Construction Manager and Subconsultants 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 Agreement. Failure to comply with this provision shall be a material breach of this Agreement.

32.10 Authority is not a contracting party to this Agreement and shall have no duties, obligation or liabilities in regards to this Agreement. Construction Manager shall look solely to 1 WTC for any claim, cause of action or damages arising out of this Agreement. For the avoidance of doubt, the relationship of the Authority to this Agreement and the Project is set forth below in this Section 32.10.

32.10.1 The Authority is hereby deemed an intended third-party beneficiary of this Agreement. Construction Manager acknowledges and agrees that the performance of the Services is for the benefit of the Authority, and that the Authority shall have the right to enforce the obligations of Construction Manager under this Agreement against Construction Manager directly.

32.10.2 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.

32.10.3 Construction Manager shall have no direct claim, right, or cause of action against Authority (i) by virtue of Authority's rights under Section 32.10.1, (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 Agreement.

32.10.4 Construction Manager shall look solely to 1 WTC for payment of any amount due and owing Construction Manager under this Agreement or for any claim, cause of action or damages in connection with the Project. Notwithstanding anything to the contrary, Construction Manager shall have no recourse in connection with this Agreement 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 Agreement.

32.11 To the extent Construction Manager purchases tangible personal property or incurs rentals charges for construction equipment with respect to the Project, and any such purchase or rental charge is exempt from New York State or New York City sales or other taxes, Construction Manager shall obtain such exemption and agrees to comply with the required rules and regulations in order to achieve the exemption as more fully set forth in Attachment 2 (Riders for Contract), Rider V thereto (Form of Trade Contract), and Rider I thereto (Sales and Use Tax Requirements).

32.12 This Agreement represents the entire and integrated agreement between Construction Manager and I WTC and supersedes all prior negotiations, arrangements, representations, or agreements, either oral or written.

### **33. CONSTRUCTION MANAGER'S QUALIFICATION TO DO BUSINESS**

33.1 Tishman Construction Corporation shall register as a foreign corporation with the New York State Division of Corporations and shall become qualified to do business in the state of New York and certified by the New York State Department of State. Tishman Construction Corporation acknowledges and agrees that these are material obligations under this Agreement that it must perform as swiftly as possible.

33.2 Tishman Construction Corporation represents, warrants, and covenants that:

33.2.1 it is a corporation incorporated in the state of Delaware;

33.2.2 it is active and in good standing with the Delaware Department of State, Division of Corporations;

33.2.3 it shall take all necessary steps to register as a foreign corporation with the New York State Division of Corporations;

33.2.4 it shall take all necessary steps to become qualified to do business in the state of New York and certified by the New York State Department of State;

33.2.5 it knows of no reason why Tishman Construction Corporation shall be unable to accomplish such registration, qualification, and certification, as described in Sections 33.2.3 and 33.2.4 above; and knows of no reason why either the New York State Department of State or the New York State Division of Corporations will deny Tishman Construction Corporation such registration, qualification, or certification in the State of New York.

33.3 In the event Tishman Construction Corporation is denied either registration, qualification, or certification required under this Section 33, Tishman Construction Corporation shall cause the General Contractor Agreement, as amended by the Third Freedom Tower Amendment and all exhibits, riders, and attachments thereto, including, without limitation, Exhibit A to the Third Freedom Tower Amendment and Exhibit B to the Third Freedom Tower Amendment, (collectively, "Freedom Tower Agreements") to be assigned to Tishman Construction Corporation's subsidiary, Tishman Construction Corporation of New York.

33.4 Tishman Construction Corporation represents, warrants, and covenants that Tishman Construction Corporation of New York is:

33.4.1 a corporation incorporated in the state of Delaware;

33.4.2 active and in good standing with the Delaware Department of State, Division of Corporations;

33.4.3 registered as a foreign corporation with the New York State Division of Corporations; and

33.4.4 qualified to do business in the state of New York and certified by the New York State Department of State.

33.5 If the Tishman Construction Corporation is denied either registration, qualification, or certification required under this Section 33, Tishman Construction Corporation shall fully guarantee the performance of Tishman Construction Corporation of New York with respect to the Freedom Tower Agreements, and shall furnish 1 WTC such other security for performance of Construction Manager's obligations as may be reasonably requested by 1 WTC.

#### ATTACHMENTS TO EXHIBIT A OF THIRD FREEDOM TOWER AMENDMENT

Attachment 1:	Scope of Services
Attachment 2:	Riders for Contract
Attachment 3:	[Intentionally Deleted]
Attachment 4:	Schedule of Annual and Hourly Personnel's Salaries
Attachment 5:	Owner Controlled Insurance Program
Attachment 6:	Insurance
Attachment 7:	Security Requirements
Attachment 8:	[Intentionally Deleted]
Attachment 9:	Milestone Dates
Attachment 10:	Non-Disclosure and Confidentiality Agreement
Attachment 11:	Mobilization Account Schedules

**ATTACHMENT 1  
TO  
EXHIBIT A  
  
SCOPE OF SERVICES**

**1. Scope of Construction Manager's Services.**

1.1 The Services to be performed by Construction Manager consist of (i) all of the duties and obligations set forth in this Attachment 1 to Exhibit A; and (ii) all of the duties and obligations of Construction Manager identified in the Contract Documents; and (iii) all of the duties and obligations of 1 WTC identified in the Contracts.

**2. Duties and Obligations.** In addition to the other duties and obligations set forth in Section 1.1 above, Construction Manager's Services include, without limitation:

**2.1 Design Consultation.**

2.1.1 Construction Manager shall represent 1 WTC throughout the design process and shall review and monitor the schematic design, design development, construction documents phases of the Project.

2.1.2 Construction Manager shall review the program furnished by 1 WTC to ascertain the design requirements of the Project and shall arrive at a mutual understanding of such requirements with 1 WTC.

2.1.3 Construction Manager shall assist 1 WTC to develop and establish design goals and objectives for the Project with 1 WTC.

2.1.4 Construction Manager shall analyze and evaluate 1 WTC's preliminary program in terms of Project design, Project Schedule, and construction budget requirements, each in terms of the other.

2.1.5 Construction Manager shall scrutinize and refine the Project design requirements, including programming, outline specifications, etc., in coordination and consultation with 1 WTC.

2.1.6 Based on early schematic designs and other design criteria prepared the Design Team, Construction Manager shall further scrutinize and refine its preliminary estimates of construction costs for program requirements using area, volume, and similar conceptual estimating techniques.

2.1.7 Construction Manager shall expeditiously analyze, review, and evaluate design documents during their development and advise on proposed site use and improvements, selection of materials, building systems and equipment, and methods of Project delivery. Construction Manager shall manage and oversee value engineering of alternative materials,

methods, and systems and analyze and recommend the relative feasibility of construction methods, availability of materials and labor, time requirements for procurement, installation and construction, and factors related to construction cost, including, but not limited to, costs of alternative designs or materials, preliminary budgets and possible economies.

2.1.8 Construction Manager shall coordinate and synchronize its design reviews with 1 WTC and the Design Team.

2.1.9 Construction Manager shall assist 1 WTC in reaching 1 WTC's goal that its requirements and requests are properly reflected in the design documents, and Construction Manager shall review and report on same as requested by 1 WTC.

2.1.10 [Intentionally omitted]

2.1.11 Construction Manager shall coordinate and synchronize the schematic design with Design Team and Chief Engineer; shall continue to scrutinize and review the schematic design throughout the schematic design process; and shall obtain 1 WTC's approval as necessary.

2.1.12 As Design Team progresses with the preparation of the schematic design documents, Construction Manager shall prepare and update, with increasing detail and refinement and at appropriate intervals agreed to by 1 WTC, Construction Manager's and Design Team's estimates of the construction cost and of each of the Contracts. Such estimates shall be provided for Design Team's review and 1 WTC's approval. Construction Manager shall advise and warn 1 WTC and Design Team if it appears that the construction cost may exceed the latest approved Project budget and research, analyze, and recommend corrective action.

2.1.13 Construction Manager shall obtain approval from 1 WTC before proceeding from the design phase Services to the construction phase.

2.1.14 Construction Manager shall coordinate and synchronize design development with the Design Team and 1 WTC; shall continue to review and monitor design development throughout the design development process; and shall analyze and then review same with 1 WTC and obtain approval prior to proceeding to the construction phase.

2.1.15 Construction Manager shall analyze and update the Project budget based upon design development. During the design development phase, Construction Manager shall prepare and update monthly a Project Schedule for review by Design Team and acceptance by 1 WTC. Construction Manager shall obtain Design Team's comments and 1 WTC's approval for the portion of the preliminary Project Schedule relating to the performance of Design Team's services. In the Project Schedule, Construction Manager shall analyze, coordinate, and integrate Construction Manager's Services, Design Team's services, and 1 WTC's responsibilities with the anticipated Project Schedules, and Construction Manager shall highlight critical and long-lead time items.

2.1.16 Construction Manager shall obtain approval from 1 WTC before proceeding to the construction phase.

2.1.17 Construction Manager shall scrutinize and analyze and then consult with 1 WTC and Design Team regarding the Contract Drawings and make recommendations whenever design details adversely affect constructability, cost or schedules.

2.1.18 Construction Manager shall assist 1 WTC and Design Team with local, regional, state, and federal jurisdictional agencies; research and identify municipal permitting processes; manage, administer, and secure building permit approval in accordance with Section 2.1.19 below; coordinate and oversee with local permitting officials with respect to permit submissions; and assist Design Team, the Chief Engineer, and other contractors or entities in securing all other necessary permits and required approvals from public agencies and others.

2.1.19 Construction Manager shall assist 1 WTC in obtaining building permits, or the equivalent of a building permit as provided by Authority, and special permits for permanent improvements, except for permits required to be obtained directly by the various Contractors. Construction Manager shall oversee, assist, monitor, and confirm 1 WTC and Design Team in connection with 1 WTC's timely filing of sufficient and the appropriately completed documents required for the approvals of governmental authorities having jurisdiction over the Project.

2.1.20 Construction Manager shall analyze, recommend and inform 1 WTC and Design Team regarding the assignment of responsibilities for temporary Project facilities and equipment, materials, and services for common use of the Contractors. Construction Manager shall confirm and verify that such requirements and assignment of responsibilities are included in the proposed Contract Documents.

2.1.21 Construction Manager shall analyze, evaluate, and then recommend a comprehensive plan to 1 WTC regarding the allocation of responsibilities for safety programs among the Contractors, including, without limitation, the Site Wide Safety Plan, Health and Safety Plan, Site Wide Security, and Tenant Construction Review Manual. During execution of the Project, Construction Manager shall be responsible to review, comment upon, and provide information to 1 WTC upon its request regarding the testing and inspection of plans and safety features and monitoring the compliance of the Contractors with respect to their responsibilities for the safety programs; and reporting regularly to 1 WTC on such compliance and the effectiveness of the Authority and Construction Manager's comprehensive plan.

2.1.22 Construction Manager shall analyze, evaluate, and recommend specific division of the Project into individual Contracts for various categories of trades and Work, including the method to be used for selecting Contractors and awarding Contracts. If multiple Contracts are to be awarded, Construction Manager shall analyze and review the Contract Drawings and recommend, as required, how to assure that (1) the services and Work of the Contractors are coordinated; (2) all requirements for the Project have been assigned to the appropriate Contract; (3) the likelihood of jurisdictional disputes has been minimized; and (4) proper coordination has been provided for phased construction.

2.1.23 Construction Manager shall evaluate and prepare a Project Schedule providing for the components of the Work, including phasing of construction, times of commencement and completion required of each contractor, ordering and delivery of products

requiring long-lead time, and the occupancy requirements of 1 WTC that shall be consistent with all Contractor's construction schedules incorporated into the Contracts. Such Project Schedule also shall meet 1 WTC's requirements for construction schedules as set forth in the Contract Documents. Construction Manager shall provide the current Project Schedule for each set of bidding documents.

2.1.24 Construction Manager shall oversee and manage compliance with the construction schedule, scrutinize any delays, and report the status once each month to 1 WTC, providing analysis of and recommendations regarding any delay, concern, problem, or other issue.

2.1.25 Construction Manager shall oversee, manage, expedite, and coordinate the ordering and delivery of materials requiring long-lead time.

2.1.26 Construction Manager shall analyze, evaluate, and provide input as to constructability, methods, and materials.

2.1.27 Construction Manager shall analyze and recommend, and assist 1 WTC in selecting, retaining, and coordinating, the professional services of surveyors and testing laboratories required for the Project.

2.1.28 Construction Manager shall investigate and analyze the types and quantities of labor required for the Project and determine the availability of appropriate categories of labor required for critical phases. Construction Manager shall recommend actions designed to minimize adverse effects of labor shortages.

2.1.29 Construction Manager shall research, obtain, and review applicable requirements and information re: same for equal employment opportunity programs for inclusion in the Contract Documents.

2.1.30 Construction Manager shall perform and prepare a final review, analysis, and evaluation of all documents and obtain approval from 1 WTC prior to final pricing.

2.1.31 Following 1 WTC's approval of the Contract Drawings, Construction Manager shall update and submit the latest estimate of construction cost and the Project Schedule for Design Team's review and 1 WTC's approval.

## 2.2 Procurement of Contractors.

### 2.2.1 Solicitation

2.2.1.1 Construction Manager shall develop and encourage bidders' interest in the Project. Construction Manager shall prepare and submit to 1 WTC for approval a list of prospective bidders for each solicitation, including written justification for the selected list of bidders for that solicitation, and establish bidding schedules.

2.2.1.2 Construction Manager will secure bids from at least three (3) potential contractors for any Work that is competitively bid.

2.2.1.3 In instances where less than three (3) bids are received, Construction Manager shall provide a written explanation to 1 WTC setting forth the reasons therefor.

2.2.1.4 Where the nature of the Work to be solicited requires special construction, experience or expertise, or has critical operational constraints or special situations, prior to employing a solicitation other than a method that is intended to result in a competitive bid with three bids, Construction Manager shall submit such solicitation to 1 WTC for its approval setting forth the reasons therefor.

2.2.1.5 Prior to each solicitation, Construction Manager shall submit to 1 WTC for review and approval the length of time of the bidding period, compensation method and basis for award.

## 2.2.2 Bid Documents

2.2.2.1 Bid documents are to be prepared and distributed by Construction Manager. All costs associated with the preparation and distributions of bid documents are Reimbursable Expenses.

2.2.2.2 Bid documents are to be submitted for the written approval of 1 WTC. Construction Manager shall not make changes to any approved documents without the prior written approval of 1 WTC.

2.2.2.3 Bid documents shall include specific instructions regarding the date, time and method of bid submission, and such instructions shall be subject to the approval of 1 WTC.

2.2.2.4 Construction Manager shall provide copies of any addenda issued for a bid and the reasons therefor which are subject to the review and approval of 1 WTC.

## 2.2.3 Bid Submission

2.2.3.1 Bids are to be submitted to Construction Manager in accordance with the instructions for bid submission contained in the bid documents.

2.2.3.2 Bids are to be sealed. Bidders must not submit bids via phone or fax unless specifically requested and approved by the Project Executive or his/her designee or as directed by the 1 WTC Representative.

2.2.3.3 Construction Manager, prior to receipt and opening of bids, shall provide a written estimate of the Work required by the bid documents, including unit prices and lump sum amounts, to 1 WTC.

2.2.3.4 Construction Manager shall maintain a written record of bid submissions, including the solicitation identified by a title and/or number, name and address of bidders, and dollar value of bid, and shall provide a copy of the record to 1 WTC.

2.2.3.5 1 WTC shall have the right to be present at the bid opening.

2.2.3.6 All bids for a particular trade or portion of the Work will be gathered by the Construction Manager and opened with the Project Executive or his/her designee.

2.2.3.7 During the bid opening, Construction Manager should have the budget breakdown for the trade and a copy of the bid package in the event that questions regarding the scope of Work arise.

2.2.3.8 All bid proposal information (i.e., base bid, unit price, lump sum amounts, alternatives, etc.) shall be formatted on a spreadsheet prepared for the bid opening. This information shall be compiled by Construction Manager and, when completed, initialed by all present during the bid opening.

2.2.3.9 All bid proposals are to be filed in the safe bid folders with the bid opening spreadsheet.

2.2.3.10 The bid opening spreadsheet shall be prepared in an Excel format, and the computer file shall be accessible only to Construction Manager and approved personnel. Information contained on the spreadsheet shall include the following:

- (i) Project date, trade
- (ii) Contractor's name, address, phone number
- (iii) Contact
- (iv) Base bid
- (v) Budget (adjusted with each revised bid to reflect bid package and bid addenda)
- (vi) Unit Prices
- (vii) Alternates
- (viii) Bidder's alternates
- (ix) Schedule duration
- (x) Qualifications

(xi) Exclusions

2.2.3.11 All revised information is to be documented on a new spreadsheet and denoted as revised. All superseded spreadsheets are to be maintained in the safe bid folder.

2.2.3.12 Project Executive or his/her designee must approve of any procedure that differs from those set forth herein.

2.2.4 Scope Review Meetings

2.2.4.1 Scope review meetings are held with the Contractors, the Construction Manager, 1 WTC, and the Architect. Prior to the meeting, an agenda will be prepared containing a complete checklist of items to be reviewed during the meeting, including:

- (i) Contract boiler plate review
- (ii) Retainage
- (iii) Payment schedule
- (iv) General Conditions
- (v) MBE, WBE and EEO Requirements
- (vi) Insurance requirements
- (vii) Sales tax requirements
- (viii) List of Contract Documents (Rider "B," List of Drawings and Specifications to the Contract)
- (ix) Building and other rules and regulations
- (x) Scope of Work review and value engineering opportunities
- (xi) Special requirements, sequencing
- (xii) Clarifications, modifications
- (xiii) Alternates
- (xiv) Time of performance

2.2.5 Contract bid review and negotiation

2.2.5.1 Construction Manager and 1 WTC may meet with all active bidders and discuss scope and price of bids. Upon completion of the bid scope review sessions, a revised scope and/or drawings may be issued as a bid addendum and bidders requested to submit revised or adjusted bids. Such resubmissions shall be requested from all active bidders and shall be received and opened in conformance with the bid submission procedures set forth in Section 2.2.3 above. Upon receipt of final sealed bids, the Construction Manager and the Project Executive will negotiate a best and final bid price from all active bidders. The Construction Manager will review the final proposals with the Project Executive of 1 WTC or, at such Project Executive's direction, another 1 WTC Representative, for strategy and award target.

2.2.5.2 Construction Manager shall prepare Contracts and evaluate and advise 1 WTC on the acceptability of proposed Contractors. Such Contract shall be in the form of contract referenced as Rider V (Form of Trade Contract, dated January 19, 2007) in **Attachment 2 to Exhibit A** (Riders for Contract). Construction Manager shall enforce all of the provisions of the Contract, and no changes may be made to the form of Contract without prior written approval by 1 WTC; provided, however, Construction Manager shall not be required to retain legal counsel to enforce provisions of the Contract unless 1 WTC pre-approves the retention of such counsel and agrees to reimburse Construction Manager in accordance with Section 9.2.2.5(iii) of this Agreement.

#### 2.2.6 Contractor Award

2.2.6.1 Construction Manager shall provide a written recommendation for review and approval by 1 WTC setting forth the basis for award.

2.2.6.2 Construction Manager shall prepare and submit to 1 WTC a comparison of bids, which shall include all unit prices, lump sum amounts, alternatives, etc., for each bid and the Construction Manager's estimate; a statement regarding the reasonableness of the bids and an explanation when there is a disparity between the estimate and the bids received and/or when there is a disparity between the bid of the recommended contractor and the estimate and/or between the bid of the recommended contractor and the other bids received.

2.2.6.3 Construction Manager shall submit information regarding each recommended contractor, including name and address of firm and principals, to 1 WTC for review of the firm's responsibility and business integrity prior to award.

2.2.6.4 Following the selection of a Contractor by 1 WTC, Construction Manager shall prepare and forward to Project Executive an award letter requesting approval for Construction Manager to enter into an agreement as 1 WTC's agent with the selected Contractor.

- (i) The award letter shall provide the following information:
- (ii) Number of bidders

- (iii) Final bid summary
- (iv) Contractor's name and amount
- (v) Budget trade line items and amount
- (vi) Line for authorization signature and date

## 2.2.7 Issuance, Execution and Distribution of Contract

2.2.7.1 Upon receipt of executed award letter, Construction Manager shall prepare the Contract document.

2.2.7.2 The Contract shall be in the same format as the bid package incorporating modifications made during the scope review process and final negotiation. All documents are to be based on the most current information provided during scope review; Rider B (List of Drawings and Specifications) is to incorporate the latest documents available at time of award.

2.2.7.3 The draft of the Contract should be reviewed and approved in writing by 1 WTC prior to issuance to the Contractor for execution.

2.2.7.4 Prior to signing, a copy of the Contract shall be issued to the Contractor for review, with a cover page stating when the Contractor is scheduled to meet at Construction Manager's office for execution of the actual Contract.

2.2.7.5 Construction Manager shall assemble five (5) execution originals of each Contract for signing. Each of the five (5) execution originals shall be signed by the Contractor and Construction Manager; the first and last page of every rider shall be initialed by the Contractor and Construction Manager.

2.2.7.6 Upon signing by the Construction Manager and Contractor, the five original signed Contracts will be distributed as follows:

- (i) Contractor
- (ii) 1 WTC/Document Control
- (iii) Safe bid folder
- (iv) Project Executive
- (v) Construction Manager

## 2.2.8 Notification of Awards

2.2.8.1 Construction Manager shall submit to 1 WTC notice of Contract awards and Change Orders within three (3) business days of Contract or Change Order

execution. Notification shall be provided in an Excel format and include the following information:

- (i) Contractor name and address
- (ii) Contract number and title
- (iii) Brief description of Contract or Change Order
- (iv) Start and end dates (if applicable)
- (v) Revised start and end dates (if applicable)
- (vi) Contract or Change Order execution date
- (vii) Contract or Change Order award amount or estimate
- (viii) Form of solicitation (for new awards)

Additional descriptive information for Contracts and Change Orders may be required by 1 WTC.

2.2.8.2 Notice of Contract awards shall be posted on the Authority's Web site. Additional Contract and Change Order information may be posted at 1 WTC's discretion.

## 2.2.9 Protests

2.2.9.1 Construction Manager shall manage protest and appeal processes in a manner consistent with Authority protest procedures.

2.2.9.2 Construction Manager shall receive protests related to the procurement or award of Contracts and give notice to 1 WTC of receipt of such protest.

2.2.9.3 Construction Manager shall designate a management employee of the Construction Manager as Protest Officer to review the protest and supportive documents and draft a written decision and submit to 1 WTC for review and written approval within five (5) business days of the receipt of the protest where feasible.

2.2.9.4 Construction Manager shall forward the written decision to the protesting party within two (2) business days of receipt of 1 WTC's approval.

2.2.9.5 Construction Manager shall receive appeals of protest decisions and give notice to 1 WTC of receipt of such appeal.

2.2.9.6 Construction Manager shall designate a higher level management employee of the Construction Manager as Appeals Officer to review the appeal and

supportive documents and the decision of the Protest Officer and issue a written decision within five (5) business days of receipt if feasible.

2.2.9.7 Construction Manager shall forward the written decision to the appealing party within two (2) business days of receipt of 1 WTC approval.

#### 2.2.10 Contract File Administration

2.2.10.1 Construction Manager shall maintain a contract file for each Contract award and provide a copy of the Contract to 1 WTC.

2.2.10.2 Construction Manager shall include records of any protests, appeals and associated decisions as part of the contract file for each Contract award and provide copies to 1 WTC.

2.2.10.3 Any Change Orders required under the Contract agreement shall be subject to the review and approval of 1 WTC. Construction Manager shall provide copies of approved Change Orders to 1 WTC.

2.2.10.4 Construction Manager shall provide to 1 WTC a record of all payments made to each Contractor, which payment shall be subject to audit by 1 WTC.

### 2.3 Construction Phase / Administration of the Construction Contract.

2.3.1 Construction Manager shall scrutinize, manage, and oversee construction activities at the Project site and with respect to administration of the Contracts.

2.3.2 Construction Manager shall manage, administer, direct, supervise, and perform other related services in order to coordinate the activities and responsibilities of the Contractors, each with the other, and those with the activities and responsibilities Construction Manager, 1 WTC, and the Design Team, in order to manage the Project in accordance with the latest approved Project budget, Project Schedule, and Contract Documents.

2.3.3 Construction Manager shall (i) execute and perform all of the duties and obligations required or requested of 1 WTC under each of the Contracts, and (ii) protect and exercise all of 1 WTC's rights and benefits under each of the Contracts; provided, however, that prior to Construction Manager determining a Contractor in breach of its Contract or selecting and pursuing any remedy, Construction Manager shall obtain the written approval of 1 WTC.

2.3.4 Construction Manager shall schedule, facilitate, administer, and conduct regular Project meetings, including 1 WTC, Design Team, Contractors, and others approved or requested by 1 WTC. Construction Manager shall facilitate discussion of such matters as procedures, progress, and scheduling. Construction Manager shall prepare and promptly distribute minutes of such meetings to 1 WTC, Design Team, and Contractors.

2.3.5 Construction Manager shall confirm that Design Team and Contractors have established the shop drawing process, and Construction Manager shall manage and administer delivery and review of Shop Drawings and Submittals.

2.3.6 Utilizing the construction schedules provided by Contractors, Construction Manager shall evaluate and update the Project Schedule monthly, incorporating the activities of all of the Contractors on the Project, including activity sequences and durations, allocation of labor and materials, processing of Shop Drawings, Submittals, and delivery of products requiring long-lead time and procurement. The Project Schedule shall include 1 WTC's occupancy requirements showing portions of the Project having occupancy priority as the appropriate information becomes available. Construction Manager shall update and reissue the Project Schedule as required to show current conditions. If an update indicates that the previously approved Project Schedule's Final Completion date of any Contractor may not be met, Construction Manager shall inform and warn 1 WTC of such deviation and recommend corrective action to 1 WTC.

2.3.7 Consistent with the various bidding documents, and utilizing information from the Contractors, Construction Manager shall manage, oversee, scrutinize, and coordinate the sequence of construction and assignment of space in areas where the Contractors are performing Work.

2.3.8 Construction Manager shall require and use best efforts to obtain satisfactory performance from each of the Contractors. Construction Manager shall evaluate and recommend courses of action to 1 WTC when requirements of a Contract are not being fulfilled.

2.3.9 Construction Manager shall oversee and monitor the approved estimate of construction costs. Construction Manager shall prepare an analysis showing actual costs for activities in progress and estimates for uncompleted tasks by way of comparison with such approved estimate.

2.3.10 Construction Manager shall develop, analyze, and prepare monthly cash flow reports and forecasts for the Project, unless required more often by 1 WTC, and advise 1 WTC and Design Team as to variances between actual and budgeted or estimated costs.

2.3.11 Construction Manager shall submit quarterly to 1 WTC Representative for its prior written approval a proposed budget estimating the General Conditions Costs for the remainder of the Project on a quarterly basis. For the duration of the Project, Construction Manager shall submit the proposed budget in a timely fashion in order to allow 1 WTC Representative to review and approve same.

2.3.12 Construction Manager shall manage, coordinate, prepare, and maintain accounting records on authorized Work performed under unit costs, additional Work performed on the basis of actual costs of labor and materials, and other Work requiring accounting records.

2.3.13 Construction Manager shall evaluate, develop, and implement procedures for the review and processing of applications by Contractors for progress and final payments.

2.3.13.1 Based on Construction Manager's observations and evaluations of each Contractor's application for payment, Construction Manager shall scrutinize, evaluate, review, and certify the amounts due the respective Contractors.

2.3.13.2 Construction Manager shall scrutinize, oversee, monitor, and review all payments to Contractors and vendors and supporting documentation, including, without limitation, all lien waivers (partial and final) from all Contractors throughout the course of the Project.

2.3.13.3 Construction Manager shall analyze, evaluate, and prepare a Project application for payment based on the Contractors' requests for payment.

2.3.13.4 Construction Manager's certification for payment shall constitute a representation to 1 WTC, based on Construction Manager's determinations at the Project site and on the data comprising Contractors' Applications for Payment, that the Work has progressed to the point indicated and the quality of the Work is in accordance with the Contract Documents ("Certificate for Payment"). The foregoing representations are subject to an evaluation of the Work for conformance with the Contract Documents upon Final Completion of each Contract, to results of subsequent tests and inspections, to minor deviations from the Contract Documents correctable prior to completion, and to specific qualifications expressed by Construction Manager. The issuance of a Certificate for Payment shall further constitute a representation that Construction Manager and Contractors are entitled to payment in the amount certified.

2.3.14 Construction Manager shall scrutinize, review, and monitor the safety programs developed by each of the Contractors for the purposes of coordinating the safety programs with those of the other Contractors as well as with any other contractor.

2.3.15 Construction Manager shall with Design Team propose, develop, and implement a quality assurance plan, including mockups, testing, and inspections. Solicitation of third-party-controlled inspections must be approved in advance and in writing by 1 WTC.

2.3.16 Construction Manager shall oversee and manage Project site visits and provide or arrange for responses to Contractor inquiries.

2.3.17 Construction Manager shall provide the services and assistance necessary to avoid a construction conflict; when a conflict does occur, Construction Manager shall use best efforts to resolve the dispute.

2.3.18 Construction Manager shall scrutinize and determine, subject to review by 1 WTC, that the Work of each Contractor is being performed in accordance with the requirements of the Contract Documents, guarding 1 WTC against defects and deficiencies in the Work. As appropriate, Construction Manager shall have authority, upon written authorization from 1 WTC, to require additional inspection or testing of the Work in accordance with the provisions of the Contract Documents, whether or not such Work is fabricated, installed, or completed. Construction Manager may reject Work that does not conform to the requirements of

the Contract Documents; provided, however, Contractor may appeal Construction Manager's rejection of such Work to 1 WTC; and, in the event of an appeal, 1 WTC shall make the final decision as to whether the Work shall be rejected. Notwithstanding anything to the contrary herein, 1 WTC shall retain at all times the right to reject any Work at 1 WTC's sole, absolute, and subjective discretion.

2.3.19 Construction Manager shall scrutinize, schedule, oversee, and coordinate the sequence of construction in accordance with the Contract Documents and the latest approved Project Schedule.

2.3.20 Construction Manager shall transmit to Design Team requests for interpretations of the meaning and intent of the Contract Drawings and, with the Design Team's assistance, shall resolve questions that arise.

2.3.21 Construction Manager shall review and evaluate requests for changes in costs and/or time, assist in negotiating Contractors' proposals for such changes, submit recommendations to Design Team and 1 WTC, and, if such proposals are accepted, prepare Change Orders and Construction Change Directives that incorporate Design Team's modifications to the Contract Drawings.

2.3.22 Construction Manager shall review, analyze, evaluate, and document any claim made or any claim Construction Manager anticipates may be made.

2.3.23 Construction Manager shall receive certificates of insurance from the Contractors, review and evaluate them for conformance with the requirements of the respective Contracts, and forward them to 1 WTC.

2.3.24 In collaboration with Design Team, Construction Manager shall establish and implement procedures for expediting the processing and approval of Shop Drawings and other Submittals. Construction Manager shall review and evaluate all Shop Drawings and other Submittals from the Contractors. Construction Manager shall coordinate and synchronize Submittals with information contained in related documents and transmit to Design Team those which have been reviewed and deemed complete by Construction Manager. Construction Manager's actions shall be performed and completed with such reasonable promptness as to cause no delay in the Work or in the activities of 1 WTC or Contractors.

2.3.25 Construction Manager shall oversee, scrutinize, monitor, evaluate, analyze, and record the progress of the Project. Construction Manager shall prepare and submit written, detailed progress reports to 1 WTC and Design Team, including information and evaluation with respect to each Contractor and each Contractor's Work; as well as on the entire Project, and determining and showing percentages of completion. Construction Manager shall maintain a daily Project log containing a record of weather, each Contractor's Work on the Project site, and, for each Contractor, the number of workers, identification of major equipment, Work accomplished, problems encountered, and other similar relevant data as 1 WTC may require.

2.3.26 Construction Manager shall arrange and be responsible for and maintain complete progress photos and other visual records, files, and documentation with respect to the progress of the Project, as requested by 1 WTC. Construction Manager shall make all photos and other visual records available to 1 WTC upon request and shall deliver them to 1 WTC upon Final Completion of all Contracts for the Project.

2.3.27 Construction Manager shall maintain at the Project site for 1 WTC one (1) record copy of all Contracts, Contract Drawings, addenda, Construction Change Directives, Change Orders, and other modifications, in good order and marked currently to record changes and selections made during construction; and, in addition, approved Shop Drawings and similar required Submittals. Construction Manager shall maintain records, in duplicate, of principal building layout lines, elevations of the bottom of footings, floor levels, and key site elevations certified by a qualified surveyor or professional engineer. Construction Manager shall make all such records available to Design Team and, upon completion of the Project, shall deliver all such records to 1 WTC.

2.3.28 As requested by 1 WTC, Construction Manager shall oversee and coordinate requirements for 1 WTC-provided material, systems, and equipment with Contractors and vendors, and arrange for, monitor, and confirm the delivery, storage, protection, and security of 1 WTC-provided materials, systems, and equipment that are a part of the Project until such items are incorporated into the Project or returned to 1 WTC.

2.3.29 When Construction Manager determines that a Contractor's Work, or a designated portion thereof, is sufficiently complete to allow Contractor to prepare a punch list, then Construction Manager, jointly with the Contractor, shall prepare for Design Team and 1 WTC a list of incomplete or unsatisfactory items and schedule and monitor them for completion. Construction Manager shall coordinate, oversee, and monitor the correction and completion of the Work and evaluate and make recommendations to Design Team. When the Work is ready for final inspections, then Construction Manager shall participate and assist Design Team in conducting inspections to determine whether the Work or designated portion thereof meets the Contract's requirements for Final Completion.

## **2.4 Financing.**

2.4.1 During the course of the Project, Construction Manager shall assist with, monitor, and, as appropriate, administer any financing aspect of the Project, including the following:

2.4.1.1 Construction Manager shall prepare and provide necessary Project information, documentation, and materials as requested by various lenders and as approved by 1 WTC.

2.4.1.2 Construction Manager shall scrutinize and coordinate the financing requirements and cash flow reports of the contracts with Design Team, any other member of the design team, Chief Engineer, Contractors, and Subconsultants of any tier.

2.4.1.3 Construction Manager shall scrutinize and manage, and use best efforts to control construction costs and/or time, and negotiate on behalf of 1 WTC as necessary or required and pre-approved by Authority, in accordance with the schedule, Project, safety, and quality goals of 1 WTC.

2.4.1.4 Construction Manager shall comply on behalf of 1 WTC with ongoing Project and construction requirements.

## **2.5 Furniture, Fixtures, Equipment, and Other Technical Requirements.**

2.5.1 Construction Manager shall analyze and determine the scope and requirements for furniture, fixtures, equipment, tele/data cabling, operational equipment, security requirements, etc., to be provided or purchased by 1 WTC, as requested by 1 WTC.

2.5.2 Construction Manager shall gather and evaluate information and product data that meets the scope and requirements of 1 WTC with respect to furniture, fixtures, equipment, tele/data cabling, operational equipment, security requirements listed in Section 2.5.1 above, as requested by 1 WTC.

2.5.3 Construction Manager shall evaluate and assist in qualifying vendors and reviewing pricing and product proposals with respect to furniture, fixtures, and equipment, as requested by 1 WTC.

2.5.4 Construction Manager shall coordinate and oversee the delivery, installation, and commissioning of furniture, fixtures, and equipment, and coordinate same with vendors, as requested by 1 WTC.

## **2.6 Project Closeout.**

2.6.1 Construction Manager shall (i) oversee and manage preparation of and review of construction punch lists by Contractors and (ii) coordinate and, along with the Design Team, verify completion of punch list items.

2.6.2 Construction Manager shall oversee, manage, coordinate and confirm delivery of keys, manuals, plans and specifications, as-built drawings, etc.

2.6.3 Construction Manager shall schedule, manage, and oversee all product and equipment demonstrations.

2.6.4 Construction Manager shall oversee and manage (i) the delivery, installation, and commissioning of equipment; (ii) commissioning processes and procedures; and (iii) the initial start-up and testing of all systems to confirm compliance with specifications.

2.6.5 Construction Manager shall ensure and confirm that all equipment use permits and regulatory sign-offs are obtained and delivered to 1 WTC upon Project completion.

2.6.6 Construction Manager shall oversee, scrutinize, and coordinate activities and obtain sign-offs necessary for the issuance of a final certificate of occupancy or Authority's equivalent.

2.6.7 Construction Manager shall scrutinize, evaluate, review, administer, and process final payments and lien documentation.

2.6.8 Construction Manager shall coordinate, oversee, and confirm performance of corrective and warranty work prior to closeout of the Project.

## **2.7 Other.**

2.7.1 Construction Manager shall prepare and deliver to 1 WTC not less than once each month a report addressing progress, problems, issues, and concerns with respect to the status of these Services and the status of any additional services Construction Manager is performing with respect to the Project.

2.7.2 Construction Manager shall perform other construction management services related to the Project as requested by 1 WTC.

2.7.3 Duties, responsibilities, and limitations of authority of Construction Manager as set forth in the Contract Documents shall not be restricted, modified, or extended without written consent of 1 WTC.

2.7.4 Construction Manager shall use the management software designated by 1 WTC, including, without limitation, Authority's document management software, LiveLink.

2.7.5 Construction Manager shall follow the Authority's policies and procedures as set forth in the Agreement, including all Attachments hereto, and as may be modified or established from time to time.

## **3. Conditions of Performance of Services.**

3.1 Construction Manager immediately shall inform 1 WTC Representative of any unsafe condition discovered at any time during the course of performing these Services.

3.2 Pedestrians (including PATH and NYCT patrons), vehicular traffic, and PATH operations at the World Trade Center site always shall have priority over any and all of Construction Manager's operations, except as directed by Authority and 1 WTC with respect to the Project.

3.3 Construction Manager shall limit its work to the areas necessary for the performance of the tasks herein and shall not interfere with the operation of the facility without first obtaining specific approval from 1 WTC.

3.4 During all periods of time when Construction Manager is not performing operations at the Project site, Construction Manager shall store all equipment being used for

performance of such operations related to the tasks herein in areas designated by 1 WTC Representative, and 1 WTC shall provide all security required for such equipment unless 1 WTC requests that Construction Manager shall perform such tasks, in which case Construction Manager shall do so at 1 WTC's expense.

3.5 Construction Manager shall not permit any objects or pieces of equipment to lie unattended on sidewalks, roadways, or structures at any time except with proper permits.

**ATTACHMENT 2  
TO  
EXHIBIT A**

**RIDERS FOR CONTRACT**

- Rider D Insurance Rider, dated November 30, 2006, as modified
- Rider DX Owner Controlled Insurance Program
- Rider E [Intentionally Deleted]
- Rider F Non-Disclosure and Confidentiality Agreement
- Rider G Sustainable Construction Requirements, dated April 11, 2007, as modified
- Rider H Requirements for Work in PATH Right of Way, dated June 16, 2006
- 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 \_\_\_\_\_, 2007  
New York State Contractor Exempt Purchase Certificate Form S120.1  
New York State Certificate of Capital Improvement Form ST-124
- Rider K Project Corruption Prevention Program, dated January 8, 2007
- Rider L Payment Procedures
- Rider M Tishman Construction Safety Guidelines, dated November 3, 2005
- Rider N Port Authority of New York & New Jersey WTC Site Rules and Regulations,  
dated January 1, 2006
- Rider Q Above and Below Grade Site Logistics Plans
- Rider R [Intentionally Deleted]
- Rider S Site Security Requirements
- Rider T Milestones Dates
- Rider V Form of Trade Contract, dated January 19, 2007

**ATTACHMENT 3  
TO  
EXHIBIT A**

**[INTENTIONALLY DELETED]**

**ATTACHMENT 4  
TO  
EXHIBIT A**

**SCHEDULE OF ANNUAL AND HOURLY PERSONNEL'S SALARIES**

2007 Annual Salaries for WTC1 Project

PROJECT MANAGEMENT STAFF:		
		Annual Salary
<b>Executive Staff</b>		
Corporate Executive	Mike Mennella	341,280
Project Executive	Mel Ruffini	258,400
Project Director	Jim Durkin	188,400
Project Director-Below Grade	Gary Cohen	185,000
Project Director-Above Grade	Joe Capone	181,000
MEP Project Director	John Kovacs	208,400
Analyst	Amy Wincko	120,000
<b>Purchasing Agents</b>		
Purchasing Agent # 1	Marty Adelman	125,000
Purchasing Agent # 2	Chris Cocotas	59,000
<b>Estimators and Schedulers</b>		
Scheduler #1	Clive Chan	115,000
<b>Project Managers</b>		
PM # 1 - Below Grade Structural/Arch	Juan Estevez	100,000
PM # 2 - Curtainwall/Exterior	Steve Cannizzo	90,000
<b>Assistant P.M.'s / Project Engineers</b>		
APM # 1 - Below Grade Structural/Arch	Brian Boylan	97,474
APM # 8 - Port Authority / Misc	Tanya Barba	61,000
APM # 9 - Hoist/Logistics	Lisette Molina	94,000
<b>MEP Project Managers</b>		
Senior Project Manager	Bob Mackie	175,800
<b>MEP Assistant P.M.'s</b>		
APM # 2 - Upper MEP Electrical	Steve Violante	68,000
<b>Accounting</b>		
Cost Control Manager	Randy Koller	127,500
Assistant Accountant #1	Betty Eng	82,530
Clerk	David Burgos	42,000
<b>EEO/LEED</b>		
EEO Director	Henry Estrada	158,400
EEO/LEED Manager	Flora Ramos	75,000
<b>SECURITY</b>		
Administrator	Charlotte Pezolt	45,000
<b>SECRETARY</b>		
Secretary # 1	Marica Curavic	52,250
<b>PLAN CLERK</b>		
Plan Clerk # 1	Bernie Fitzsimmons	41,280
Plan Clerk # 2	Kevin Lasalle	40,000
<b>SUPERINTENDENTS - FIELD</b>		
General Superintendent	Elio Cattina	213,400
Project Superintendent #1	Marc Becker	135,000
<b>ASSISTANT SUPERINTENDENTS-FIELD</b>		
Assistant Superintendent - Below Grade #1 Arch/Struc	Carmine Castelano	100,000
Assistant Superintendent - Below Grade #2	Frank Hussey	66,000
Assistant Superintendent - Below Grade #3 Arch/Struc	Antoine Bernard Jr.	53,000
Assistant Superintendent - Below Grade #4 Arch/Struc	Brian Troast	80,000
<b>SUPERINTENDENTS - MEP</b>		
Superintendent - Below Grade M&P	Brian Lyons	137,000
<b>SITE SAFETY</b>		
Senior Safety	Dwayne Carter	108,000
Assistant # 1	Thayne Zigale	80,000
Assistant # 2	Anthony Fedor	88,000
<b>FIELD SECRETARY / PLAN CLERK</b>		
Secretary # 1	Gail Ramsingh	38,500

Name	Title	Hourly Rate
BANKS, LAUREN	Analyst	\$52.08
BENJAMIN, EUGENE N	Document Clerk	\$37.50
BONSE, JOHN C	Estimator	\$108.33
BUBIAS, EDUARDO	Estimator	\$92.50
CHIARELLO, RAFFAELA M	Secretary	\$38.75
CINELLI, DINA M	Purchasing Agent	\$47.50
CORDAHI, IRENE	Purchasing Agent	\$47.50
DeVARD, EMANUEL J	Estimator	\$53.00
DIAMANTOPOULOS, JAMES N	Senior Estimator	\$125.00
ENDRES, WILLIAM	Corporate Executive - Estimating	\$220.33
FOTEV, PAVEL V	Document Clerk	\$27.08
GALLAGHER, RICHARD R	Estimator	\$120.83
GLYNN, JOHN F	Chief Estimator	\$166.67
JOYCE, BOB	Risk Management	\$99.33
KHAN, IRFAN R	Estimator	\$82.50
KOLAIAN, CHRISTOPHER J	Purchasing Agent	\$87.50
KWAN, MAY YEE	Structural Manager	\$91.67
LUNDY, SAYYEDA R	Scheduler	\$39.17
MADISON, JAMES A	Corporate Executive	\$91.67
McDONNELL, JAMES R	Structural Manager	\$132.08
MITCHELL, LINDA	Secretary	\$56.67
MOHABIR, HAIMWANTE	Secretary	\$45.00
MOSCOVICI, SORIN	Estimator	\$108.33
MOTHERWAY, WILLIAM	Risk Management Director	\$183.33
NABAS, DESIREE K	Scheduler	\$52.92
NEGLIA, BRIAN	Estimator	\$62.50
PANKEY, SHAVONE C	Secretary	\$27.08
PAULL, ALLAN M	Corporate Executive - Structural	\$152.83
PHILLIPS, ROB	Risk Management	\$107.25
REILLY, EDWARD P	Estimator	\$108.33
SCHISLER, ERIC B	Corporate Executive - Purchasing	\$105.00
SELIGA, CHRISTOPHER C	Corporate Executive - Scheduling	\$108.33
SERRANO, EVELYN	Secretary	\$45.21
SPAMPANATO, JANET E	Executive Secretary	\$62.92
STARANKA, JOHN E	Scheduler	\$143.75
TSVIK, VALERY	Estimator	\$69.17
WALKER, LOUIS E	Estimator	\$94.17
WELSING, PAUL V	Corporate Executive - Purchasing	\$131.67
ZENG, WALTER T	Estimator	\$112.50

The above hourly rates are based on 1800 hours using a 1.5 multiplier. If 2080 hours were to be used the multiplier would need to be increased to 1.735 since vacation, holidays, sick & personal days are not included in our fringe benefit rate.

**ATTACHMENT 5  
TO  
EXHIBIT A**

**OWNER CONTROLLED INSURANCE PROGRAM**

**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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(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:

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

(b) 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.

(c) 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.

(d) That Construction Manager shall confirm with respect to each Contract awarded, that prior to the effective date of the respective Contract the alternate

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Costs of OCIP Coverages. In the event Contractor (or a Subcontractor of any tier) 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.

**RIDER "DX"**  
**OWNER CONTROLLED INSURANCE PROGRAM**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

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deduct amount for any credit resulting from excluding insurance coverage provided by 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.

(e) 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

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Attachment DX-1

**Summary of OCIP Coverages**

## 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.

#### 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
    - 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 nor 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:

- 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

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.

**ATTACHMENT 6  
TO  
EXHIBIT A  
INSURANCE**

Project: Freedom Tower, 1 World Trade Center, New York, New York  
Tishman Insurance Requirements  
1-19-2007

INSURANCE

The parties agree that the Project shall be insured as set forth in A - O below; provided, however, that sometime during execution of the Project, 1 WTC may provide, at its sole discretion, either an insurance program ("Insurance Program") or have the Construction Manager implement a Contractor Controlled Insurance Program (CCIP). The parties agree that if an Insurance Program is put in place by 1 WTC or a CCIP is put in place by the Construction Manager on behalf of 1 WTC, the requirement of the Construction Manager to provide "A" and "B" below shall no longer be in effect for on-site work and be provided for off-site activities. The Construction Manager and 1 WTC agree to mutually cooperate in the development of an Insurance Program or CCIP, and the terms of the Insurance Program or CCIP, including, but not limited to:

- a) Assisting in the development of underwriting and exposure data required for the submission
- b) Participation in underwriting meetings and site tours as may be required as part of the marketing process
- c) Cooperation with the safety consultants of the Authority in development of a Project safety program for submittal to the potential insurance markets
- d) Cooperation with the Insurance Program/CCIP Safety Program as developed in conjunction with the Authority, 1 WTC, the Construction Manager, Consultants and the Insurance Carrier.
- e) Completing the required documentation, and causing all of the Contractors and Subcontractors to complete the required documentation including, but not limited to:
  - i) Enrollment Information
  - ii) Payroll Information
  - iii) Safety Program Information
- f) Cooperating with any potential accident or claim investigations and any specific reporting requirements superseding those identified in A - M below
- g) Provide 1 WTC or the Construction Manager or designated Insurance Program/CCIP 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 OCEP/CCIP by completing Bid Deduction Worksheet specifically identifying the costs associated with Workers' Compensation, Commercial General Liability, Excess Liability and other coverages to be identified.

Prior to commencement of any work under this Contract and until all obligations under this contract are fulfilled, the Construction Manager shall maintain the following insurance on 1 WTC's behalf, and furnish to 1 WTC and the specified Additional Insureds, Certificates of Insurance evidencing same and reflecting the effective date of such coverage as follows. 1 WTC shall bear the expense of only the insurance described in paragraphs A (Worker's Compensation and occupational Disease Insurance), B (Commercial General Liability), and N (Pollution Legal Liability) below. The expense of the remaining insurance described below shall be borne by the Contractors, at no cost to 1 WTC:

- 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.
- 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 Two Hundred Million Dollars (\$200,000,000) 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.
  2. Completed Operations/Products Liability with a seven (7) year extension beyond completion and acceptance of the project. Any Insurance Program or CCIP will be required to provide any and all completed operations

coverage for work performed prior to the implementation of said Insurance Program or CCIP.

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 (CG 2010 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. Coverage is to be endorsed to reflect that the insurance provided is to be primary and non-contributory for the 1 WTC and all other indemnities named in the Contract.
  9. 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 shall have an A.M. Best Rating of A - X or better.
  10. 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 1 WTC or any other indemnitee.
  11. 1 WTC, The Port Authority of New York & New Jersey, Port Authority Trans Hudson (PATH) and Tishman will be named insureds on the policy.
  12. TRIA coverage in a separate policy for \$100 Million Dollars for certified and non-certified terrorism acts at the cost of 1 WTC.
  13. Railroad Protective Liability insurance will be purchased as required and will remain at the sole cost of 1 WTC. The responsibility to pay any and all deductibles related to claims under this policy will remain with 1 WTC.
- 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 1 WTC and all other indemnities named in the Contract.
- D. Where an Off Project Site property exposure exists, the Construction Manager shall furnish to 1 WTC 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 indemnitees named in the contract.
- F. The amount of insurance contained in aforementioned insurance coverages, shall not be construed to be a limitation of liability and the carrying of the insurance described shall in no way be interpreted as relieving the General Contractor of any responsibility of liability under the Contract.

- H. The Construction Manager shall file certificates of insurance prior to the commencement of work and with 1 WTC and Port Authority which shall be subject to 1 WTC and the Port Authority's approval of adequacy of protection and the satisfactory character of the Insurer. In the event of failure of the Construction Manager to furnish and maintain said insurance and to furnish satisfactory evidence thereof, 1 WTC and/or Port Authority shall have the right (but not the obligation) to take out and maintain the same for all parties on behalf of the Construction Manager.
- I. The Construction Manager shall cause the Contractors and Subcontractors performing work or services in connection with the project shall maintain "All Risk" Property Insurance for all materials, equipment and supplies located at the project site and for Temporary Structures and Contractor's Tools and Equipment until completion of the project. Coverage is to be provided on a replacement cost basis including the perils of Flood, Earthquake and Terrorism (TRIA).
- J. Any type of insurance or any increase of limits of liability not described above which the Construction Manager 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 Construction Manager on their Owned an/or Rented Equipment and Materials shall contain a provision requiring the insurance carriers to waive their rights of subrogation against 1 WTC and all other additional insureds and indemnitees 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 1 WTC and all other additional insureds and indemnitees named in the Contract.
- L. The Construction Manager shall cause the same conditions that apply under this contract to each Contractor and Subcontractor; however, the Contractors and Subcontractor shall be required to maintain limits of liability in accordance with Tishman Construction Corporation Minimum Liability Limits Exhibit and said limits to be applicable on a per project basis.
- 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's Contract Administrator and to the Authority's Risk Management Division at the location where the work will take place. This Certificate of Insurance MUST show evidence of the above insurance policy (ies), stating the agreement/contract number prior to the start of work.
- N. On behalf of and at the cost of 1 WTC, for a period of not more than one year from the execution of this contract, the Construction Manager shall maintain Pollution Liability Insurance with limits of not less than Ten Million (\$10,000,000) Dollars covering the interests of both the Construction Manager and 1 WTC. At the conclusion of this one-year period, 1 WTC must purchase this coverage for the Construction Manager and all trades at the cost of 1 WTC for the length of the project plus 5 years of extended reporting or completed operations. This coverage must provide the broadest possible coverage available in the market at the time of purchase.
- O.

**Schedule 1 - Additional Insureds:**

- a) WTC Retail LLC
- b) City of New York
- c) World Trade Center Memorial Foundation
- d) Lower Manhattan Development Corporation
- e) STV Construction, Inc
- f) NYS State Department of Transportation
- g) Metropolitan Transit Authority

- h) Silverstein Freedom Tower Development LLC
- i) Two World Trade Center LLC
- j) Three World Trade Center LLC
- k) Four World Trade Center LLC
- l) World Trade Center Properties LLC
- m) 1 WTC Holdings LLC
- n) 2 WTC Holdings LLC
- o) 3 WTC Holdings LLC
- p) 4 WTC Holdings LLC
- q) Silverstein Properties, Inc.
- r) Silverstein East WTC Facility Manager LLC
- s) WTC Redevelopment LLC
- t) Silverstein WTC Mgmt. Co. LLC
- u) Silverstein WTC Mgmt. Co. II LLC
- v) Silverstein WTC Properties LLC
- w) Silverstein WTC LLC
- x) Silverstein 2/3/4 WTC Redevelopment LLC
- y) Spring World Inc.
- z) Spring World Holdings Inc
- aa) WTC Investors LLC
- bb) Net Lessees' Association of the World Trade Center
- cc) WTC Management and Development LLC
- dd) Silverstein WTC Management and Development LLC
- ee) WTC Investors Management and Development LLC
- ff) Larry A. Silverstein
- gg) And the parents and affiliates, successors and permitted assigns of each of a) through ff) above and the officers and directors of each of them.

**ATTACHMENT 7  
TO  
EXHIBIT A  
SECURITY REQUIREMENTS**

RIDER "S"  
SITE SECURITY REQUIREMENTS

**WTC Division 1 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 badging 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 badging 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.

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

## **WTC Division 1 Security Article**

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 badging 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 badged 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.

## **WTC Division 1 Security Article**

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 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.

## **WTC Division 1 Security Article**

- Physical inspection and imaging of the equipment or vehicle and its contents as deemed necessary by the Authority.
- 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 4<sup>th</sup> quarter of 2007.
- Off-Site Equipment and Vehicle Inspection Facilities are expected to be operational in or around the 4<sup>th</sup> quarter of 2007.

### **D) Attachments**

- A     WTC ID Process-disqualifying Crimes dated June 2006

## 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).
- (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

## **ATTACHMENT A**

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.

## ATTACHMENT A

### 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.

Identify 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.
  - \* (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.

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Note \*

No convictions in their lifetime since birth

## ATTACHMENT A

Note \*\*

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

## ATTACHMENT A

### High Level Access for Unescorted Access to Secure Access Control Areas

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

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

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

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

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

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

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

## ATTACHMENT A

- (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.

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Note \* No convictions in their lifetime since birth

**ATTACHMENT 8  
TO  
EXHIBIT A**

**[INTENTIONALLY DELETED]**

**ATTACHMENT 9  
TO  
EXHIBIT A  
MILESTONE DATES**

**EXHIBIT****MILESTONE DATES**

<b>MILESTONE</b>	<b>DATES</b>
Completion of Below Grade Superstructure	8/24/2008
Completion of Roof Steel Framing	8/24/2010
Turnover of E-W Corridor to the Hub Project from West Street to Column Line 12	5/7/2007
Start Structural Steel Superstructure Erection	8/20/2008
<b>Access for Tenant Construction with use of Interior Elevators:</b>	
Floors 20-27	1/1/2011
Floors 28-35	1/1/2011
Floors 36-42	3/1/2011
Floors 43-49	3/1/2011
Floors 50-56	6/1/2011
Floors 57-63	6/1/2011
Floors 64-76	1/1/2012
Floors 77-88	1/1/2012
Completion of Core Slab Floor 104	11/11/2010
Completion of Curtainwall @ roof	6/30/2011
Completion of Service Elevators	12/15/2011
Normal Power from 4/5 Network	5/14/2010
Normal Power from 93/93M Network	11/17/2011
Start DX Unit Delivery	8/21/2009
Condenser Water Available	1/5/2012
Building Complete and Ready for TCO Inspection	12/16/2011
<b>CORE &amp; SHELL ZERO OCCUPANCY T.C.O. OR EQUIVALENT</b>	<b>9/19/2012</b>

**ATTACHMENT 10  
TO  
EXHIBIT A**

**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**

**RIDER "F"**  
**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

May 11, 2007

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT ("Confidentiality Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 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 \_\_\_\_\_ having an office and place of business at \_\_\_\_\_ ("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 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

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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 - 15<sup>th</sup> Floor  
New York, NY 10003  
Attn: General Counsel

If to the Recipient:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

with a copy to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**RIDER "F"**  
**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

May 11, 2007

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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**NEW YORK, NEW YORK**

**May 11, 2007**

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]*

**RIDER "F"**  
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**NEW YORK, NEW YORK**

May 11, 2007

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  
\_\_\_\_\_, 2007

**RECIPIENT:**

\_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

**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 \_\_\_\_\_, 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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**NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT**  
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**NEW YORK, NEW YORK**

May 11, 2007

**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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**NEW YORK, NEW YORK**

May 11, 2007

**EXHIBIT B**

**PORT AUTHORITY HANDBOOK**

**(attached)**

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**NEW YORK, NEW YORK**

May 11, 2007

**EXHIBIT C**

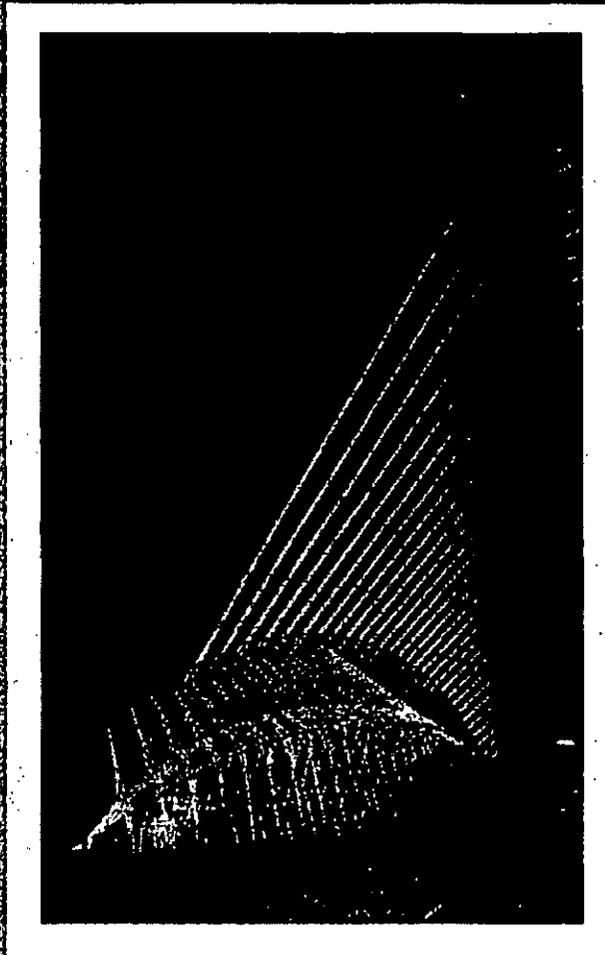
**SECURITY INFORMATION PRACTICES AND PROCEDURES (SIPP)**

**(attached)**



**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 Act<sup>1</sup>; 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 Information<sup>2</sup>; 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

<sup>1</sup> 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)

<sup>2</sup> 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.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
That a facility is designed with extensive security features.	<b>UNMARKED</b>	
Identity of individual security systems installed at the facility.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Time frame or schedules showing project progress.	<b>UNMARKED</b>	
The general areas of the project or where security systems will be installed.	<b>UNMARKED</b>	
Announcement of security subcontract awards.	<b>UNMARKED</b>	
Results of site survey documentation or review that address specific physical security vulnerabilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	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	<b>UNMARKED</b>	<b>UNMARKED</b> when referring to commercially available security systems, accepted

security system(s).	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	construction techniques, information which is in the public domain and/or when security systems will be installed in area accessible to public view.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> when referring to methods of defeating the security system(s) and/or covert/unexposed security systems.
Design drawings with specific forced entry ratings	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Shop drawings that provide specific rating information	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
What specific security system/hardware model number is installed at a specific location?	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	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	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when data is commercially available in the public domain.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when the information is commercially available or in the public domain.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> If equipment is readily observable to the public.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	

countermeasures when referring to a specific site or project location.		
Blast protection design requirements for new or existing PANYNJ facilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Blast analysis that addresses specific vulnerabilities to new or existing PANYNJ facilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	If specific weaknesses are reflected or maximum tolerances are provided.
Structural plans, details, and specifications.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when generic criteria are used. Site-specific information generated from generic criteria is <b>UNMARKED</b> .  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> if generic design criteria/terms are used.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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	<b>CONFIDENTIAL &amp;</b>	<b>CONFIDENTIAL &amp;</b>

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

**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:

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

		<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>
<b>Performance Specifications</b>	<b>SSI</b>	<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>
<b>Vulnerability Assessments</b>	<b>SSI</b>	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><b>Security Inspection or Investigative Information.</b></p>	<p><b>SSI</b></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><b>SSI</b></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.
<b>Threat Information</b>	<b>SSI</b>	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.
<b>Security Measures</b>	<b>SSI</b>	<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>
<b>Security Screening Information</b>	<b>SSI</b>	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>
<b>Security Training Materials</b>	<b>SSI</b>	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><b>Identifying Information of Certain Transportation Security Personnel</b></p>	<p><b>SSI</b></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><b>Critical Aviation or Maritime Infrastructure Asset Information</b></p>	<p><b>SSI</b></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><b>Systems Security Information</b></p>	<p><b>SSI</b></p>	<p>Any information involving the security of</p>

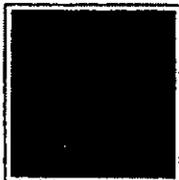
		operational or administrative data systems operated by the Federal government that have been identified by the DOT or DHS as critical to aviation or maritime transportation safety or security, including automated information security procedures and systems, security inspections, and vulnerability information concerning those systems.
<b>Confidential Business Information</b>	<b>SSI</b>	<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>
<b>Research and Development</b>	<b>SSI</b>	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.
<b>Other Information</b>	<b>SSI</b>	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**

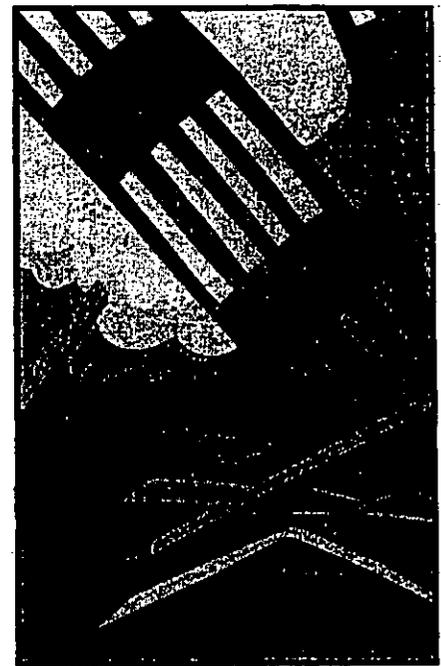


# The Need

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.*

**ATTACHMENT 11  
TO  
EXHIBIT A**

**MOBILIZATION ACCOUNT SCHEDULES**

**Mobilization Account Funding Schedule**

<b><u>Date</u></b>	<b><u>Payment Amount</u></b>	<b><u>Cumulative Amount<sup>1</sup></u></b>
Initial Working Capital	\$1.0 million	\$1.0 million
April 2007	\$1.0 million	\$2.0 million
October 2007	\$0.5 million	\$2.5 million
April 2008	\$0.5 million	\$3.0 million
October 2008	\$0.5 million	\$3.5 million
April 2009	\$1.5 million	\$5.0 million
October 2009	\$0.5 million	\$5.5 million
April 2010	\$0.5 million	\$6.0 million
October 2010	\$0.5 million	\$6.5 million
April 2011	\$0.5 million	\$7.0 million

**Mobilization Account Repayment Schedule**

<b><u>Date</u></b>	<b><u>Repayment Amount</u></b>	<b><u>Cumulative Amount*</u></b>
		\$7.0 million
April 2012	\$1.5 million	\$5.5 million
October 2012	\$3.0 million	\$2.5 million
April 2013	\$1.5 million	\$1.0 million
October 2013	\$1.0 million	\$0.0 million

<sup>1</sup> This amount represents the total balance required to be in the Mobilization Amount, after deposit of monthly replenishment amounts pursuant to Section 10.1, during the time period commencing on the corresponding "Date" in the first column of the Schedule that is in the same line as the Cumulative Amount and continuing until the day before the "Date" set forth on the next line of the Schedule.

**EXHIBIT B**

**SCHEDULE OF GC TERMS AND CONDITIONS**

**EXHIBIT B**  
**TO**  
**THIRD FREEDOM TOWER AMENDMENT**

THIS PART B AGREEMENT ("the Part B Agreement"), dated as of July 13, 2007, by and among (a) TISHMAN CONSTRUCTION CORPORATION, a Delaware corporation, having an office at 666 Fifth Avenue, New York, NY 10103 ("Tishman" or "General Contractor"); and (b) 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, NY 10003 ("1 WTC").

WITNESSETH

**WHEREAS**, the World Trade Center Site – Freedom Tower Project involves the design, permitting, approval, construction, and construction administration of World Trade Center Tower One on the World Trade Center site in New York City ("Property"). The World Trade Center Site – Freedom Tower Project will incorporate approximately 3.5 million gross square feet of new construction both above and below grade in a Class A office building complex which, in addition to sixty-nine (69) office tenant floors, includes specialty components such as an observation deck, retail space, two-level restaurant, three-level broadcast facility, core and shell spaces for PATH and support spaces, and an iconic top rising at the peak to the broadcast antennae (specifically excluding the broadcast antennae themselves). Below grade, the World Trade Center Site – Freedom Tower Project will incorporate storage, service areas, a car parking area, building and tenant mechanical facilities, loading docks, and other key building functions which lie beneath portions of the Freedom Tower, the open space between the Freedom Tower and the Performing Arts Center (PAC), Fulton Street, West Street-Route 9A and Vesey Street. All of the descriptions of the World Trade Center Site – Freedom Tower Project in this paragraph shall be referred to in this Agreement as the "Project," the "Freedom Tower Project," or "Freedom Tower."

**WHEREAS**, pursuant to that certain Third Freedom Tower Amendment to General Contractor Agreement dated July 13, 2007 (the "Third Freedom Tower Amendment") 1 WTC and Tishman have agreed that under certain circumstances Tishman will act as a general contractor with respect to the Freedom Tower Project and under other circumstances Tishman will act as an agent construction manager with respect to the Freedom Tower Project;

**WHEREAS**, Exhibit A to the Third Freedom Tower Amendment (the "Part A Agreement") sets forth terms and conditions that shall apply to the relationship between 1 WTC and Tishman when Tishman acts as an agent construction manager with respect to the Freedom Tower Project under the circumstances more specifically described in the Third Freedom Tower Amendment;

**WHEREAS**, 1 WTC and Tishman wish to set forth in this Part B Agreement the terms and conditions that shall apply to the relationship between 1 WTC and Tishman when Tishman acts as general contractor with respect to the Freedom Tower Project, under the circumstances more specifically described in the Third Freedom Tower Amendment; and

**WHEREAS**, to facilitate the orderly management of the Freedom Tower Project, to maintain administrative efficiency and to achieve other benefits with respect to the Freedom Tower Project, all of the provisions of Exhibit A from Section 1 through and including Section 32 and "Attachments 1-10" to Exhibit A (such provisions and Attachments are collectively the "Part A Terms and Conditions") also shall apply when Tishman acts as a general contractor with respect to Freedom Tower Project, except as modified in this Part B Agreement.

**NOW THEREFORE**, in consideration of the agreements and mutual covenants of the parties herein contained and other consideration, the sufficiency of which is hereby acknowledged by 1 WTC and Tishman, the parties hereto agree as follows:

**1. Incorporation by Reference.** The Part A Terms and Conditions are incorporated by reference into this Part B Agreement as if fully set forth below in this Paragraph 1; provided, however, that such Part A Terms and Conditions, upon incorporation into this Part B Agreement, shall be deemed amended and modified as set forth below.

**2. Definitions.**

2.1 All references to the "Construction Manager" in the Part A Terms and Conditions shall be deemed to mean the "General Contractor" for purposes of this Part B Agreement.

2.2 All references to the "Contracts" and "Contractors" in the Part A Terms and Conditions shall be deemed to mean the "Subcontracts" and "Subcontractors," respectively, for purposes of this Part B Agreement.

2.3 All references to the "Agreement" in the Part A Terms and Conditions shall be deemed to mean the "Part B Agreement" for purposes of this Part B Agreement.

**3. Compensation.**

3.1 For purposes of this Part B Agreement, Section 9.1.2 of the Part A Terms and Conditions is hereby modified as follows: the language " % of the Cost of the Work" is deleted and replaced with the language " % of the Trade Costs."

3.2 For purposes of this Part B Agreement, Section 9.1.2.1 of the Part A Terms and Conditions shall not apply.

**4. Scope of Services.**

4.1 For purposes of this Part B Agreement, the first sentence of Section 3.4 of the Part A Terms and Conditions is hereby deleted and replaced with the following: "The Services are described below in this Section 3.4."

4.2 For purposes of this Part B Agreement, the following subparagraphs are hereby added to Section 3.4 of the Part A Terms and Conditions:

"3.4.1 The General Contractor shall act pursuant to and in accordance with the terms, covenants and provisions of the Third Freedom Tower Amendment and shall cause to be performed and provided, through Subcontracts identified in Sections 2.2.1 and 2.3.1 of the Third Freedom Tower Amendment, subject to the terms of this Part B Agreement, all labor, materials, equipment, tools and services required for the complete construction of the Work identified in Sections 2.2.1 and 2.3.1 of the Third Freedom Tower Amendment, all such Work being in accordance with the terms of the Contract Documents."

"3.4.2 Nothing contained in this Part B Agreement shall be deemed to require or authorize the General Contractor to perform with its own forces any act which would constitute the rendering of professional services, such as the practice of architecture, engineering or laboratory testing. The reviews, recommendations and advice to be furnished by the General Contractor under this Part B Agreement pertaining to engineering or architectural matters shall not be deemed to be warranties or guaranties or constitute the performance of professional services other than as a general contractor, it being understood that any such recommendation or advice pertaining to engineering or architectural matters shall only be considered as a recommendation by the General Contractor, which is subject to the review and approval of the 1 WTC and its professional consultants. The General Contractor warrants that all Work will be performed in a competent manner, will be of good quality and workmanship, free from faults and defects and in accordance with the Contract Documents and that materials installed into the Project shall be new, unless otherwise specified in the Contract Documents. The General Contractor agrees that the Authority shall be a third party beneficiary of any and all warranties contained in this Exhibit B Agreement and/or by the Contract Documents."

"3.4.3 During the construction phase of the Project (the "Construction Phase"), the General Contractor shall:

(a) Supervise the performance of the Work by the Subcontractors and coordinate and schedule the Work of all Subcontractors on the Project with the activities of 1 WTC, the Architect, their engineers and consultants, the General Contractor and other subcontractors, and take all reasonably required steps to cause such Subcontractors to complete their respective portions of the Work in accordance with their respective Subcontracts.

(b) Perform, or cause to be performed, the General Conditions work.

(c) Without assuming the Architect's responsibility for inspection of the Work, or the responsibility of other engineers and consultants performing controlled inspections of the Work, review the Work done by Subcontractors to determine whether the Work is being performed in accordance with the requirements of the Contract Documents and generally to guard 1 WTC against defects and deficiencies in the Work and advise 1 WTC and the Architect of any discovered deficiencies. The General Contractor shall be required to take all required actions to assure to 1 WTC that the Work performed by the General

Contractor and Subcontractors complies with all terms and conditions of the Contract Documents or their respective Subcontracts. If, during the progress of the Work, the General Contractor's supervisory personnel discover work being performed contrary to the Contract Document requirements and/or good construction practices, or have reasonable cause to believe that any Work is not in accordance with the Contract Documents and/or good construction practices, the General Contractor shall promptly notify the Architect and 1 WTC. The General Contractor shall be fully responsible for arranging for all necessary inspections and testing of the Work and, to the extent General Contractor determines such Work has not been performed in accordance with the Contract Documents and/or good construction practices, the General Contractor shall be fully responsible for the cost of inspection and testing and for correcting such Work without adjustment of the Cost of Work. The General Contractor shall require any Subcontractor to stop Work or any portion thereof and require special inspection or testing of any Work and, if required by 1 WTC after examination and determination of noncompliance, removal, uncovering, repair and restoration to the standard of the Contract Document requirements without adjustment of the Cost of Work, as applicable, whether or not such Work be then fabricated, installed or completed, in accordance with the requirements of the respective Subcontract.

(d) Arrange for expediting of long-lead equipment required in connection with the Work and advise 1 WTC with respect to potential delays in their purchase and delivery.

(e) Prepare (i) a construction schedule in a form suitable to 1 WTC, showing each major trade, the critical path and all milestone dates, and shall update and deliver same to 1 WTC monthly, or as more frequently as reasonably requested by 1 WTC and (ii) an anticipated cost report of construction costs for the Project, as applicable, also on a monthly basis, showing past, present and future expenditures required to complete the Project, and which report shall reflect all claims and pending Change Orders issued during the period covered by such report.

(f) Schedule and conduct job meetings with 1 WTC and the Architect when necessary; coordinate meetings with appropriate parties as necessary and prepare and furnish to all attendees minutes of such meetings; such minutes to be issued to all parties prior to the next scheduled meeting.

(g) In conjunction with the Architect and 1 WTC identify, require, and arrange to be performed by an independent testing laboratory or other consultant, all subject to 1 WTC's prior approval, such tests as shall be determined to be necessary and appropriate except for controlled inspections which shall be performed by others.

(h) Cause to be obtained all necessary construction operation licenses and permits, including, without limitation, with 1 WTC's and the Architect's

cooperation, a core and shell final certificate of occupancy or Authority equivalent, except if and to the extent that the same, under applicable contract, law or practice, must be or are normally obtained by 1 WTC (such as the initial building permit), the Architect or Subcontractors; and, in such event, the General Contractor shall cooperate with 1 WTC, the Architect or Subcontractors, as the case may be, in obtaining such licenses and permits.

(i) Keep such accounts and costs records, in addition to those specified in Section 17 of this Part B Agreement (as incorporated from Section 17 of the Part A Terms and Conditions), as are required to be maintained by the General Contractor pursuant to 1 WTC's or 1 WTC's lender's or lenders' (collectively, the "Lenders") requirements (if applicable), such as trade by trade and General Conditions Costs records, cost records required in connection with time and material and unit price change order work, man hours, certified payrolls, and monitoring of the workforce for compliance with affirmative action goals (provided such goals are provided by 1 WTC prior to awarding the relevant Subcontracts).

(j) Prepare, file, and secure required Authority approval for a comprehensive Site Safety Plan with the Authority and thereafter review and coordinate the safety program with the Subcontractors. The General Contractor and the Subcontractors shall be responsible for the safety of persons or property at the Property and in the immediate vicinity for which the General Contractor would be liable under the New York City Building Code. The General Contractor shall comply with and be responsible for causing all Subcontractors to comply with all federal, state and local safety, health and environmental statutes, rules, regulations and orders and all other requirements of law, including, without limitation, the Construction Safety Act of 1969, the Williams-Steiger Occupational Safety and Health Act and the Administrative Code of the City of New York and the environmental site safety plan entitled "Health and Safety Guidelines for Foundation Construction", dated April 26, 2002 and prepared by Langan Engineering and Environmental Services, Inc. (the "Langan Report"), a copy of which has been delivered to the General Contractor.

(k) Assist and cooperate with 1 WTC in any legal actions or proceedings that may arise out of or relate to the Work, including appearances, as reasonably necessary.

(l) Cooperate with 1 WTC's insurers (or insurance brokers) and/or safety consultants.

(m) Supervise the performance by Subcontractors of the correction of defective Work, including, without limitation, performance of all guarantees given by Subcontractors, but in no event longer than the expiration of the relevant guarantee/warranty period prior to Lessee's acceptance of the Work, at which point Lessee's maintenance staff will undertake such supervision.

(n) Coordinate the submission by Subcontractors for approval by the Architect and other consultants of all required shop drawings, samples and catalogue cuts; maintain a log of all such submissions; promptly advise 1 WTC of any potential problems pertaining to the timeliness of such submissions and approvals; advise 1 WTC periodically as to the status of such submissions; advise 1 WTC and the Architect of any errors in such submissions that are discovered by the General Contractor (without assuming the Architect's responsibility for reviewing and approving such submissions); and coordinate the various disciplines after the Architect's approval of the respective shop drawings and before installation.

(o) Cause all Subcontractors who are required to maintain and provide, on an on-going and continuous basis, comprehensive "as-built" and coordination drawings of their Work on mylar for the mechanical, electrical and plumbing as-built drawings, together with one copy of the AutoCAD compatible computer files used to prepare the same, to the extent drawings were prepared on AutoCAD under the terms of their respective Subcontracts, and to deliver same to 1 WTC upon final payment to each such Subcontractor.

(p) At all times as part of the General Conditions Costs, cause the Property to be kept free from accumulation of waste material or rubbish caused by the Work. Subcontracts shall include a provision requiring daily carrying of rubbish and debris to designated stockpiling areas and/or receptacles, to the maximum extent possible. Upon substantial completion of the Project, the General Contractor shall cause all waste material and rubbish generated by General Contractor and its Subcontractors to be removed from and about the Property, and, to the extent practicable, all tools, construction equipment, machinery and surplus materials of General Contractor and its Subcontractors.

(q) Review requests for changes by the Architect, submit recommendations to 1 WTC regarding same, make independent recommendations regarding changes to the Work to enable expeditious and economical completion of the Work, negotiate change orders, prepare and process written change orders for approval by 1 WTC, and thereafter transmit same to the appropriate Subcontractors.

(r) Review Subcontractors' monthly requisitions for progress payments and make recommendations to 1 WTC regarding approval of same. The General Contractor's and all Subcontractors' monthly requisitions shall be in a form acceptable to and in full conformance with the Lenders' requirements (if applicable).

(s) If requested, cooperate with 1 WTC in the selection and retention of professional and other consultants in connection with the Work.

(t) Consult with 1 WTC and the Architect when any Subcontractor requests interpretations of the Contract Documents, promptly give notice to 1 WTC and the Architect of any dispute or claim which may arise during construction of the Project, assist in the timely resolution of any such dispute or claim in accordance with 1 WTC's directions and recommendations regarding settlement of such disputes and claims. To the extent that 1 WTC issues such directions and/or recommendations and the subject and resolution of such dispute or claim is determined to be both outside the scope of Work to be performed by the General Contractor under this Agreement and outside the scope of Work to be performed by the Subcontractor under its Subcontract and the Contract Documents, then any additional costs incurred by the General Contractor in complying with 1 WTC's directions and/or recommendations regarding the resolution of such dispute or claim shall be a Cost of the Work.

(u) Make recommendations to 1 WTC regarding the advisability of pre-purchasing materials to be incorporated into the Work and stored off-site (if approved in advance by 1 WTC and the Lenders (if applicable)), cooperate with 1 WTC in making arrangements for inspection of same, including such arrangements as 1 WTC shall deem necessary or desirable for (i) access to such materials for the purpose of segregation, on-going inspection, project identification and removal of the same, (ii) protecting 1 WTC's title to such materials, free and clear of all liens, encumbrances and rights of others, and (iii) insuring and protecting the same and not make any payments for materials stored off-site, unless all such arrangements have been approved in writing by 1 WTC.

(v) The General Contractor shall assist in conducting final inspections of the Work (without assuming the Architect's responsibility for inspection of the Work) and shall request of 1 WTC and the Architect a determination of Substantial Completion of the Work or designated portions thereof and assist in the preparation of a list of incomplete or unsatisfactory items (the "Punchlist") with the Architect and 1 WTC, and thereafter prepare a schedule for completion of such items. The date of "Substantial Completion" of the Work, or designated portions thereof, is the date construction is sufficiently complete in the opinion of the Architect, in accordance with the Contract Documents, so that 1 WTC can occupy or utilize the Project, as applicable, or designated portions thereof for the use for which it was intended. Warranties called for by this Agreement and/or by the Contract Documents shall commence on the date set forth in the applicable Contract Documents.

(w) The General Contractor shall request of 1 WTC and the Architect a determination of Final Completion of the Project and provide written notice to 1 WTC and the Architect that the Project is completed and ready for final inspection. This will be preceded by the Punchlist inspection by the General Contractor and approval of the corrective work by the Architect and 1 WTC. For purposes of this Part B Agreement, the term "Final Completion of the Project" shall mean full completion of the Project (including all Punchlist items) in full

compliance with the Contract Documents and the issuance by the Authority of a core and shell final certificate of occupancy or Authority equivalent.

(x) Cooperate with 1 WTC's maintenance or operational personnel during initial start-up and testing of utilities, equipment and systems.

(y) Cooperate and consult with 1 WTC and the Architect and their respective consultants and engineers, in closing-out Subcontractors, including processing of appropriate backcharges; review requests for final payment to Subcontractors and make recommendations to 1 WTC regarding approval of same; and receive and transmit to 1 WTC required cost certifications and/or other documentation required by the Lenders (if applicable), as well as guarantees, affidavits, releases, certificates of compliance (if required), maintenance manuals, liens and other waivers in such form as the Lenders, if applicable, may reasonably require, bonds and other documents required by the Contract Documents and the Subcontracts prior to final payments being made to Subcontractors.

(z) Review and make recommendations with respect to Subcontractors' forms of guarantee, release and requisition for final payment(s).

(aa) Maintain a complete set of drawings, specifications, purchase orders, contracts, shop drawings and related documents at the Property or at the General Contractor's main office, and turn over all as-built drawings prepared by appropriate Subcontractors to 1 WTC upon completion of the Work or earlier as directed by 1 WTC.

(bb) Assist 1 WTC in enforcement of guarantees and warranties of Subcontractors.

(cc) Review each Subcontractor's insurance certificate as to the coverage required to be carried by such Subcontractor hereunder in order to determine whether it complies with 1 WTC's requirements before submission to 1 WTC.

(dd) Cooperate with 1 WTC with respect to final acceptance and close-out by the Lenders (if applicable).

(ee) Make recommendations and render assistance regarding labor disputes and jurisdictional disputes.

(ff) Take such action as may be reasonably necessary in an emergency to protect life and property and notify 1 WTC of such actions as soon as practicable.

(gg) The General Contractor shall use all reasonable efforts to maintain good relations with labor unions as well as minority and other related interest groups in an effort to maintain peaceful labor relations and a trouble-free job site for the duration of the Project, and advise 1 WTC of any anticipated problems in connection therewith.

(hh) Cooperate with 1 WTC and construct a management office, to the extent shown on or called for in the Contract Documents and included in the Cost of Work or, in the alternative, include this work in accordance with a Change Order approved by 1 WTC.

(ii) The General Contractor shall, as directed by 1 WTC, institute and supervise a program for minority participation in the labor force and in the ownership of Subcontractors in accordance with requirements of any tax incentive or other program or programs applicable to the Project and/or each Sub-Project, as applicable, or the requirements of the Authority from time to time provided that such program is delivered to General Contractor by 1 WTC prior to the awarding of the applicable Subcontracts.

(jj) Provide a cash flow schedule for the Work once the major Project requirements have been identified, and adapt same to 1 WTC's and the Lenders' requirements (if applicable), as necessary.

(kk) Provide a detailed trade-by-trade construction time schedule for the Project in a form suitable to 1 WTC, once the major Project requirements, as applicable, have been identified, which schedule shall be updated on a monthly basis or as more frequently as reasonably requested by 1 WTC."

## **5. Miscellaneous Provisions.**

**5.1 Effective Date.** This Part B Agreement shall be deemed effective as follows:

5.1.1 With respect to any Retained Obligations to which this Part B Agreement applies, September 10, 2003.

5.1.2 With respect to all work and services to which this Part B Agreement applies, other than those described in Section 5.1.1 above, November 17, 2006.

**5.2 Representations and Warranties.** Tishman represents and warrants that there are no outstanding liens, claims or demands that have been made, asserted or filed, and no reasonable evidence exists indicating that such a lien, claim or demand may be asserted, by any subcontractor identified in Subparagraphs 2.2.1 or 2.3.1 or, to the extent its subcontract is not

terminated, any subcontractor identified in Subparagraphs 2.4.1 of the Third Freedom Tower Amendment, or, to the best of General Contractor's knowledge, information, and belief, by any materialmen or subcontractor of any tier of any such identified subcontractor, for any amount outstanding, due, owed or claimed for any reason, including, without limitation, the subcontract amount or any purchase order amount or for costs, extra costs, time or delay; that all amounts outstanding, due, owed or claimed to or by such identified subcontractors, and, to the best of General Contractor's knowledge, information, and belief, materialmen and subcontractors of any tier, have been paid or satisfied in full or, if not paid or satisfied in full, any such unpaid or unsatisfied amount or amount owed is set forth in a detailed statement of account provided to 1 WTC by General Contractor as of the date and no later than at the time of the execution of the Third Freedom Tower Amendment.

**5.3 Prevailing Wage.** General Contractor shall require each subcontractor identified in Sections 2.2.1 or 2.3.1 or, to the extent its Subcontract is not terminated, any subcontractor identified in Section 2.4. of the Third Freedom Tower Amendment, to comply with all of the provisions set forth in Attachment 1 to this Exhibit B to the Third Freedom Tower Amendment, and General Contractor shall monitor and enforce such requirements. In addition, General Contractor shall comply with all prevailing wage and other requirements with respect to its own employees and its Subconsultants and their employees.

**5.4 Riders.** Notwithstanding anything to the contrary set forth in this Exhibit B, and except as and subject to the terms and conditions set forth in Subparagraph 2.4.2 of the Third Freedom Tower Amendment, General Contractor shall require each subcontractor identified in Subparagraphs 2.2.1 or 2.3.1 or, to the extent its subcontract is not terminated, any subcontractor identified in Subparagraph 2.4.1 of the Third Freedom Tower Amendment, to comply with all of the provisions set forth in the following riders:

- Rider F: Non-Disclosure and Confidentiality Agreement
- Rider G: Sustainable Construction Requirements, dated March 13, 2006 (Revision #2)
- Rider H: Requirements for Work in PATH Right of Way, dated June 16, 2006
- Rider K: Project Corruption Prevention Program, dated January 8, 2007
- Rider L: Payment Procedures
- Rider M: Tishman Construction Safety Guidelines, dated November 3, 2005
- Rider N: Port Authority of New York & New Jersey WTC Site Rules and Regulations
- Rider Q: Above and Below Grade Site Logistics Plans
- Rider S: Site Security Agreements

**5.5 Allowances.** 1 WTC and General Contractor acknowledge that, as of the date of execution of the Third Freedom Tower Amendment, certain Subcontracts provide for the following allowances: \$700,000 with respect to the LaQuila Subcontract; \$612,500 with respect to the Banker Steel Subcontract; and \$150,000 with respect to the Petrocelli Subcontract. Such allowances shall be used at the discretion of General Contractor; provided, however, that General

Contractor agrees that (i) the allowances are also not-to-exceed amounts, which may not be increased under any circumstance; (ii) the foregoing not-to-exceed amounts represent the total amount available as provided for in each respective Subcontract on the date of execution of such Subcontract and may not represent the available balance on the date of execution of the Third Freedom Tower Amendment (i.e., some portion of the allowance may have been used as of the date the Third Freedom Tower Amendment was executed). General Contractor agrees to provide 1 WTC with written notice of the use of any portion of any of these allowances within 5 business days prior to intended use. General Contractor agrees to return to 1 WTC, in the form of a deductive change order, all allowance amounts remaining at Final Completion. General Contractor agrees that to the extent General Contractor converts the Banker Steel Subcontract to a Contract subject to the terms of Exhibit A, the allowance currently included in the Banker Steel Subcontract shall be eliminated from the Contract that Banker Steel must execute upon becoming a Contractor. General Contractor warrants and represents that, except for the allowances in the LaQuila Subcontract, Banker Steel Subcontract, and Petrocelli Subcontract as described in this Section 5.5, no other allowances exist or are provided for in any other Subcontract set forth in the Schedule of Subcontracts in Exhibit 2 to the Third Freedom Tower Amendment.

**5.6 Miscellaneous Modifications.** The Part A Terms and Conditions as incorporated into this Part B Agreement are further modified as set forth below in this Subparagraph 5.2.

- 5.6.1 In Section 2.4.3 of the Part A Terms and Conditions, all language is deleted in its entirety.
- 5.6.2 In Section 3.5 of the Part A Terms and Conditions, add the following language to the end of the first sentence: "under the Part A Agreement". Also in Section 3.5 of the Part A Terms and Conditions, all language following the first sentence is deleted in its entirety.
- 5.6.3 In Section 4.1 of the Part A Terms and Conditions, all language is deleted in its entirety.
- 5.6.4 In Section 4.2 of the Part A Terms and Conditions, all language is deleted in its entirety.
- 5.6.5 In Section 4.4 of the Part A Terms and Conditions, add the following language to the end of the section: "Notwithstanding anything to the contrary in this Agreement or in the Contract Documents, 1 WTC shall have no liability for any construction means, methods, techniques, sequences or procedures, or for any safety program or precaution. If General Contractor has any objection to any exercise by 1 WTC of its right under this Section 4.4, such objection shall be made and delivered to 1 WTC immediately in writing or deemed forever waived."
- 5.6.6 In Section 18.1 of the Part A Terms and Conditions, add the following language to the end of the last sentence: ", or arise out of, or in connection with, the Work".

- 5.6.7 In Section 22 of the Part A Terms and Conditions, all obligations imposed on General Contractor with respect to its Subconsultants and, as applicable, the employees of Subconsultants, shall be deemed to also apply to General Contractor with respect to all Subcontractors and, as applicable, all of their respective employees.
- 5.6.8 In Section 23.4 of the Part A Terms and Conditions, assignment of contracts shall include contracts of all Materialmen and Subcontractors of any tier at 1 WTC's option.
- 5.6.9 In Section 25.1 of the Part A Terms and Conditions, at the beginning of clause (iii), delete the words "use best efforts to".
- 5.6.10 In Section 2.2.6.4 of Attachment 1 of the Part A Terms and Conditions, third line, delete the words "as 1 WTC's agent".
- 5.6.11 In Attachment 1 of the Part A Terms and Conditions, delete all language in Sections 2.3, 2.4, and 2.5 in its entirety.

**ATTACHMENT TO EXHIBIT B OF THIRD FREEDOM TOWER AMENDMENT**

Attachment 1:      Prevailing Rate of Wage

**Attachment 1  
to  
Exhibit B  
of  
Third Freedom Tower Amendment**

**PREVAILING RATE OF WAGE**

For purposes of this Attachment 1 with respect to Subcontractors under the Part B Agreement, and notwithstanding anything to the contrary herein: all references below to the "Construction Manager" in this Attachment 1 shall be deemed to mean to the "General Contractor"; and all references to the "Contracts" or "Contractors" in this Attachment 1 shall be deemed to mean the "Subcontracts" and "Subcontractors," respectively.

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 designees), and the Contractor and its Subcontractors shall permit such representatives to interview employees during working hours on the job site.

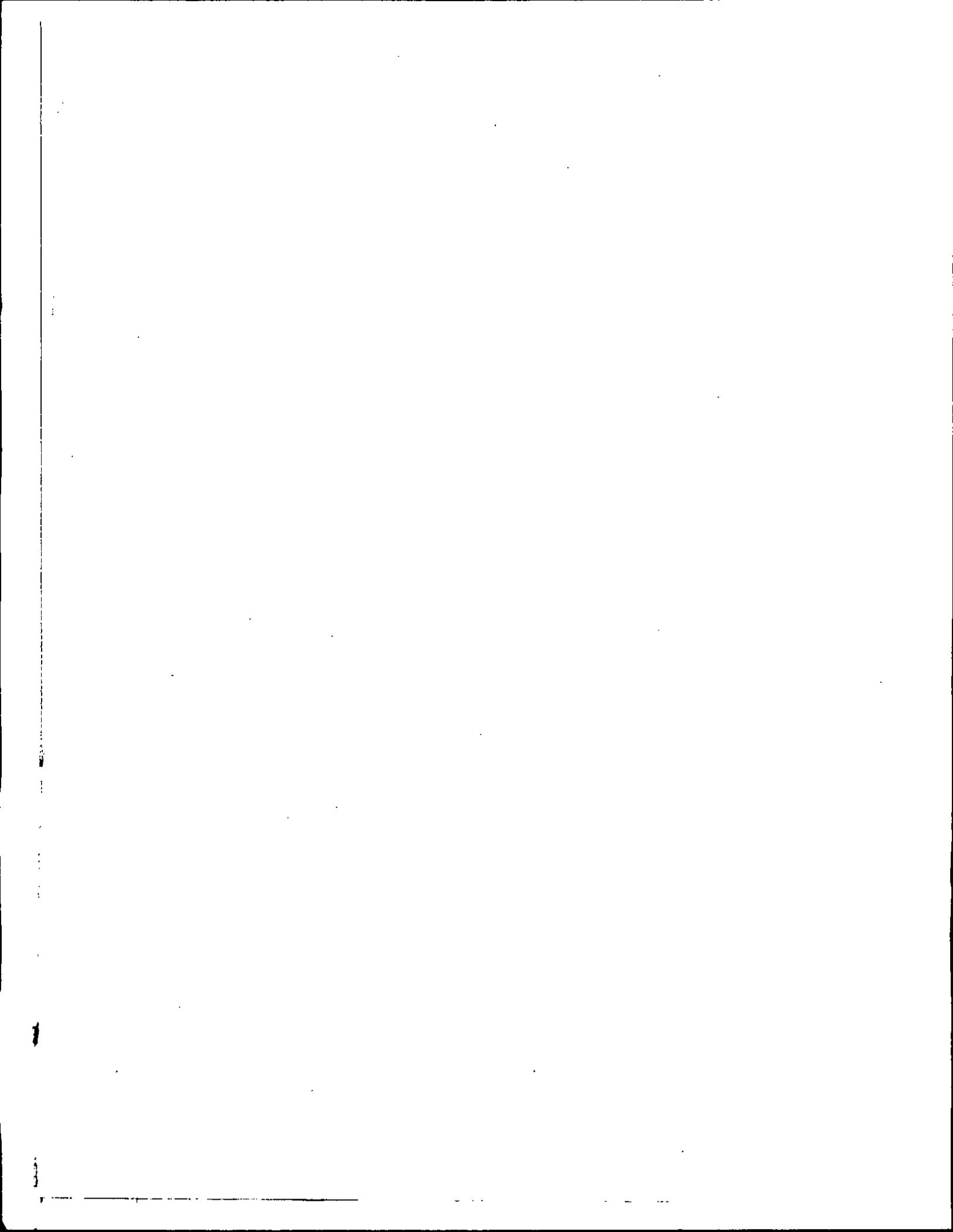
The Construction Manager may at any time request the Contractor to prepare a daily report on the Construction Manager form entitled *Contractor Daily Sign-In Sheet*, copies of which can be obtained from the Construction Manager, The *Contractor Daily Sign-In Sheet* shall be completed as follows:

- 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.

[END OF EXHIBIT B]



**WORLD TRADE CENTER**

**ELECTRICAL (BELOW GRADE)  
LUMP SUM CONTRACT**

**CONTRACT WTC-1001.04-7**

**JANUARY 12, 2007**

This Proposal is not complete unless bidder's  
signature appears on page



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

**TRADE:** ELECTRICAL – BELOW GRADE

**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:** FIVE STAR ELECTRIC CORPORATION  
101-82 101<sup>st</sup> Street  
Ozone Park, New York 11416  
(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:**

FIVE STAR ELECTRIC CORPORATION

(Contractor)

BY: \_\_\_\_\_

(Signature)

Steve Smith Senior Vice President

(Print Name & Title)

DATE: \_\_\_\_\_

6/7/07

**CONSTRUCTION MANAGER:**

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

BY: \_\_\_\_\_

Martin Adelman, Vice President

DATE: \_\_\_\_\_

JUNE 7, 2007

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## LIST OF RIDERS

- Rider "A", General Addendum, dated December 22, 2006 (Revision #1)
- Rider "B", List of Drawings and Specifications, dated December 18, 2006
- Rider "C", Alternatives & Unit Prices, December 22, 2006 (Revision #1)
- 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 May 18, 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", Available Documents, undated
- Rider "P", [Intentionally Deleted]
- Rider "Q", Above and Below Grade Site Logistics Plans, dated November 29, 2006
- Rider "R", [Intentionally Deleted]
- Rider "S", Site Security Requirements, dated January 8, 2007
- Rider "T", Milestone Dates and Liquidated Damages, undated
- Rider "U", Additional Provisions [Used Only for Certain Trades]

## 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.<sup>1</sup> 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.

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<sup>1</sup> 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 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, 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 Directory<sup>2</sup> 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.

- |  |   |
|--|---|
| <p>1. Queens Air Services Development Office<br/>JFK International Airport<br/>Building #141<br/>Federal Circle, First Floor<br/>Jamaica, NY 11430<br/>(718) 244-6852<br/>Fax (718) 244-7371</p> | <p>2. Hispanic American Chamber of Commerce of Essex County<br/>P.O. Box 9146<br/>Newark, NJ 07104<br/>(973) 484-5441<br/>Fax (973) 350-9238</p>                    |
| <p>3. Association of Minority Enterprises of NY, Inc.<br/>135-20 Liberty Avenue<br/>Richmond Hill, NY 11419<br/>(718) 291-1641<br/>Fax (718) 297-2986</p>  | <p>4. Statewide Hispanic Chamber of Commerce of New Jersey<br/>150 Warren Street, Suite 110<br/>Jersey City, NJ 07302<br/>(201) 451-9512<br/>Fax (201) 451-9547</p> |
| <p>5. Newark Opportunity Center<br/>17 Academy Street, Suite 501<br/>Newark, NJ 07102<br/>(973) 622-4537<br/>Fax (973) 622-3914</p>  | <p>6. Jamaica Business Resource Center<br/>90-33 16th Street<br/>Jamaica, NY 11432<br/>(718) 206-2255<br/>Fax (718) 206-3693</p>                                    |

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<sup>2</sup> 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

- |   |   |
|---|---|
| <p>15. York College Small Business Development Center<br/>94-50 159th Street<br/>York College,<br/>Room S 107<br/>Jamaica, NY 11451<br/>(718) 262-2880<br/>Fax (718) 262-2881</p> | <p>16. Small Business Development Center - Rutgers University, University Heights<br/>49 Bleeker Street<br/>Newark, NJ 07102<br/>(973) 353-1927<br/>Fax (973) 353-1110</p>                    |
| <p>17. Small Business Development Center - Kean University<br/>East Campus, Room 242<br/>Union, NJ 07083<br/>(908) 527-2946<br/>Fax (908) 527-2960</p>                            | <p>18. New Jersey Air Services Development Office<br/>Newark Liberty International Airport<br/>Building #80 - Second Floor<br/>Newark, NJ 07114<br/>(973) 961-4278<br/>Fax (973) 961-4282</p> |
| <p>19. Caribbean-American Chamber of Commerce<br/>Brooklyn Navy Yard Brooklyn,<br/>NY 11205<br/>(718) 834-4544<br/>Fax (718) 834-9774</p>   | <p>20. Manhattan Hispanic Chamber of Commerce<br/>P.O. Box 3494<br/>Grand Central Station<br/>New York, NY 10163<br/>(212) 683-5955<br/>Fax (212) 683-5999</p>                                |
| <p>21. Asian Women in Business<br/>358 Fifth Avenue, Suite 504<br/>New York, NY 10001<br/>(212) 868-1368<br/>Fax (212) 868-1373</p>   | <p>22. Asian American Business Development Center<br/>80 Wall Street, Suite 418<br/>New York, NY 10005<br/>(212) 966-0100<br/>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 undersigned<sup>3</sup>

**BIDDERS NAME:**

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**TYPE OF ENTITY (see Note "3" below):**

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(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

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<sup>3</sup> 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. _____	\$ _____
<b>TOTAL BASE BID:</b>	<b>\$ _____</b>

**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:	_____ _____ _____
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)

<sup>4</sup> 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 AUTHORITY<sup>6</sup>**

Dated, \_\_\_\_\_, 20

(Signature of individual or name of corporation or partnership)	_____
(Signature of agent, partner or corporate officer)	By <sup>6 7</sup> _____
(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)

<sup>5</sup> *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.*

<sup>6</sup> If Proposal is signed by an officer or agent, give title.

<sup>7</sup> **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:**

**ACKNOWLEDGMENT<sup>8</sup>**

**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 6 OF 6)

<sup>8</sup> *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 PROPOSAL<sup>9</sup>**

Names and residences of officers, if bidder is a corporation:

Name	Title	Residence <sup>10</sup>

Names and residences of partners, if bidder is a partnership:

Name	General or Limited Partner	Residence <sup>11</sup>

Bidder's residence, if an individual<sup>12</sup>

(PAGE 6 OF 6)

<sup>9</sup> 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.

<sup>10</sup> Give street and number of residence. Do not give business address.

<sup>11</sup> Give street and number of residence. Do not give business address.

<sup>12</sup> 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 AGREEMENT<sup>3</sup>

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:

**Fourteen Million Nine Hundred Sixty Three Thousand Dollars and Zero Cents (\$14,963,000.00)** (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.

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<sup>3</sup> 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 sureties<sup>4</sup> 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.

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<sup>4</sup> 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 I 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 (3<sup>rd</sup> 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.

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 and Damages for Delay" (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 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 Indemnatee 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 undersigned<sup>5</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

**Contractor**

**Surety**

---

<sup>5</sup> 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)

\_\_\_\_\_  
Principal  
By <sup>6</sup> \_\_\_\_\_

\_\_\_\_\_  
Surety

By <sup>7</sup> \_\_\_\_\_

APPROVED AS TO ACCEPTABILITY OF SURETIES:

\_\_\_\_\_  
Credit Manager

\_\_\_\_\_ 20

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

<sup>7</sup> 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**

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 Indemnatee 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 Indemnatee 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 Indemnatee 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]



RIDER "A"  
GENERAL ADDENDUM  
WORLD TRADE CENTER - TOWER ONE  
NEW YORK, NEW YORK

December 22, 2006  
(Revision #1)



**RIDER "C"**  
**ALTERNATES & UNIT PRICES**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

December 22, 2006  
(Revision #1)

**TRADE: ELECTRICAL (BELOW GRADE)**

**Alternate No. 5**

In the event that the Contractor is required to furnish and install the firestopping work as detailed on drawing E.001 at all concrete openings provided for electrical riser raceways up to and including those located within the Ground Floor slab. This includes firestopping of the entire framed opening at both the location of day-1 pipe installations as well as within areas allotted for future electrical pathways.

Note that this work supersedes that which is described in Rider A, Section B, Item 24.

**Add \$350,000**

**Alternate No. 6**

In the event that the manual fire pump is eliminated from the scope of the project entirely, deleting from the scope of this Contract the following work:

- Requirements outlined in Rider A, Section B, Item 25
- NORMAL FEED
  - Three (3) 3" empty conduits to B4M Level Fire Pump Room with drag-lines
- EMERGENCY FEED
  - Eight (8) 3" empty conduits to B4M Level Fire Pump Room with drag-lines

**Deduct \$80,000**

**Alternate No. 7**

In the event that the Contractor is not required to furnish and install the electrical work associated with the Steam Micro Turbines, inclusive of the conduit, wire and terminations to EPP-B4A & EPP-B4B.

**Deduct \$27,000**

**Alternate No. 8**

In the event that the Contractor is not required to survey the existing Vesey Street Telecommunication POE conduits as described in Rider A, Section B, Item 26-E.

**Deduct \$25,000**

**Alternate No. 9**

In the event that the Contractor is not required to provide any work associated with the Type "S" series light fixtures as indicated in Rider A, Section B, Item 48.

**Deduct \$260,000**

**Alternate No. 10**

In the event that the Contractor is not required to provide any work associated with the Network Programmable Relay System as indicated in Rider A, Section B, Item 49.

**Deduct \$36,000**

**RIDER "C"**  
**ALTERNATES & UNIT PRICES**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

December 22, 2006  
 (Revision #1)

TRADE: ELECTRICAL (BELOW GRADE)

**UNIT PRICE SCHEDULE**

Light Fixture outlet completely circuited including 15 ft. of raceway and wiring.		
Voltage	BX type raceway (\$ / each)	EMT type raceway (\$ / each)
120	250	290
277	250	290

Light Fixtures - furnished & installed, including lamps	
Type	Cost (\$ / each)
F1	370
F2	300
F3	325
F4	165 / FT
F5	569
F7	320
F8	310
F9	457
F10	245
EM	415

Light Switches - completely circuited including box, cover plate, fifteen feet of conduit and wire.			
Item	Type of Switch	BX type raceway (\$ / each)	EMT type raceway (\$ / each)
a	Single Pole Lighting	280	315
b	3-Way Lighting	290	355

**RIDER "C"**  
**ALTERNATES & UNIT PRICES**  
**WORLD TRADE CENTER - TOWER ONE**  
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December 22, 2006  
 (Revision #1)

TRADE: ELECTRICAL (BELOW GRADE)

UNIT PRICE SCHEDULE - continued

Receptacles - completely circuited including box and cover plate (with 20' conduit and wire).			
Item	Type of Receptacle	BX type raceway (\$ / each)	EMT type raceway (\$ / each)
a	Duplex Receptacle 15A, 125V	285	379
b	Weatherproof GFI Receptacle 20A, 125V	330	416
c	Single Twistlock Receptacle 20A, 250V	295	430
d	Single Twistlock Receptacle 30A, 250V	310	445
e	Single Twistlock Receptacle 50A, 250V	450	580
f	Ground Fault Protected Receptacle 125V	365	416
g	Telephone Wall Outlet with 3/4" conduit to ceiling	---	210
h	Telephone Floor Outlet Poke Through	629	629
i	Floor Box Preset Type	---	---
j	Floor Box, Afterset Type, Including Chopping and Carpeting	---	---
k	Duplex Receptacle 15A, 125V, Floor, Poke Through	795	865
l	Floor Telephone/Signal Outlet Assembly, Poke Through (Excluding conduit)	675	675
m	Double Duplex Wall "Quad" 15A, 125V ea. (3 Per Circuit)	430	585

\* = Minimum of six (6) per circuit  
 \*\* = Up to fifty (50) feet of raceway

**RIDER "C"**  
**ALTERNATES & UNIT PRICES**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

December 22, 2006  
 (Revision #1)

TRADE: ELECTRICAL (BELOW GRADE)

**UNIT PRICE SCHEDULE - continued**

Conduit - Installed including all necessary fittings, hangers, etc. (cost per linear foot):								
Size (inches)	EMT		RIGID GALVANIZED		RIGID ALUMINUM		FLEXIBLE METAL	
	conc.	exposed	conc.	exposed	conc.	exposed	8' tall	exposed
¾	10	11	16	18	15	16	47.88	12
1	13	14	20	22	18	20	86	15
1¼	16	18	24	26	22	24	115	26
2	25	28	34	37	32	35	229	51
2½	30	33	48	52	43	47	285	64
3	33	36	58	64	52	58	343	79
3½	38	42	64	78	64	70	458	105
4	44	49	84	92	75	82	573	129

Wire and Cable - Installed in conduit (\$ / foot)			
Size	THHN-CU Wire	Size	THHN-CU Wire
14 AWG	1.02	1/0 AWG	5.20
12 AWG	1.14	2/0 AWG	6.40
10 AWG	1.39	3/0 AWG	7.00
8 AWG	1.94	4/0 AWG	7.60
6 AWG	2.40	250 MCM	8.80
4 AWG	3.00	300 MCM	10.00
2 AWG	3.60	350 MCM	12.80
1 AWG	3.80	400 MCM	15.27
		500 MCM	18.40

**RIDER "C"**  
**ALTERNATES & UNIT PRICES**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

December 22, 2006  
 (Revision #1)

TRADE: ELECTRICAL (BELOW GRADE)

UNIT PRICE SCHEDULE - continued

Circuit Breaker & Panel Boards (with fusible switching)			
Circuit Breaker Type Bolt On Type - furnished, installed and connected, including circuit connections. With 15A or 20A single pole breakers.			
Item	Panelboard No. of Circuits	120/208 Volt	277/480 Volt
a	8	1,400	1,820
b	12	2,210	2,280
c	18	2,505	2,640
d	24	2,695	2,856
e	30	2,975	3,326
f	36	3,170	3,792
g	42	4,340	4,771

Transformers - furnished, installed on floor and terminated complete. (460 to 120/208 volt, 3P dry type, K-13 rated)		
Item	Size (KVA)	Cost (\$ / each)
a	6	2,500
b	9	3,600
c	15	4,300
d	30	4,800
e	45	6,400
f	75	8,200
g	112.5	11,300
h	150	13,900
i	225	21,200
j	300	29,000
k	500	46,000
l	750	57,000

**RIDER "C"**  
**ALTERNATES & UNIT PRICES**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

December 22, 2006  
 (Revision #1)

TRADE: ELECTRICAL (BELOW GRADE)

**UNIT PRICE SCHEDULE - continued**

Safety Switches - unfused, 3P			
Item No.	Switch Amperage	250 Volt (\$ / each)	600 Volt (\$ / each)
a	30	330	365
b	60	465	520
c	100	680	750

Safety Switches - fused, 3Æ			
Item No.	Switch Amperage	250 Volt (\$ / each)	600 Volt (\$ / each)
a	30	410	460
b	60	528	605
c	100	860	935
d	200	1,230	1,360

Miscellaneous	
Description	Cost (\$ / each)
Connect Motor - 120V Fractional HP	160
Connect Motor - 480V, 3 Phase, ½ thru 5 HP	200
Connect Motor - 480V, 3 Phase, 7½ thru 10 HP	250
Connect Motor - 480V, 3 Phase, 15, 20 or 25 HP	415
Connect Motor - 480V, 3 Phase, 30 or 40 HP	595
Connect Motor - 480V, 3 Phase, 50 HP	755
Connect Electric HW Heater	135
Connect Electric Heat Trace	18 / Ft
Lock-out stop pushbutton station - furnished, installed and connected	242 Ea
Core drilling concrete (finch / inch)	20
Core drilling concrete or masonry - (2 1/2" - 4")	20



**RIDER "D"**  
**INSURANCE RIDER**

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

**TRADE: ELECTRICAL – BELOW GRADE**

**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." [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 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-retained 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
- 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



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**RIDER "DX"**  
**OWNER CONTROLLED INSURANCE PROGRAM**  
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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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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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**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

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**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

May 11, 2007

THIS NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT ("Confidentiality Agreement") is made as of this 7 day of JOPE, 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 FIVE STAR ELECTRIC CORP. having an office and place of business at 101-32 101<sup>st</sup> STREET, ROSELAND NY ("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 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



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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 - 15<sup>th</sup> 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  
JUNE 7, 2007

RECIPIENT:  
Five Star Electric Coop.  
By: [Signature]  
Title: Senior Sr. R Sensor V.R  
Date: 6/7/07

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

**1 WORLD TRADE CENTER LLC**

By: \_\_\_\_\_  
Title: \_\_\_\_\_  
Date: \_\_\_\_\_

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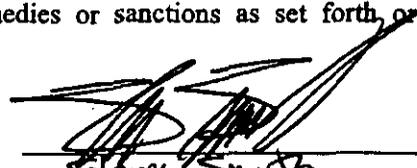
May 11, 2007

**EXHIBIT A**

**ACKNOWLEDGEMENT BY RELATED PARTY ENTITY**

The undersigned STEVEN SMITH, is the SENIOR VICE PRESIDENT [TITLE] of FIVE STAR ELECTRIC CORP A CORPORATION [TYPE OF ENTITY AND JURISDICTION OF FORMATION], located at 101-32 101<sup>st</sup> ST, OZONE PARK, N.Y.. I am duly authorized to execute this Acknowledgment on behalf of the above Related Party that is involved with the functions of SENIOR VICE 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 JUNE 7, 2007, between FIVE STAR ELECTRIC CORP 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:

  
Steven Smith  
Senior Vice President  
6/9/07

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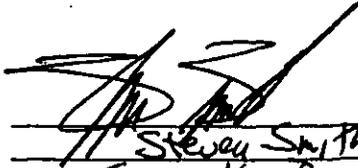
May 11, 2007

**EXHIBIT A**

**ACKNOWLEDGEMENT BY RELATED PARTY INDIVIDUAL**

The undersigned Stewart Smith, is/are employed by [NAME OF ENTITY] Five Star Electric Corp. [TYPE OF ENTITY AND JURISDICTION OF FORMATION] Corporation located at 101-32 101st Street Ozone Park, NY. In my capacity as Senior Vice President, I/we am/are involved with the functions of Senior Vice President

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 June 7, 2007, between Five Star Electric Corp. 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: Stewart Smith  
Title: Senior Vice President  
Date: 6/7/07

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**EXHIBIT C**

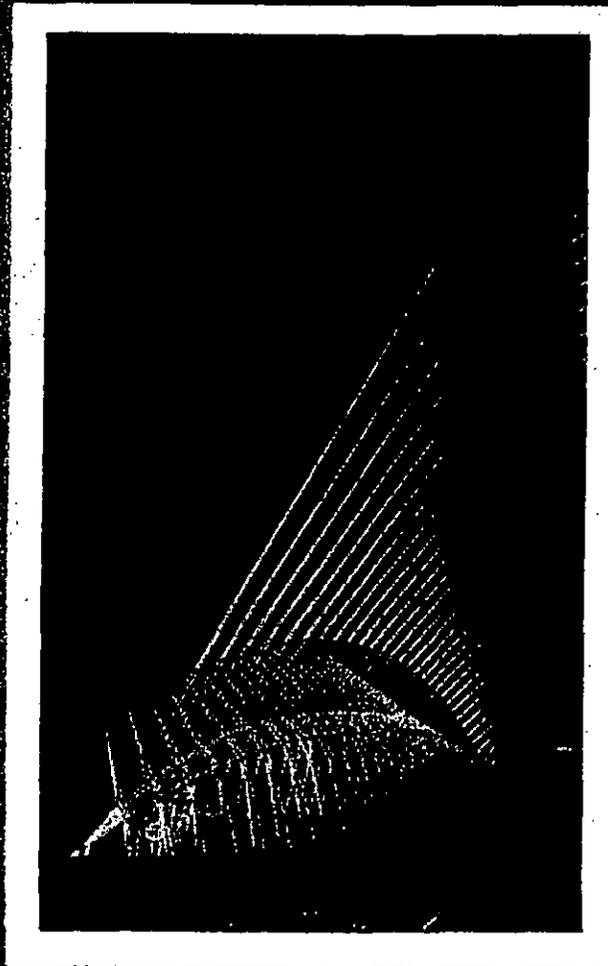
**SECURITY INFORMATION PRACTICES AND PROCEDURES (SIPP)**

(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 who have 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 Act; 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 Information; 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

<sup>1</sup> 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)

<sup>2</sup> 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.

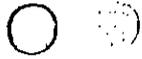
The Security Information Manager from each organization that requires access to Confidential and Privileged Security Information is required to prepare an Authorized Personnel Contract Project List - a list of employees who are authorized to access Confidential and Privileged Security Information and 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 temper 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.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
That a facility is designed with extensive security features.	<b>UNMARKED</b>	
Identity of individual security systems installed at the facility.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Time frame or schedules showing project progress.	<b>UNMARKED</b>	
The general areas of the project or where security systems will be installed.	<b>UNMARKED</b>	
Announcement of security subcontract awards.	<b>UNMARKED</b>	
Results of site survey documentation or review that address specific physical security vulnerabilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	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	<b>UNMARKED</b>	<b>UNMARKED</b> when referring to commercially available security systems, accepted

security system(s).	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	construction techniques, information which is in the public domain and/or when security systems will be installed in area accessible to public view.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> when referring to methods of defeating the security system(s) and/or covert/unexposed security systems.
Design drawings with specific forced entry ratings	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Shop drawings that provide specific rating information	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
What specific security system/hardware model number is installed at a specific location?	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	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	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when data is commercially available in the public domain.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when the information is commercially available or in the public domain.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> If equipment is readily observable to the public.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	

countermeasures when referring to a specific site or project location.		
Blast protection design requirements for new or existing PANYNJ facilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Blast analysis that addresses specific vulnerabilities to new or existing PANYNJ facilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	If specific weaknesses are reflected or maximum tolerances are provided.
Structural plans, details, and specifications.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when generic criteria are used. Site-specific information generated from generic criteria is <b>UNMARKED</b> .  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> if generic design criteria/terms are used.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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	<b>CONFIDENTIAL &amp;</b>	<b>CONFIDENTIAL &amp;</b>

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

**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><b>Security Programs and Contingency Plans</b></p>	<p><b>SSI</b></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><b>Security Directives</b></p>	<p><b>SSI</b></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><b>Information Circulars</b></p>	<p><b>SSI</b></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>
<b>Performance Specifications</b>	<b>SSI</b>	<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>
<b>Vulnerability Assessments</b>	<b>SSI</b>	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><b>Security Inspection or Investigative Information.</b></p>	<p><b>SSI</b></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><b>SSI</b></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.
<b>Threat Information</b>	<b>SSI</b>	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.
<b>Security Measures</b>	<b>SSI</b>	<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>
<b>Security Screening Information</b>	<b>SSI</b>	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><b>Security Training Materials</b></p>	<p><b>SSI</b></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>

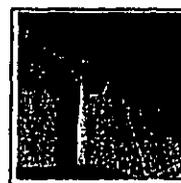
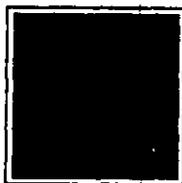
<p><b>Identifying Information of Certain Transportation Security Personnel</b></p>	<p><b>SSI</b></p>	<p>Lists of the names or other identifying information that identify persons as--</p> <p>Having unescorted access to a secure area of an airport or a secure or restricted area of a maritime facility, 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><b>Critical Aviation or Maritime Infrastructure Asset Information</b></p>	<p><b>SSI</b></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><b>Systems Security Information</b></p>	<p><b>SSI</b></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 security procedures and systems, security inspections, and vulnerability information concerning those systems.
<b>Confidential Business Information</b>	<b>SSI</b>	<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>
<b>Research and Development</b>	<b>SSI</b>	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



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

# 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

## 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.*

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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](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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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](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' 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 Bath tub (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://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 luminaries 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. CO<sub>2</sub> 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 CO<sub>2</sub> 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 CO<sub>2</sub> 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.



RIDER "H"  
REQUIREMENTS FOR WORK IN PATH RIGHT OF WAY  
WORLD TRADE CENTER - TOWER ONE  
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June 16, 2006

May 18, 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 \_\_\_\_\_.
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.

A handwritten signature, possibly 'M', is written over a circular stamp. The stamp contains the text 'INITIAL HERE' around the perimeter and a large, stylized 'M' in the center.

\_\_\_\_\_ 2007

Re: CONSTRUCTION OF THE FREEDOM TOWER  
NEW YORK CITY, NEW YORK

**BUSINESS NAME AND ADDRESS**

Dear \_\_\_\_\_:

In connection with the construction work that you are to perform with respect to the building known or to be known as the Freedom Tower (a/k/a One World Trade Center), located at the World Trade Center site, in New York, New York ("Freedom Tower"), this letter confirms that the land upon which the Freedom Tower will be located, and all improvements constructed or to be constructed thereon (including the Freedom Tower) 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 the Freedom Tower and the improvements being constructed in connection therewith, pursuant to a lease dated July 16, 2001 and executed on November 16, 2006, which lease is for a term of ninety-nine years extending through July 15, 2100, provided that July 15, 2100 is a business day (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 Freedom Tower.

Sincerely,



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

- 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)
- 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 \_\_\_\_\_
- 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 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  $\frac{3}{8}$ % 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  $\frac{3}{8}$ % 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](http://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 tobbies, 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
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**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) 485-6800.

**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.



RIDER "J"  
BELOW-GRADE TEMPORARY SERVICES FOR CONSTRUCTION PURPOSES  
WORLD TRADE CENTER - TOWER ONE  
NEW YORK, NEW YORK

February 2, 2007

RIDER "K"  
PROJECT CORRUPTION PREVENTION PROGRAM  
WORLD TRADE CENTER – TOWER ONE  
NEW YORK, NEW YORK

January 8, 2007

1 World Trade Center LLC (1 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 1 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")

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## **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 ½ 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.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

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

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:

\_\_\_\_\_

\_\_\_\_\_

- 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

(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:
- 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
  - 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
  - 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:
- 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

**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

REVISED 12/14/06

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:** \_\_\_\_\_

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





Rider "M"

# Tishman Construction Safety Guidelines

*"Tishman Values Safety"*

Tishman Construction Corporation  
666 Fifth Avenue  
New York, NY 10103



INITIAL HERE  
*[Handwritten initials]*

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## FORWARD

### The Tishman Construction Safety Guidelines:

- *These guidelines are the implementation of safety policies and procedures for your project.*
- *Apply **general** Tishman Construction Policy requirements to all construction projects.*
- *Apply **specific** Tishman Construction Policy requirements to all construction projects.*
- *Apply **guide** to all construction projects to ensure compliance with all applicable regulatory requirements.*

**Note: Regional requirements may augment, add to, or enhance, but shall not replace these guidelines.**

## **PART I TISHMAN CONSTRUCTION'S SAFETY OVERVIEW**

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### **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**

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- 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](http://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

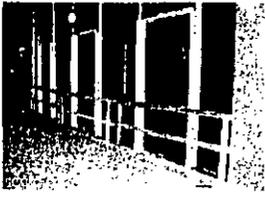
The contractor shall furnish a written fall protection plan for the scope of Unless otherwise contractually specified, it shall be the goal to achieve 100% fall protection (guardrails, safety nets, personal fall arrest systems, All conditions shall be controlled where there is a danger of employees or materials falling through floor openings, roof openings, holes, roof



Orange Vertical Debris Nets



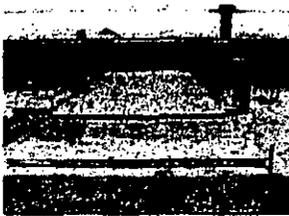
Perimeter Fall Protection



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.



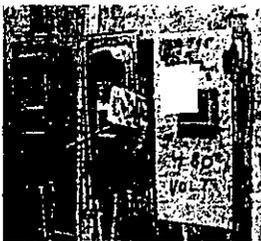
Electrical cords attached to a Ground Fault Circuit Interrupter

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)

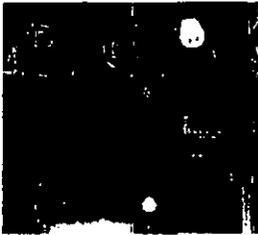
All machines and power sources must be locked out and tagged out before making an adjustment or repair. The machine shall be shut off and the employee should wait until the machine comes to a COMPLETE STOP and the main switch should be locked out. All elevated ramps and other mechanisms should be blocked so that they cannot operate. Lockout procedures will vary for individual jobs and machines but basic rules are:



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 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)]

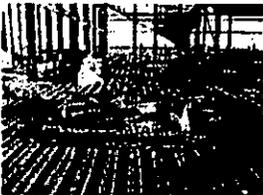
All employees must wear appropriate personal protective equipment (PPE) in all operations where they are exposed to hazardous conditions or where hazards with equipment may be reduced. Types of PPE are:

- ▶ **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))

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.



*Debris Net*

- ▶ 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*

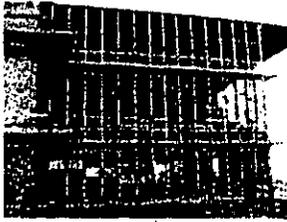
Where permanent or temporary stairways or suitable ramps are not provided, ladders to be used must meet the following guidelines:

- ▮ 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:



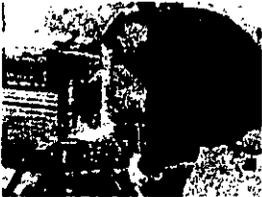
*Construction worker using a GFCI (Ground Fault Circuit Interrupter) with a power tool*

- 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 no 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.



- 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.









## 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*



Handwritten signature or initials.

## 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  
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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

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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.

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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.

**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.

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.

## **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 workites 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

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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

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**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

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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 ehty/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:50B: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.

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AVAILABLE DOCUMENTS  
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NEW YORK, NEW YORK

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**RIDER "O"**  
**SITE LOGISTICS PLANS**  
**WORLD TRADE CENTER - TOWER ONE**  
**NEW YORK, NEW YORK**

November 29, 2006

1. ABOVE GRADE SUPERSTRUCTURE, DATED APRIL 11, 2006
2. BELOW GRADE STEEL - PHASE I, DATED NOVEMBER 29, 2006
3. BELOW GRADE STEEL - PHASE II, DATED NOVEMBER 29, 2006
4. BELOW GRADE STEEL - PHASE III, DATED NOVEMBER 29, 2006

A handwritten signature is written over a circular stamp. The stamp contains the text "INITIAL REF" around its perimeter.

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NEW YORK, NEW YORK

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**RIDER "S"**  
**WTC SITE SECURITY REQUIREMENTS**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

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 budgeting 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 budgeting 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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**NEW YORK, NEW YORK**

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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

**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 2005**

**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**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

January 8, 2007

(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

**ATTACHEMENT A**

**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.
  - \*(b) RICO (Racketeer Influenced and Corrupt Organizations Act).
  - (c) A crime involving a severe transportation security incident.
  - (d) Felony involving-

**RIDER "S"**  
**WTC SITE SECURITY REQUIREMENTS**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

January 8, 2007

- (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**

**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) 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-

**RIDER "S"**  
**WTC SITE SECURITY REQUIREMENTS**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

January 8, 2007

- (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



A handwritten signature or set of initials, possibly "A", located below the circular stamp.

RIDER "T"  
MILESTONE DATES AND LIQUIDATED DAMAGES  
WORLD TRADE CENTER - TOWER ONE  
NEW YORK, NEW YORK

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RIDER "U"  
ADDITIONAL PROVISIONS  
WORLD TRADE CENTER - TOWER ONE  
NEW YORK, NEW YORK

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# WORLD TRADE CENTER

## ELECTRICAL (TOWER)

- Package E-1: Core & Shell
- Package E-2: Bus Duct & Load Side Work
- Package E-3: High Voltage Switchgear & Transformers
- Package E-4: Emergency Power System

## LUMP SUM CONTRACT

**CONTRACT WTC-1001.09-17**

June 12, 2008



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

**TRADE:** ELECTRICAL (TOWER)  
Package E-1: Core & Shell  
Package E-2: Bus Duct & Load Side Work  
Package E-3: High Voltage Switchgear & Transformers  
Package E-4: Emergency Power System

**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:** Five Star Electric Corp.  
101-32 101 Street  
Ozone Park, New York 11416  
(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:

Five Star Electric Corp.

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

(Contractor)

BY:

[Signature]

(Signature)

BY:

[Signature]

Martin Adelman, Vice President

DATE:

8/12/08

DATE:

SEPT. 3, 2008

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## LIST OF RIDERS

1. Rider "A", General Addendum, dated June 12, 2008
2. Rider "B", List of Drawings and Specifications, dated April 30, 2008
3. Rider "C", Alternatives & Unit Prices, dated June 12, 2008 (Revision #2)
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 12, 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.<sup>1</sup> 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.

---

<sup>1</sup> 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 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 <sup>2</sup> 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<br/>JFK International Airport<br/>Building #141<br/>Federal Circle, First Floor<br/>Jamaica, NY 11430<br/>(718) 244-6852<br/>Fax (718) 244-7371</p> | 2. | <p>Hispanic American Chamber of Commerce of Essex County<br/>P.O. Box 9146<br/>Newark, NJ 07104<br/>(973) 484-5441<br/>Fax (973) 350-9238</p>                    |
| 3. | <p>Association of Minority Enterprises of NY, Inc.<br/>135-20 Liberty Avenue<br/>Richmond Hill, NY 11419<br/>(718) 291-1641<br/>Fax (718) 297-2986</p>  | 4. | <p>Statewide Hispanic Chamber of Commerce of New Jersey<br/>150 Warren Street, Suite 110<br/>Jersey City, NJ 07302<br/>(201) 451-9512<br/>Fax (201) 451-9547</p> |
| 5. | <p>Newark Opportunity Center<br/>17 Academy Street, Suite 501<br/>Newark, NJ 07102<br/>(973) 622-4537<br/>Fax (973) 622-3914</p>  | 6. | <p>Jamaica Business Resource Center<br/>90-33 16th Street<br/>Jamaica, NY 11432<br/>(718) 206-2255<br/>Fax (718) 206-3693</p>                                    |

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<sup>2</sup> 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<br/>           90-04 161st Street Jamaica,<br/>           NY 11432<br/>           (718) 523-7100<br/>           Fax (718) 526-3472</p>                | 8.  | <p>Urban Business Assistance Corp.<br/>           New York University Stern School of<br/>           Business<br/>           44 West 4th Street, Suite 5-61<br/>           New York, NY 10012<br/>           (212) 995-4404<br/>           Fax (212) 995-4255</p> |
| 9.  | <p>Greater Jamaica Development Corp.<br/>           90-04 161st Street<br/>           Jamaica, NY 11432<br/>           (718) 291-0282<br/>           Fax (718) 291-7918</p>              | 10. | <p>NYS Assn. Of Minority Contractors<br/>           Brooklyn Navy Yard<br/>           Building 280, 4th Floor, Suite 414<br/>           Brooklyn, NY 11205<br/>           (212) 246-8380<br/>           Fax (718) 246-8376</p>                                    |
| 11. | <p>Professional Women in Construction<br/>           315 E. 56th Street, Suite 202<br/>           New York, NY 10022<br/>           (212) 486-7745<br/>           Fax (212) 486-0228</p> | 12. | <p>NY/NJ Minority Purchasing Council<br/>           205 East 42nd Street<br/>           New York, NY 10017<br/>           (212) 573-2385<br/>           Fax (212) 522-4004</p>  |
| 13. | <p>Jamaica Chamber of Commerce<br/>           90-25 161st Street, Room 505<br/>           Jamaica, NY 11432<br/>           (718) 657-4800<br/>           Fax (718) 658-4642</p>          | 14. | <p>Queens Overall Economic<br/>           Development Office<br/>           120-55 Queens Boulevard, Suite 309<br/>           Kew Gardens, NY 11424<br/>           (718) 263-0546<br/>           Fax (718) 263-0594</p>   |

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| 15. | <p>York College Small Business Development Center<br/>94-50 159th Street<br/>York College,<br/>Room S 107<br/>Jamaica, NY 11451<br/>(718) 262-2880<br/>Fax (718) 262-2881</p> | 16. | <p>Small Business Development Center - Rutgers University, University Heights<br/>49 Bleeker Street<br/>Newark, NJ 07102<br/>(973) 353-1927<br/>Fax (973) 353-1110</p>                |
| 17. | <p>Small Business Development Center - Kean University<br/>East Campus, Room 242<br/>Union, NJ 07083<br/>(908) 527-2946<br/>Fax (908) 527-2960</p>                            | 18. | <p>New Jersey Air Services Development Office<br/>Newark Liberty International Airport Building #80 - Second Floor<br/>Newark, NJ 07114<br/>(973) 961-4278<br/>Fax (973) 961-4282</p> |
| 19. | <p>Caribbean-American Chamber of Commerce<br/>Brooklyn Navy Yard Brooklyn,<br/>NY 11205<br/>(718) 834-4544<br/>Fax (718) 834-9774</p>   | 20. | <p>Manhattan Hispanic Chamber of Commerce<br/>P.O. Box 3494<br/>Grand Central Station<br/>New York, NY 10163<br/>(212) 683-5955<br/>Fax (212) 683-5999</p>                            |
| 21. | <p>Asian Women in Business<br/>358 Fifth Avenue, Suite 504<br/>New York, NY 10001<br/>(212) 868-1368<br/>Fax (212) 868-1373</p>   | 22. | <p>Asian American Business Development Center<br/>80 Wall Street, Suite 418<br/>New York, NY 10005<br/>(212) 966-0100<br/>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 I 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 I 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 I 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 AGREEMENT<sup>3</sup>

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:

**One Hundred Eighty-Three Million Five Hundred Thousand Dollars and Zero Cents (\$183,500,000)** (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.

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<sup>3</sup> 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 sureties<sup>4</sup> 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.

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<sup>4</sup> 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 workmen, 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 I 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 (3<sup>rd</sup> 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

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 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".

#### 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 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 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 I WTC as to the feasibility of performance of this Contract or any part thereof. Moreover, the Construction Manager or I 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 I 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 I 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, I 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 I 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 I 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 I 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, 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.

**CONTRACT WTC-XXX.XXX**

**PERFORMANCE AND PAYMENT BOND**

KNOW ALL MEN BY THESE PRESENTS that we, the undersigned<sup>5</sup> Contractor and surety company (or companies), as principal and surety (or sureties), respectively,

**Contractor**

**Surety**

<sup>5</sup> 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 <sup>6</sup> \_\_\_\_\_

\_\_\_\_\_  
Surety  
By <sup>7</sup> \_\_\_\_\_

APPROVED AS TO ACCEPTABILITY OF SURETIES:

\_\_\_\_\_  
Credit Manager  
\_\_\_\_\_ 20

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

<sup>7</sup> 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 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 I WTC has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority and/or I 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 I 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 I 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, I 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 I WTC and/or the Authority. Promptly upon request by the Construction Manager or I WTC, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to I WTC, but as between the Contractor and I WTC the license herein provided for shall nevertheless arise for the benefit of I 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 I 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 I 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 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]

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Ex. 4

RIDER "A"  
GENERAL ADDENDUM  
1 WORLD TRADE CENTER - "The Freedom Tower"  
NEW YORK, NEW YORK

June 12, 2008

**RIDER "C"**  
**ALTERNATES AND UNIT PRICES**  
**1 WORLD TRADE CENTER, "THE FREEDOM TOWER"**  
**NEW YORK, NEW YORK**

June 12, 2008 (Revision #2)

- TRADE: ELECTRICAL (TOWER)**  
PACKAGE E-1: Core & Shell  
PACKAGE E-2: Bus Duct & Load-Side Work  
PACKAGE E-3: Medium Voltage Switchgear & Spot Networks  
PACKAGE E-4: Emergency Power System

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. 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.

Alternate pricing shall remain in effect for the duration of the project or until such time that work has transpired which impacts the price of the alternate scope of work, whichever occurs sooner.

Unit prices shall remain in effect for one (1) calendar year from the date of this Contract and shall be increased by an amount consistent with Cost of Living Index (CLI) each calendar year thereafter.

**ALTERNATES**

**ADD Alternate No. 1**  
 INTENTIONALLY DELETED

**ADD Alternate No. 1A**  
 In the event that the Contractor is directed to furnish all insurances in accordance with the Insurance rider in lieu of participating in the OCIP. The commercial general liability limit for this contract shall be \$3,000,000

Package E-1	Add \$ <u>698,250</u>
Package E-2	Add \$ <u>91,875</u>
Package E-3	Add \$ <u>154,875</u>
Package E-4	Add \$ <u>148,738</u>

**ADD Alternate No. 1B**  
 In the event that the Contractor is directed to change the project status from a tax exempt to a capital improvement project.

Package E-1	Add \$ <u>2,635,520</u>
Package E-2	Add \$ <u>574,609</u>
Package E-3	Add \$ <u>1,874,413</u>
Package E-4	Add \$ <u>1,277,100</u>

**DEDUCT Alternate No. 2**  
 In the event that the retention of funds as outlined in Article 24 of the Lump Sum Contract document is modified as follows:

- Upon the successful completion of Drafting, Coordination and Submissions, retention costs on the associated line items on the approved Trade Payment Breakdown shall be reduced to 0%.
- Upon confirmation of the receipt of materials and equipment at an off-site bonded and insured storage / warehouse facility (in accordance with the terms indicated in Rider "A"), retention on the furnish only component of the associated equipment and material cost line items on the approved Trade Payment Breakdown shall be reduced to 0%.



**RIDER "C"**  
**ALTERNATES & UNIT PRICES**  
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TRADE: ELECTRICAL (TOWER) – Packages E1; E2; E3; E4

Retention on all other portions of the work of this Contract shall remain in compliance with the terms as outlined elsewhere in this Contract.

Package E-1	Deduct	\$ <u>0</u>
Package E-2	Deduct	\$ <u>0</u>
Package E-3	Deduct	\$ <u>0</u>
Package E-4	Deduct	\$ <u>0</u>

**ADD Alternate No. 3**

In the event that the Contractor is directed not to provide all fuses from the following manufacturers:

**A. The following relate to Package E-1**

Bussman	Deduct	\$ <u>0</u>
Gould-Shawmut	Deduct	\$ <u>0</u>

**B. The following relate to Package E-2**

Bussman	Deduct	\$ <u>0</u>
Gould-Shawmut	Deduct	\$ <u>0</u>

**C. The following relate to Package E-3**

Bussman	Deduct	\$ <u>0</u>
Gould-Shawmut	Deduct	\$ <u>0</u>

**D. The following relate to Package E-4**

Bussman	Deduct	\$ <u>0</u>
Gould-Shawmut	Deduct	\$ <u>0</u>

**Alternate No. 4**

INTENTIONALLY DELETED

**ADD Alternate No. 5A for Package E-1 Core and Shell**

In the event that the Contractor is directed to provide fire stopping materials from one of the following approved manufacturers:

[Note that pricing must be provided for *manufacturers* listed below]

Hilti Const Chemicals Inc.	Add	\$ <u>150,480</u>
Minnesota Mining & Mfg. Co. (3M)	Add	\$ <u>182,820</u>
Tremco Inc.	Add	\$ <u>300,040</u>
Isolatek International	Add	\$ <u>N/A</u>
Specified Technologies	Add	\$ <u>203,805</u>
United States Gypsum Co.	Add	\$ <u>190,656</u>

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**TRADE: ELECTRICAL (TOWER) - Packages E1; E2; E3; E4**

**ADD Alternate No. 5B for Package E-2 Bus Duct**

In the event that the Contractor is directed to provide fire stopping materials from one of the following approved manufacturers:

[Note that pricing must be provided for *manufacturers* listed below]

Hiltl Const Chemicals Inc.	Add	\$	15,106
Minnesota Mining & Mfg. Co. (3M)	Add	\$	18,332
Tremco Inc.	Add	\$	30,119
Isolatek International	Add	\$	N/A
Specified Technologies	Add	\$	20,458
United States Gypsum Co.	Add	\$	19,139

**ADD Alternate No. 5C for Package E3 Medium Voltage**

In the event that the Contractor is directed to provide fire stopping materials from one of the following approved manufacturers:

[Note that pricing must be provided for *manufacturers* listed below]

Hiltl Const Chemicals Inc.	Add	\$	3,989
Minnesota Mining & Mfg. Co. (3M)	Add	\$	4,840
Tremco Inc.	Add	\$	7,953
Isolatek International	Add	\$	N/A
Specified Technologies	Add	\$	5,402
United States Gypsum Co.	Add	\$	5,053

**ADD Alternate No. 5D for Package E4 Emergency Power**

In the event that the Contractor is directed to provide fire stopping materials from one of the following approved manufacturers:

[Note that pricing must be provided for *manufacturers* listed below]

Hiltl Const Chemicals Inc.	Add	\$	4,218
Minnesota Mining & Mfg. Co. (3M)	Add	\$	5,119
Tremco Inc.	Add	\$	8,410
Isolatek International	Add	\$	N/A
Specified Technologies	Add	\$	5,713
United States Gypsum Co.	Add	\$	5,344

**ADD Alternate No. 6 (16620-1): Emergency Power for Package E4**

In the event that the Contractor is directed to extend the manufacturer's warranty as described in Article 1.11 of this section to 3 years if not so included in the base bid.

ADD \$ 84,000

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**TRADE: ELECTRICAL (TOWER) – Packages E1; E2; E3; E4**

**ADD Alternate No. 7 (16620-2): Emergency Power for Package E4**

In the event that the Contractor is directed to extend the manufacturer's warranty as described in Article 1.11 from 2 years to 5 years

ADD \$ 234,000

**ADD Alternate No. 8 (16629-3): Emergency Power for Package E4**

In the event that the Contractor is directed to provide the following service and all required preventive maintenance (preventative maintenance cost beyond the first year that is included in the base price, cost for testing for each year including the 1<sup>st</sup> year) on an annualized basis for the following scope:

- a. Diesel engine generator shall include one man on standby (at the site) for two tests per year (on weekends) plus a fully integrated system test at the end of the one year period which shall be performed on weekends. Preventive maintenance shall be performed on straight time.

ADD \$ 182,000 /year

- b. Switchgear and automatic transfer switches shall include one man on standby (at the site) for two tests per year (on weekends) plus a fully integrated system test at the end of one year period which shall be performed on weekends. Preventative maintenance shall be performed on weekends.

ADD \$ 144,000 /year

**ADD Alternate No. 9 (16620-4): Emergency Power for Package E4**

In the event that the Contractor is directed to provide a battery monitor for all battery strings, including each diesel generator battery, and each switchboard control battery. Monitor shall be as manufactured by CEL-CEK or Power Alert

ADD \$ 103,000

**DEDUCT Alternate No. 10 (16005 - 1): Core and Shell for Package E1 – UPS system**

In the event that the E1 Contractor is directed to delete the UPS serving the Security system

DEDUCT \$ (75,000)

**ADD Alternate No. 11 (16005 - 1A) : Core and Shell for Package E1 – UPS system**

In the event that that the Contractor is directed to furnish all manufacturer recommended spare parts as stated in the manufacturers literature (include a separate price for the addition of one spare circuit breaker of each type and size provided)

11A Minimum Spare Parts Level ADD \$ 3,750

11B Intermediate Spare Parts Level ADD \$ 7,500

11C Full Spare Parts Level ADD \$ 15,000

11D Spare Circuit Breakers ADD \$ 2,500

**ADD Alternate No. 12 (16005- 1B): Core and Shell for Package E1 – UPS System**

In the event that the Contractor is directed to provide an annually renewable maintenance contract for the power converter module, bypass control cubicle and batteries, for up to 5 years, the first year of which shall be for preventative maintenance only and the remaining years for preventive and full corrective maintenance (include a complete description of services included in the maintenance contract, service(s) centers locally available for equipment servicing and staffing of the service(s) centers. Preventive maintenance shall include (1) one minor visit and (1) one major visit per year at times as directed by the Owner, including weekends. The major preventative maintenance visit shall include a complete functional and load test of the systems and their batteries. The price shall include the replacement of all defective parts.)

ADD \$ 25,000

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**ADD Alternate No. 13 (16005- 1C): Core and Shell for Package E1 – UPS System**

In the event that the Contractor is directed to provide Johnson batteries in lieu of standard batteries.  
(include warranty data and schedule ramifications)

ADD \$ 25,000

**DEDUCT Alternate No. 14 (16005- 2): Bus Duct for Package E2**

In the event that the Contractor is directed to delete sub meters, lighting, utility panels and transformers serving tenant floors. (leaving only the bus duct take off switch with feeder extension to a junction box within the electric closet).

DEDUCT \$ (1,700,000)

**DEDUCT Alternate No. 15 (16005- 3): Bus Duct for Package E2**

In the event that the Contractor is directed to reduce bus duct riser capacity for the light and power risers from 6.5 VA/sq. ft. to 4.5 VA/sq. ft., per the revised Bus Duct riser shown on -BULLETIN # 24.

DEDUCT \$ (600,000)

**DEDUCT Alternate No. 16 (16005- 4): Bus Duct for Package E1**

In the event that the Contractor is directed, (based on the reduced riser capacity listed above) to reduce in size the raceways and conductors feeding the bus ducts as per Bulletin # 24 referenced in the previous alternate ... This only applies if item Alternate # 15 (above) is exercised.

DEDUCT \$ (1,700,000)

**DEDUCT Alternate No. 17 (16005- No 5): Aluminum feeders for Packages E1 and E4**

In the event that the Contractor is directed to revise cable and conduit feeders 1,200A and larger from Copper to Aluminum conductors (All cables are to be terminated in two bolt long barrel concentric hydraulic compression connectors for all major feeders going from switch to major load centers. The panel schedules on Bulletin # 24 show the copper conductor & conduit sizing vs. Aluminum conductor & conduit sizing).

E1 DEDUCT \$ (640,000)

E4 DEDUCT \$ (315,000)

**ADD Alternate No. 18 (16005- 6) Core and Shell for Package E-1 and Bus Duct for Package E2**

In the event that the Contractor is directed to provide an additional "General Electric – Level II (Soft Wired System) Lighting Control Relay Panel" with forty-two (42) relays and the potential for twelve (12) Override Switches. ( Provide two (2) such General Electric panels for each floor (floors 6 through 47). Panels shall be mounted adjacent to each of two 277/480 volt, 3 phase, 4 wire lighting panels on each floor (one (1) per electric closet).

E1 ADD \$ 675,000

E2 ADD \$ 25,000

**ADD Alternate No. 19 For Core and Shell Package E1 and Bus Duct Package E2**

INTENTIONALLY DELETED

**ADD Alternate No. 20**

In the event that Liquidated Damages are reinstated in the Lump Sum Contract.

Package E1 – E4 ADD \$ 1,175,000

**ADD Alternate No. 21**

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.

Package E1 – E4 ADD \$ 1,000,000

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ADD Alternate No. 22

In the event that the Payment Application Period specified in Article 24 of the Lump Sum Contract is reinstated from "One Half of a Calendar Month" to "One Calendar Month".

Package E1 - E4                      ADD \$ 1,000,000

ADD Alternate No. 23

In the event that the Owner does not approve the Contractor's requisition of an initial payment of six percent of the Base Contract Amount, upon the execution of the Lump Sum Contract, 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.

Package E1 - E4                      ADD \$ 2,360,000

ADD Alternate No. 24

INTENTIONALLY DELETED

ADD Alternate No. 25

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

Package E1 - E4                      ADD \$ 160,000

DEDUCT Alternate No. 26

In the event that the Contractor is not charged for 114 (Fill in the quantity of picks) Tower Crane ¼ hour picks on an overtime basis per the rate specified in Rider-A.  
(The Contractor will be charged for crane picks in excess of the quantity inserted above)

Package E1 - E4                      DEDUCT \$ 285,000 / 114 picks

DEDUCT Alternate No. 27 - (Drawing E-003 - for Package E1)

INTENTIONALLY DELETED

DEDUCT Alternate No. 28A

In the event that the E1 Contractor is directed to delete the raceways for the vertical medium voltage triplex armored cable (splice chambers will still be required)

E1      Deduct \$ (1,200,000)

ADD Alternate No 28B

In the event that the E3 Contractor is directed to install the medium voltage triplex armored cable in free air without raceways (E3 shall comply with the manufacturer's installation instructions)

E3      Add \$ 325,000

COST REDUCTION ALTERNATES

Alternate No. 29A (DRAWING CR - E-002)

In the event that the E1 Contractor is directed per drawing CR E-002 to reduce the quantity of 3 ½" conduit from 12 conduits to 9 conduits from SS-LB feeding Bus duct 2BM

Package E-1                      DEDUCT \$ (237,000)

Alternate No. 29B (DRAWING CR - E-002)

In the event that the E1 Contractor is directed per drawing CR E-002 to increase the size of fuses on DS-HD feeding EPP-103C

Package E-1                      ADD \$ 300

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**Alternate No. 30A - 30I (DRAWING CR E-003)**

In the event that the E1 Contractor is directed per drawing CR E-003 to delete the spare conduits as color coded on the CR drawing - priced per deleted conduit (Some of the spare 5" conduits from Dwg CR-E-003 are not color coded)

A. Spare control conduits between Spot Network E and F on the 93<sup>rd</sup> floor - same lengths

Deduct \$ (23,000) /CONDUIT

B. Spare conduits between Spot Network B and C on the 4<sup>th</sup> floor - same lengths

Deduct \$ (1,100) /CONDUIT

C. Spare conduit between MV switchgear room (A5-D5) on B3 level to the Spot Network F on the 93<sup>rd</sup> floor

Deduct \$ (227,000) /CONDUIT

D. Spare conduit between MV switchgear room (A5 & D5) on B3 level to Spot Network A on the 4<sup>th</sup> floor

Deduct \$ (35,000) /CONDUIT

E. Spare conduit between Spot Network A on the 4<sup>th</sup> floor to Spot Network E on the 93<sup>rd</sup> floor

Deduct \$ (232,000) /CONDUIT

F. Spare conduit between MV switchgear room (E5 & H5) on B3 level to electric closet B on the 6<sup>th</sup> floor ("BR" conduit)

Empty BR Conduit: Deduct \$ (46,000) /CONDUIT

G. Spare conduit between MV switchgear room (E5 & H5) on B3 level to spot network C on the 4<sup>th</sup> floor

Deduct \$ (36,000) /CONDUIT

H. Spare conduit between MV switchgear room (A5 & D5) on B3 level to electric closet A on the 6<sup>th</sup> floor

Deduct \$ (54,000) /CONDUIT

I. Spare conduit between MV switchgear room (E5 & H5) on B3 level to spot network C on the 4<sup>th</sup> floor

Deduct \$ (22,000) /CONDUIT

**Alternate No. 30.1A - 30.1D (DRAWING CR E-003)**

In the event that the E1 Contractor is directed per drawing CR E-003 to delete the "BR" conduits that are connected to switchgear - priced per connected conduit

30.1A "BR" conduit from Switchgear #B5 on the B3 level to spot network C on the 4<sup>th</sup> floor

Deduct \$ (33,000) /CONDUIT

30.1B "BR" conduit from Switchgear #D5 on the B3 level to spot network C on the 4<sup>th</sup> floor

Deduct \$ (21,000) /CONDUIT

30.1C "BR" conduit from Switchgear #F5 on the B3 level to spot network C on the 4<sup>th</sup> floor

Deduct \$ (41,000) /CONDUIT

30.1D "BR" conduit from Switchgear #G5 on the B3 level to spot network A on the 4<sup>th</sup> floor

Deduct \$ (55,000) /CONDUIT

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**TRADE: ELECTRICAL (TOWER) - Packages E1; E2; E3; E4**

**Alternate No. 31- No. 66**

In the event that the Contractor is directed NOT to fit out the electric closets on the un-committed floors (47th through 63<sup>rd</sup> floor and 70th through 88<sup>th</sup> floors) with the following exceptions:

The bus duct switches shall be installed with slack cable extended to a junction box.

The DX units shall all be fully connected and all the emergency panels shall be installed and connected. Line side closet riser conduit work shall be installed.

NOTE: All coordination shall be included - along with all sleeves and associated fire stopping.

**Deduct Alternate No. 31 - Floor 47**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 32 - Floor 48**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 33 - Floor 49**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 34 - Floor 50**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 35 - Floor 51**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 36 - Floor 52**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 37 - Floor 53**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 38 - Floor 54**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 39 - Floor 55**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 40 - Floor 56**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Deduct Alternate No. 41 - Floor 57**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

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<u>Deduct Alternate No. 42 – Floor 58</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 43 – Floor 59</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 44 – Floor 60</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 45 – Floor 61</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 46 – Floor 62</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 47 – Floor 63</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 48 – Floor 70</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 49 – Floor 71</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 50 – Floor 72</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 51 – Floor 73</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 52 – Floor 74</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 53 – Floor 75</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>

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<u>Deduct Alternate No. 54 - Floor 76</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 55 - Floor 77</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 56 - Floor 78</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 57 - Floor 79</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 58 - Floor 80</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 59 - Floor 81</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 60 - Floor 82</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 61 - Floor 83</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 62 - Floor 84</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 63 - Floor 85</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 64 - Floor 86</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>
<u>Deduct Alternate No. 65 - Floor 87</u>	
Package E-1	Deduct \$ <u>(6,500)</u>
Package E-2	Deduct \$ <u>(31,000)</u>

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**Deduct Alternate No. 66 - Floor 88**  
**Package E-1**

Deduct \$ (6,500)

**Package E-2**

Deduct \$ (31,000)

**Alternate No. 87 - 102**

In the event that the Contractor is directed to delete the branch circuit light and power, as well as the electric flushometer and faucet controls for the uncommitted floors - 47 through 83<sup>rd</sup> floors and 70 through 88<sup>th</sup> floors - for the toilet rooms and janitors closets - except for the electrical work for emergency power requirements, life safety or code mandated systems, sleeves, fire stopping and coordination.  
 (Emergency fixtures in such areas shall be supported in an appropriate manner)

**Deduct Alternate No. 67 - Floor 47**  
**Package E-2**

Toilet Rooms Deduct \$ (47,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 68 - Floor 48**  
**Package E-2**

Toilet Rooms Deduct \$ (47,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 69 - Floor 49**  
**Package E-2**

Toilet Rooms Deduct \$ (47,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 70 - Floor 50**  
**Package E-2**

Toilet Rooms Deduct \$ (47,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 71 - Floor 51**  
**Package E-2**

Toilet Rooms Deduct \$ (47,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 72 - Floor 52**  
**Package E-2**

Toilet Rooms Deduct \$ (47,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 73 - Floor 53**  
**Package E-2**

Toilet Rooms Deduct \$ (47,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 74 - Floor 54**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 75 - Floor 55**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)

Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 76 - Floor 56**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)

Janitors closet Deduct \$ (1,400)

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**Deduct Alternate No. 77 - Floor 57**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 78 - Floor 58**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 79 - Floor 59**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 80 - Floor 60**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 81 - Floor 61**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 82 - Floor 62**  
**Package E-2**

Toilet Rooms Deduct \$ (46,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 83 - Floor 63**  
**Package E-2**

Toilet Rooms Deduct \$ (55,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 84 - Floor 70**  
**Package E-2**

Toilet Rooms Deduct \$ (57,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 85 - Floor 71**  
**Package E-2**

Toilet Rooms Deduct \$ (42,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 86 - Floor 72**  
**Package E-2**

Toilet Rooms Deduct \$ (42,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 87 - Floor 73**  
**Package E-2**

Toilet Rooms Deduct \$ (42,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 88 - Floor 74**  
**Package E-2**

Toilet Rooms Deduct \$ (42,000)  
 Janitors closet Deduct \$ (1,400)

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<b><u>Deduct Alternate No. 89 – Floor 75</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 90 – Floor 76</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 91 – Floor 77</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 92 – Floor 78</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 93 – Floor 79</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 94 – Floor 80</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 95 – Floor 81</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 96 – Floor 82</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 97 – Floor 83</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 98 – Floor 84</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 99 – Floor 85</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>
<b><u>Deduct Alternate No. 100 – Floor 86</u></b> <b>Package E-2</b>	Toilet Rooms	Deduct \$ <u>(42,000)</u>
	Janitors closet	Deduct \$ <u>(1,400)</u>

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**Deduct Alternate No.101– Floor 87**  
**Package E-2**

Toilet Rooms Deduct \$ (42,000)  
 Janitors closet Deduct \$ (1,400)

**Deduct Alternate No. 102 – Floor 88**  
**Package E-2**

Toilet Rooms Deduct \$ (42,000)  
 Janitors closet Deduct \$ (1,400)

**Alternate No. 103 – 139**

In the event that the Contractor is directed to delete the branch circuit light and power for the uncommitted floors – 47 through 63<sup>rd</sup> floors and 70 through 88<sup>th</sup> floors – for the service elevator lobbies - except for the electrical work for emergency power requirements, life safety or code mandated systems, sleeves, fire stopping and coordination.

**Deduct Alternate No. 103 – Floor 47**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 104 – Floor 48**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 105 – Floor 49**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 106 – Floor 50**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 107 – Floor 51**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 108 – Floor 52**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 109 – Floor 53**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 110 – Floor 54**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 111 – Floor 55**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 112 – Floor 56**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 113 – Floor 57**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 114– Floor 58**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 115 – Floor 59**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 116 – Floor 60**  
**Package E-2**

Deduct \$ (6,000)

**Deduct Alternate No. 117 – Floor 61**  
**Package E-2**

Deduct \$ (6,000)

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<u>Deduct Alternate No. 118 - Floor 62</u> Package E-2	Deduct \$ <u>(5,500)</u>
<u>Deduct Alternate No. 119 - Floor 63</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 120 - Floor 70</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 121 - Floor 71</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 122 - Floor 72</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 123 - Floor 73</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 124 - Floor 74</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 125 - Floor 75</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 126 - Floor 76</u> Package E-2	Deduct \$ <u>(4,500)</u>
<u>Deduct Alternate No. 127 - Floor 77</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 128 - Floor 78</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 129 - Floor 79</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 130 - Floor 80</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 131 - Floor 81</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 132 - Floor 82</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 133 - Floor 83</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 134 - Floor 84</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 135 - Floor 85</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 136 - Floor 86</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 137 - Floor 87</u> Package E-2	Deduct \$ <u>(5,200)</u>
<u>Deduct Alternate No. 138 - Floor 88</u> Package E-2	Deduct \$ <u>(5,200)</u>

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**Deduct Alternates No. 139 through No. 143**

In the event that the Contractor is directed to delete the Cost Reduction Items listed in CR-HAC-1 (Reference Drawing CR-E-009 and CR-E-1.091)

**Deduct Alternate No. 139**

In the event that the Contractor is directed to delete feeder PP-91A #1 to AC 91-4 from panel PP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (21,000)

**Deduct Alternate No. 140**

In the event that the Contractor is directed to delete feeder PP-91A #3 to AC 91-1 from panel PP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (22,000)

**Deduct Alternate No. 141**

In the event that the Contractor is directed to delete feeder PP-91A #4 to AC 91-2 from panel PP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (21,000)

**Deduct Alternate No. 142**

In the event that the Contractor is directed to delete feeder PP-91A #5 to HV 91-3 from panel PP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (4,900)

**Deduct Alternate No. 143**

In the event that the Contractor is directed to delete feeder PP-91A #6 to HV 91-4 from panel PP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (4,900)

**Deduct Alternates No. 144 through No. 155**

In the event that the Contractor is directed to delete the Cost Reduction Items listed in CR-HAC-2 (Reference Drawing CR-E-008, CR-E-009, CR-E-009A, CR-E-1.004, CR-E-1.006, CR-E-1.0045, CR-E-1.091, CR-E-1.092, CR-E-1.093 and CR-E-1.103)

**Deduct Alternate No. 144**

In the event that the Contractor is directed to delete feeder ELPP-3A #16 to P-4-2 from panel ELPP-3A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,100)

**Deduct Alternate No. 145**

In the event that the Contractor is directed to delete feeder ELPP-3B #20 to P-4-4 from panel ELPP-3B to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,500)

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**Deduct Alternate No. 146**

In the event that the Contractor is directed to delete feeder EPP-5A #13 to P-6-6 from panel EPP-5A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (8,000)

**Deduct Alternate No. 147**

In the event that the Contractor is directed to delete feeder EPP-5A #18 to P-3 from panel EPP-5A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (18,000)

**Deduct Alternate No. 148**

In the event that the Contractor is directed to delete feeder EPP-56B #3 to P-56-6 from panel EPP-56B to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (31,000)

**Deduct Alternate No. 149**

In the event that the Contractor is directed to delete feeder EPP-91A #3 to P-91-3 from panel EPP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (3,000)

**Deduct Alternate No. 150**

In the event that the Contractor is directed to delete feeder EPP-92A #18 to P-92-2 from panel EPP-92A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (3,100)

**Deduct Alternate No. 151**

In the event that the Contractor is directed to delete feeder PP-93A #16 to P-103-17 from panel PP-93A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (4,000)

**Deduct Alternate No. 152**

In the event that the Contractor is directed to delete feeder EPP-103C #7 to P-103-17 from panel EPP-103C to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (3,000)

**Deduct Alternate No. 153**

In the event that the Contractor is directed to delete feeder EPP-103C #1 to P-103-12 from panel EPP-103C to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (29,000)

**Deduct Alternate No. 154**

In the event that the Contractor is directed to delete feeder EPP-103D #5 to P-103-19 from panel EPP-103D to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (23,000)

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**Deduct Alternate No. 155**

In the event that the Contractor is directed to delete feeder EPP-104A #11 to ET-104-2 from panel EPP-104A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (3,100)

**Deduct/Add Alternates No. 156 through No. 170**

In the event that the Contractor is directed to delete the Cost Reduction Items and add the Cost Increase Items for fewer but higher capacity items listed in CR-HAC-3 (Reference Drawing CR-E-009A, CR-E-1.1003A)

**Deduct Alternate No. 156**

In the event that the Contractor is directed to delete feeder EPP-103A #1 to P-103-13 from panel EPP-103A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (21,000)

**Deduct Alternate No. 157**

In the event that the Contractor is directed to delete feeder EPP-103A #2 to P-103-14 from panel EPP-103A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (22,000)

**Deduct Alternate No. 158**

In the event that the Contractor is directed to delete feeder EPP-103B #1 to P-103-15 from panel EPP-103B to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (19,000)

**Deduct Alternate No. 159**

In the event that the Contractor is directed to delete feeder EPP-103B #2 to P-103-16 from panel EPP-103B to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (15,000)

**Deduct Alternate No. 160**

In the event that the Contractor is directed to delete feeder EPP-103C #1 to P-103-17 from panel EPP-103C to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (30,000)

**Deduct Alternate No. 161**

In the event that the Contractor is directed to delete feeder EPP-103C #8 to WF-103-2 from panel EPP-103C to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (2,700)

**Deduct Alternate No. 162**

In the event that the Contractor is directed to delete feeder EPP-103C #11 to WF-103-3 from panel EPP-103C to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (2,700)

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**Add Alternate No. 163**

In the event that the Contractor is directed to increase feeder capacity EPP-103B #4 feeding P-103-4 from panel EPP-103B to include upgrading circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning per drawing CR-E-009A.

Package E-1

Add \$ 13,000

**Add Alternate No. 164**

In the event that the Contractor is directed to increase feeder capacity EPP-103C #2 feeding P-103-5 from panel EPP-103C to include upgrading circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning per drawing CR-E-009A.

Package E-1

Add \$ 12,000

**Add Alternate No. 165**

In the event that the Contractor is directed to increase feeder capacity EPP-103C #3 feeding P-103-6 from panel EPP-103C to include upgrading circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning per drawing CR-E-009A.

Package E-1

Add \$ 11,000

**Add Alternate No. 166**

In the event that the Contractor is directed to increase feeder capacity EPP-103C #4 feeding P-103-7 from panel EPP-103C to include upgrading circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning per drawing CR-E-009A.

Package E-1

Add \$ 9,000

**Add Alternate No. 187**

In the event that the Contractor is directed to increase feeder capacity EPP-103D #1 feeding P-103-8 from panel EPP-103D to include upgrading circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning per drawing CR-E-009A.

Package E-1

Add \$ 8,000

**Add Alternate No. 168**

In the event that the Contractor is directed to increase feeder capacity EPP-103D #2 feeding P-103-9 from panel EPP-103D to include upgrading circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning per drawing CR-E-009A.

Package E-1

Add \$ 7,000

**Add Alternate No. 169**

In the event that the Contractor is directed to increase the bus capacity of panel EPP-103C to 1,600 amperes

Package E-1

Add \$ 4,000

**Add Alternate No. 170**

In the event that the E1 Contractor is directed per drawing CR E- 002 to increase the size of fuses on DS-HD feeding EPP-103C

Add \$ 300

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**Deduct Alternates No. 171 through No. 183 (V-4)**

In the event that the Contractor is directed to delete the Cost Reduction Items listed in CR-V – 4 (Reference Drawing CR-E-009 and CR-E-1.091M, CR-E-1.092 CR-E-1.092M, CR-E-1.104, CR-E-1.104M)

**Deduct Alternate No. 171**

In the event that the Contractor is directed to delete feeder ELPP-91A #5 to F-91-5 from panel ELPP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,000)

**Deduct Alternate No. 172**

In the event that the Contractor is directed to delete feeder ELPP-91A #8 to F-91-6 from panel ELPP-91A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,300)

**Deduct Alternate No. 173**

In the event that the Contractor is directed to delete feeder EPP-92A #1 to F-92-5 from panel EPP-92A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,400)

**Deduct Alternate No. 174**

In the event that the Contractor is directed to delete feeder EPP-92A #14 to F-92-6 from panel EPP-92A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,700)

**Deduct Alternate No. 175**

In the event that the Contractor is directed to delete feeder EPP-92A #18 to P-92-2 from panel EPP-92A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (3,300)

**Deduct Alternate No. 176**

In the event that the Contractor is directed to delete feeder PP-93A #9 to AC-92-1 from panel PP-93A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (10,100)

**Deduct Alternate No. 177**

In the event that the Contractor is directed to delete feeder PP-93A #10 to AC-92-2 from panel PP-93A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (9,700)

**Deduct Alternate No. 178**

In the event that the Contractor is directed to delete feeder PP-93A #16 to P-93-2 from panel PP-93A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (4,200)

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**Deduct Alternate No. 179**

In the event that the Contractor is directed to delete feeder EPP-104B #13 to F-104-5 from panel EPP-104B to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (3,400)

**Deduct Alternate No. 180**

In the event that the Contractor is directed to delete feeder MCC-104A#1 to F-104-7 from Motor Control Center MCC-104A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (4,800)

**Deduct Alternate No. 181**

In the event that the Contractor is directed to delete feeder MCC-104A#3 to F-104-6 from Motor Control Center MCC-104A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (4,600)

**Deduct Alternate No. 182**

In the event that the Contractor is directed to delete feeder MCC-104A#4 to F-104-8 from Motor Control Center MCC-104A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,100)

**Deduct Alternate No. 183**

In the event that the Contractor is directed to delete feeder MCC-104A#5 to F-104-79 from Motor Control Center MCC-104A to include deleting circuit breaker/fuses, conduit and wire, disconnect switch/VFD, terminations and testing/commissioning. (Sleeves, fire stopping and coordination shall remain in the base bid.)

Package E-1

Deduct \$ (5,400)

**Alternate No. 184**

INTENTIONALLY DELETED

**Alternate No. 185**

INTENTIONALLY DELETED

**Alternate No. 186**

INTENTIONALLY DELETED

**Alternate No. 187**

The base scope for 4-pair UTP horizontal cabling in this scope is category 6E(Enhanced). As an add alternate price, substitute category 6A(Augmented) UTP cabling and jacks for all horizontal outlet routes.

Add \$ 73,000

**Alternate No. 188**

Within the base scope for this project, there is no wireless LAN(WLAN). As an add horizontal category 6E alternate, furnish and install all cable plant for all wireless LAN outlets as shown on plans, inclusive of associated patching.

Add \$ 584,000

**Alternate No. 189**

Within the base scope for this project, there is no wireless LAN(WLAN). As an add horizontal category 6A alternate, furnish and install complete cable plant for all wireless LAN outlets as shown on plans, inclusive of associated patching.

Add \$ 603,000

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**Alternate No. 190**

Within the base scope for this project, there is no wireless LAN(WLAN). As an add alternate, furnish, install, integrate, program, test, and leave fully operational, a 802.11N wireless LAN access system consisting of CISCO access points to provide coverage in all base building areas where WLAN outlets are shown.

Add \$ 331,000

**Alternate No. 191**

Within the base scope for this project, there are EMT base conduits being homerun directly from outlet locations back to the nearest IDF node. As a deduct alternate, Contractor to run cabling mounted tightly to the ceiling above via free air in all secure spaces, and via conduit in all shared spaces.

Deduct \$ (145,000)

**Alternate No. 192**

INTENTIONALLY DELETED

**Alternate No. 193**

INTENTIONALLY DELETED

**Alternate No. 194**

In the event that the Contractor furnishes and installs Voice and Network Solution Systems manufactured by Avaya

Add \$ 700,000

**Alternate No. 195**

In the event that the Contractor furnishes and installs Voice and Network Solution Systems manufactured by Nortel

Add \$ 610,000

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**UNIT PRICE SCHEDULE**

**1. HEAT TRACE:**

A. Installation of Heat Trace- raceways, wiring, circuit breakers, etc.-  
 (all components FBO), for a complete installation

\$ 15 /L.F.

B. Furnish and install one set up to operate heat tracing arrangement, including thermostat  
 and cable relay. Include 50 ft. of heat trace cable and a lockable disconnect

\$ 4,100 /each

**2. AUTOMATIC TRANSFER SWITCHES - Enclosed**

**265/460 volts**  
**3 phase - 4 wire**

		With isolation bypass
200A	\$ <u>17,000</u>	\$ <u>29,000</u>
400A	\$ <u>27,000</u>	\$ <u>37,000</u>
600A	\$ <u>39,000</u>	\$ <u>39,000</u>
800A	\$ <u>42,000</u>	\$ <u>42,000</u>

**265/460 volt**

	<b>3 phase - 3 wire</b>	<b>3 phase - 4 wire</b>
600A	\$ <u>24,000</u>	\$ <u>26,000</u>
800A	\$ <u>28,000</u>	\$ <u>28,000</u>
1,000A	\$ <u>34,000</u>	\$ <u>36,000</u>
1,200A	\$ <u>40,000</u>	\$ <u>43,000</u>
1,600A	\$ <u>43,000</u>	\$ <u>45,000</u>
2000A	\$ <u>54,000</u>	\$ <u>57,000</u>
3000A	\$ <u>86,000</u>	\$ <u>90,000</u>

**3. LIGHT FIXTURES**

In the event that the Contractor is directed to add or deduct lighting fixtures include prices as follows  
 (Reference specifications 16501-20, section 1.36 for further details)

This is to include all Special "S" type fixtures.

(This shall include light fixture outlet, fixture whip, fixture installation, lamps plus 15' of raceway and  
 wire.)

Light Fixture outlet completely circuited including 15 ft. of raceway and wiring.		
Voltage	BX type raceway (\$ / each)	EMT type raceway (\$ / each)
120	270	450
277	290	470

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**UNIT PRICE SCHEDULE – continued**

The above installation unit cost shall be added to the below fixture installation costs if necessary for complete unit cost.

Light Fixtures – furnished & installed, including lamps	
Type	Cost (\$ / each)
F1	970
F2	425
F3	650
F4	790
F6	580
F8 Not Used	N/A
F7	470
F8	620
F9	933
F10	700
EM	560
EX-2	475
EX-6	475
EX-8	475

**4. LIGHT SWITCHES**

Light Switches - completely circuited including box, cover plate, fifteen feet of conduit and wire.			
Item	Type of Switch	BX type raceway (\$ / each)	EMT type raceway (\$ / each)
a	Single Pole Lighting	300	480
b	3-Way Lighting	320	500

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**UNIT PRICE SCHEDULE - continued**

**5. RECEPTACLES**

Receptacles - completely circuited including box and cover plate (with 20' conduit and wire).			
Item	Type of Receptacle	BX type raceway (\$ / each)	EMT type raceway (\$ / each)
a	Duplex Receptacle 15A, 125V	376	615
b	Weatherproof GFI Receptacle 20A, 125V	730	765
c	Single Twistlock Receptacle 20A, 250V	410	707
d	Single Twistlock Receptacle 30A, 250V	443	765
e	Single Twistlock Receptacle 50A, 250V	779	1,022
f	Ground Fault Protected Receptacle 125V	460	670
g	Telephone Wall Outlet with 1/2" conduit to ceiling	N/A	460
h	Telephone Floor Outlet Poke Through	N/A	1,800
i	Floor Box Preset Type	N/A	1,600
j	Floor Box, Afterset Type, Including Chopping and Carpeting	N/A	2,480
k	Duplex Receptacle 15A, 125V; Floor, Poke Through	1,620	2,000
l	Floor Telephone/Signal Outlet Assembly, Poke Through (Excluding conduit)	2,600	2,970
m	Double Duplex Wall "Quad" 15A, 125V ea. (3 Per Circuit)	474	783

\* = Minimum of six (6) per circuit  
 \*\* = Up to fifty (50) feet of raceway

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UNIT PRICE SCHEDULE - continued

6. CONDUIT

Conduit - Installed including all necessary fittings, hangers, etc. (cost per linear foot):								
Size (Inches)	EMT		RIGID GALVANIZED		RIGID ALUMINUM		FLEXIBLE METAL	
	conc.	exposed	conc.	exposed	conc.	exposed	6' tall	exposed
¼	18.76	19.60	33.70	35.39	27	27.87	100.44	28.35
1	23.07	23.59	35.67	37.30	30.20	31.13	139.80	41
1½	31.38	33.03	42.81	44.85	37.94	39.10	149.70	77.19
2	42.26	44.48	64.36	67.74	45.36	46.77	347.16	101.84
2½	57.29	59	80.78	85.03	61.84	63.54	465.18	129.54
3	66.77	68.84	100.33	105.61	76	78.44	560.88	158.84
3½	76.17	83.09	121.18	127.55	96.45	98.88	739.62	208.10
4	87.27	91.86	141.81	149.27	110.49	110.49	909.72	256.92
5	N/A	N/A	317.61	327.44	152.33	157	N/A	N/A

7. WIRE

Wire and Cable - Installed in conduit (\$ / foot)			
Size	THHN-CU Wire	Size	THHN-CU Wire
14 AWG	1.42	1/0 AWG	8.16
12 AWG	1.64	2/0 AWG	9.37
10 AWG	2.02	3/0 AWG	10.50
8 AWG	2.83	4/0 AWG	12.25
6 AWG	3.68	250 MCM	13.79
4 AWG	4.68	300 MCM	15.70
2 AWG	6.31	350 MCM	17.51
1 AWG	7.36	400 MCM	19.13
		500 MCM	21.77

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UNIT PRICE SCHEDULE - continued

Wire and Cable - Installed in conduit (\$ / foot)			
Size	XHHW-CU Wire	Size	XHHW -CU Wire
14 AWG	1.58	1/0 AWG	8.80
12 AWG	1.88	2/0 AWG	10.28
10 AWG	2.37	3/0 AWG	11.95
8 AWG	3.14	4/0 AWG	13.87
6 AWG	3.98	250 MCM	15.71
4 AWG	4.99	300 MCM	17.78
2 AWG	6.31	350 MCM	19.37
1 AWG	7.48	400 MCM	22.01
		500 MCM	22.72

750 MCM single conductor medium voltage cable as specified installed in conduit \$ 44 /ft  
 Triplex Medium Voltage cable as specified installed in conduit \$ 186 /ft  
 Triplex Medium Voltage cable as specified installed in free air \$ 180 /ft  
 Medium voltage splice for triplex cable \$ 13,200 /splice all cables  
 Medium Voltage Splice for 3 Single conductors \$ 132 /complete 3 phase splice

**8. CIRCUIT BREAKERS**

Circuit Breaker & Panel Boards (with fusible switching)			
Circuit Breaker Type Bolt On Type - furnished, installed and connected, including circuit connections. With 15A or 20A single pole breakers.			
Item	Panelboard No. of Circuits	120/208 Volt	277/480 Volt
a	8	4,650	3,320
b	12	3,020	3,420
c	18	3,250	3,780
d	24	4,150	5,130
e	30	4,880	6,100
f	36	5,650	7,070
g	42	6,230	7,840

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**UNIT PRICE SCHEDULE - continued**

**9. TRANSFORMERS**

Transformers - furnished, installed and terminated complete. (480 to 120/208 volt, 3P dry type, K-13 rated)		
Size (KVA)	Floor mounted cost (\$/each)	Trapeza mounted Cost (\$ / each)
6	6,400	7,800
9	7,000	8,500
15	5,950	8,980
30	6,920	8,260
45	9,250	10,065
75	12,462	12,982
112.5	17,400	25,200
150	22,320	29,800
225	33,560	42,100
300	42,540	51,900
500	71,190	82,500
750	79,550	95,500

**10. SAFETY SWITCHES**

Safety Switches - unfused, 3P			
Item No.	Switch Amperage	250 Volt (\$ / each)	600 Volt (\$ / each)
a	30	695	820
b	60	1,090	1,180
c	100	1,455	1,590

Safety Switches - fused, 3Æ			
Item No.	Switch Amperage	250 Volt (\$ / each)	600 Volt (\$ / each)
a	30	788	940
b	60	1,200	1,290
c	100	1,640	1,800
d	200	2,430	2,900

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UNIT PRICE SCHEDULE - continued

11. BUS DUCT

A. Furnish and install totally enclosed non-ventilated copper bus duct, 3 phase, full neutral, internal ground.

	Plug-in	Feeder
1600 Ampere	\$ <u>1,200</u> /l.f.	\$ <u>1,200</u> /l.f.
2000 Ampere	\$ <u>1,500</u> /l.f.	\$ <u>1,500</u> /l.f.
2500 Ampere	\$ <u>1,750</u> /l.f.	\$ <u>1,750</u> /l.f.
3000 Ampere	\$ <u>1,800</u> /l.f.	\$ <u>1,800</u> /l.f.
4000 Ampere	\$ <u>2,170</u> /l.f.	\$ <u>2,170</u> /l.f.
5000 Ampere	\$ <u>2,580</u> /l.f.	\$ <u>2,580</u> /l.f.

B. Furnish and install bus duct plug-in 3 pole, 480 volt disconnect switch with fuses and an oversized gutter

60 ampere	\$ <u>2,030</u> each,
100 ampere	\$ <u>2,940</u> each
200 ampere	\$ <u>5,300</u> each
400 ampere	\$ <u>11,250</u> each
800 ampere	\$ <u>31,200</u> each

12. MISCELLANEOUS

Miscellaneous	
Description	Cost (\$ / each)
Connect Motor - 120V Fractional HP	280
Connect Motor - 480V, 3 Phase, 1/2 thru 5 HP	360
Connect Motor - 480V, 3 Phase, 7 1/2 thru 10 HP	540
Connect Motor - 480V, 3 Phase, 15, 20 or 25 HP	720
Connect Motor - 480V, 3 Phase, 30 or 40 HP	900
Connect Motor - 480V, 3 Phase, 50 HP	1,150
Connect Electric HW Heater	320
Connect Electric Heat Trace	540
Lock-out stop pushbutton station - furnished, installed and connected	1,370
Core drilling concrete (1/2 inch / inch)	600
Core drilling concrete or masonry - (2 1/2" - 4")	1,660

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LABOR

Labor rates shall remain in effect for the duration of the Labor Contract and escalate per the renewed Labor Contract.

a.	Electrician Journeyman	(straight-time)	\$ 113.07 / hour
		(premium-time)	\$ 37.29 / hour
		(overtime)	\$ 150.34 / hour
b.	Electrician Foreman	(straight-time)	\$ 121.50 / hour
		(premium-time)	\$ 39.70 / hour
		(overtime)	\$ 161.20 / hour
c.	Draftsman / Engineer	(straight-time)	\$ 72.00 / hour
		(premium-time)	\$ 43.00 / hour
		(overtime)	\$ 115.00 / hour



RIDER "D"  
INSURANCE RIDER

PROJECT: 1 WORLD TRADE CENTER, "THE FREEDOM TOWER"  
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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.

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INSURANCE RIDER

- 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-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 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.



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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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**OWNER CONTROLLED INSURANCE PROGRAM**  
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May 18, 2007

Attachment DX-1

**Summary of OCIP Coverages**

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May 18, 2007

**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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May 18, 2007

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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NEW YORK, NEW YORK

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Ex. 4

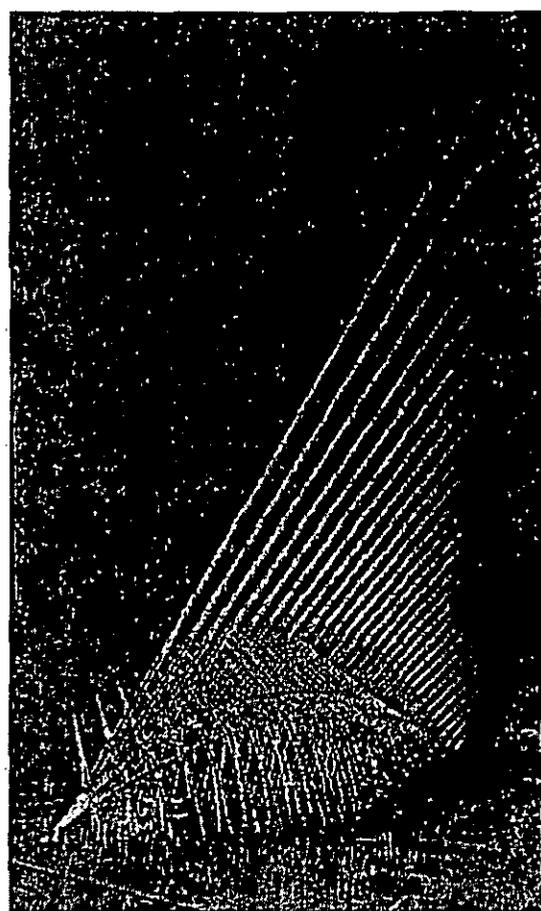
RIDER "F"  
NON-DISCLOSURE AND CONFIDENTIALITY AGREEMENT  
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"  
NEW YORK, NEW YORK

May 11, 2007



**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 Act<sup>1</sup>; 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 Information<sup>2</sup>; 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

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<sup>1</sup> 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)

<sup>2</sup> 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.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
That a facility is designed with extensive security features.	<b>UNMARKED</b>	
Identity of individual security systems installed at the facility.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Time frame or schedules showing project progress.	<b>UNMARKED</b>	
The general areas of the project or where security systems will be installed.	<b>UNMARKED</b>	
Announcement of security subcontract awards.	<b>UNMARKED</b>	
Results of site survey documentation or review that address specific physical security vulnerabilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	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	<b>UNMARKED</b>	<b>UNMARKED</b> when referring to commercially available security systems, accepted

security system(s).	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	construction techniques, information which is in the public domain and/or when security systems will be installed in area accessible to public view.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> when referring to methods of defeating the security system(s) and/or covert/unexposed security systems.
Design drawings with specific forced entry ratings	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Shop drawings that provide specific rating information	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
What specific security system/hardware model number is installed at a specific location?	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	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	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when data is commercially available in the public domain.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when the information is commercially available or in the public domain.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> If equipment is readily observable to the public.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	

countermeasures when referring to a specific site or project location.		
Blast protection design requirements for new or existing PANYNJ facilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	
Blast analysis that addresses specific vulnerabilities to new or existing PANYNJ facilities.	<b>CONFIDENTIAL &amp; PRIVILEGED</b>	If specific weaknesses are reflected or maximum tolerances are provided.
Structural plans, details, and specifications.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> when generic criteria are used. Site-specific information generated from generic criteria is <b>UNMARKED</b> .  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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.	<b>UNMARKED</b>  <b>CONFIDENTIAL &amp; PRIVILEGED</b>	<b>UNMARKED</b> if generic design criteria/terms are used.  <b>CONFIDENTIAL &amp; PRIVILEGED</b> 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	<b>CONFIDENTIAL &amp;</b>	<b>CONFIDENTIAL &amp;</b>

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

**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><b>Security Programs and Contingency Plans</b></p>	<p><b>SSI</b></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><b>Security Directives</b></p>	<p><b>SSI</b></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><b>Information Circulars</b></p>	<p><b>SSI</b></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>
<b>Performance Specifications</b>	<b>SSI</b>	<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>
<b>Vulnerability Assessments</b>	<b>SSI</b>	<p>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>

<p><b>Security Inspection or Investigative Information.</b></p>	<p><b>SSI</b></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><b>SSI</b></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.
<b>Threat Information</b>	<b>SSI</b>	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.
<b>Security Measures</b>	<b>SSI</b>	<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>
<b>Security Screening Information</b>	<b>SSI</b>	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>
<b>Security Training Materials</b>	<b>SSI</b>	<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><b>Identifying Information of Certain Transportation Security Personnel</b></p>	<p><b>SSI</b></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><b>Critical Aviation or Maritime Infrastructure Asset Information</b></p>	<p><b>SSI</b></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><b>Systems Security Information</b></p>	<p><b>SSI</b></p>	<p>Any information involving the security of</p>

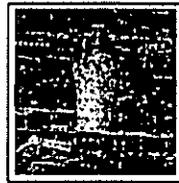
		operational or administrative data systems operated by the Federal government that have been identified by the DOT or DHS as critical to aviation or maritime transportation safety or security, including automated information security procedures and systems, security inspections, and vulnerability information concerning those systems.
<b>Confidential Business Information</b>	<b>SSI</b>	<p>Solicited or unsolicited proposals received by DHS or DOT, and negotiations arising therefrom, 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>
<b>Research and Development</b>	<b>SSI</b>	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.
<b>Other Information</b>	<b>SSI</b>	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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6. Authorized Personnel Project Lists	(not included)
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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**

<b>Confidential and Privileged</b>	
Document Control #:	
Identifier:	
Agency:	
Recipient:	
Transmittal Approved by:	
Date:	
 <b>THE PORT AUTHORITY OF NY &amp; NJ</b>	

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.

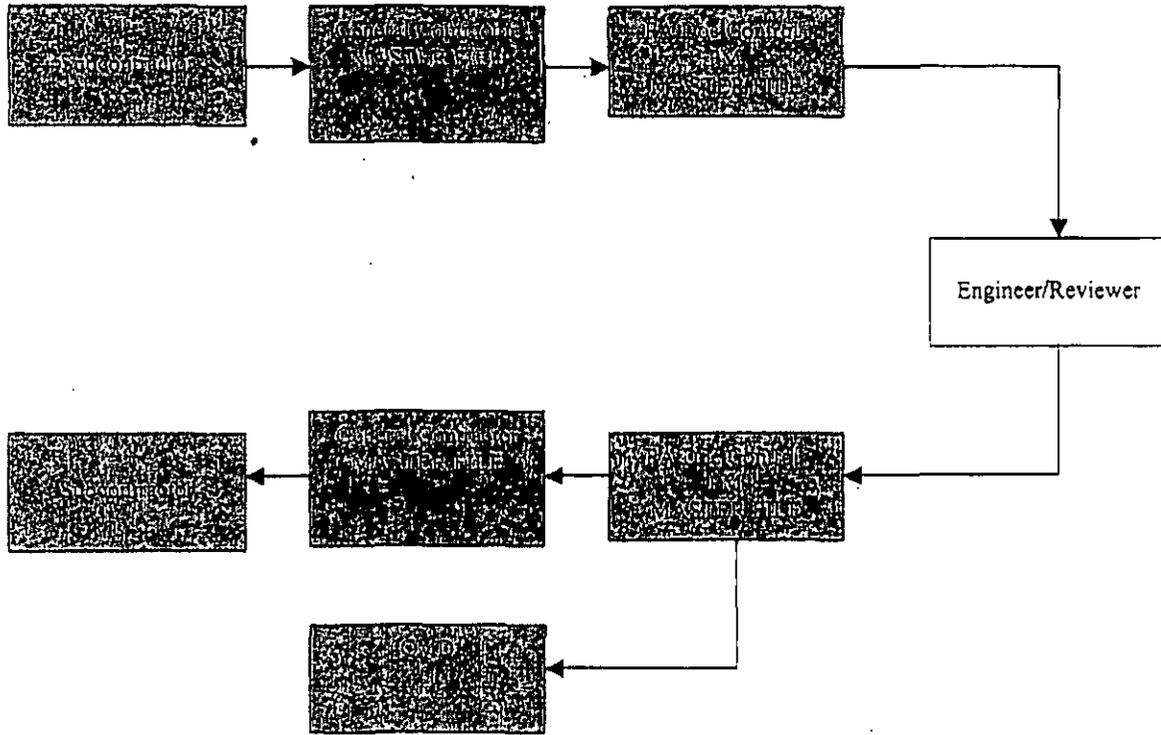
The engineer/ architect reviewer completes the review within the required time frame, maintains one copy for its records, and returns the marked-up remainder to PA Document Control. A TAF is required to be signed by PA Document Control and returned to the engineer/ architect reviewer.

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](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](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/verfilterliste.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 firms 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-6: 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://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 6-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 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.
- 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 EA1 – 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. CO<sub>2</sub> 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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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 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.
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 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 Purgung: Flush out must 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 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

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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.

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- 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  
GENERAL REQUIREMENTS  
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"  
NEW YORK, NEW YORK

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](mailto: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  
(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 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 interfor-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](http://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 1 800 834-2110. 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(i)).

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) 485-6800.

**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.



# 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:
  - the purchases shall be considered the legal equivalent of purchases made directly by the above-named governmental entity; and
  - 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
  - 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	ZIP code
New York	New York	10003
Name and title of authorized representative of governmental entity		
A. Paul Blanco		
Signature of authorized representative of governmental entity	Date	
	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	ZIP code
New York	New York	10003
Name of authorized representative of agent		
Michael B. Francois		
Signature of authorized representative of agent	Date	
	10/16/2007	

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 1 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 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 \_\_\_\_\_ 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) <i>Michael B. Francois</i>	Date 10/16/2007
Type or print the name that appears in the signature box Michael B. Francois	



New York State Department of Taxation and Finance

New York State Taxes on Fuel (Articles 12-A, 13-A, 29, and 29)

FT-122

(7/05)

# Fuel Tax Exempt Purchase Certificate for an Agent of a New York Governmental Entity

Valid for purchases made on or after July 1, 2005.

To be completed by the purchaser and given to the seller.

Read instructions on the back before completing or accepting this form.

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 (with 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	



RIDER "J"  
TEMPORARY SERVICES FOR CONSTRUCTION PURPOSES  
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"  
NEW YORK, NEW YORK

May 29, 2008

A. GENERAL REQUIREMENTS

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**

---

("The Company")

---

**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) \_\_\_\_\_

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

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:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

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:
- 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
  - 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
  - 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:
- 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

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 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

Rev: 5/28/2008



**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."

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	PROJECT	CONTRACTOR NO.	TRADE	TENANT	VALUE OF WORK	PAYMENT
J R R E Q	/ /								

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**

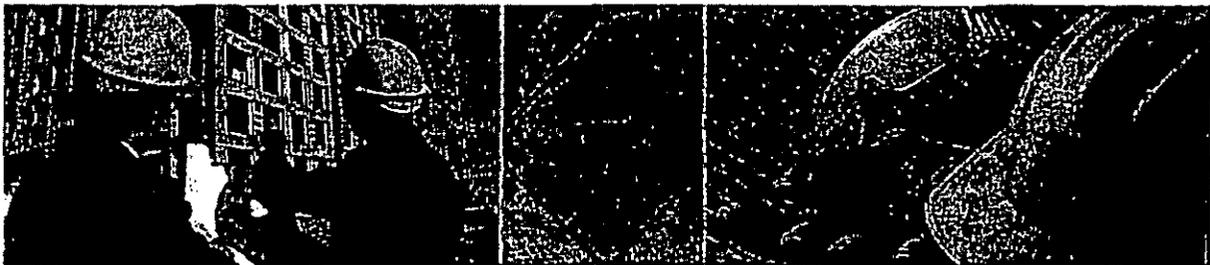
\_\_\_\_\_  
(NOTARY)



# Tishman Construction Safety Guidelines

*"Tishman Values Safety"*

Tishman Construction Corporation  
666 Fifth Avenue  
New York, NY 10103



INITIAL HERE  
*[Handwritten 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**

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### **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**

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### **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 ACCORDINGLY. (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**

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- 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](http://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.

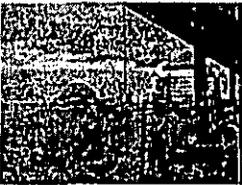
The closing conference is required to disclose apparent health and safety violations. Normally, citations are not issued during an inspection, but an "on site" citation may be issued by the inspector at the end of the inspection. All deviations from the inspection procedures by the inspector should be 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

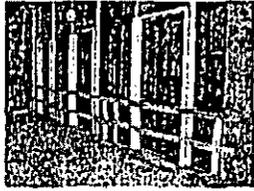
The contractor shall furnish a written fall protection plan for the scope of Unless otherwise contractually specified, it shall be the goal to achieve 100% fall protection (guardrails, safety nets, personal fall arrest systems, All conditions shall be controlled where there is a danger of employees or materials falling through floor openings, roof openings, holes, roof



*Orange Vertical Debris Nets*



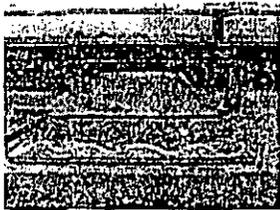
Perimeter Fall Protection



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*

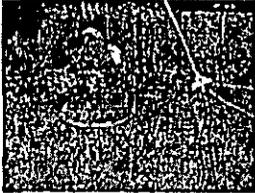
- ▶ Wall openings from which there is a drop of more than three feet shall be guarded.
- ▶ Runways shall be guarded by standard railing or the equivalent on all open sides 19 inches or more above the floor or ground level. A toeboard shall be provided on each exposed side when tools, machine

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.

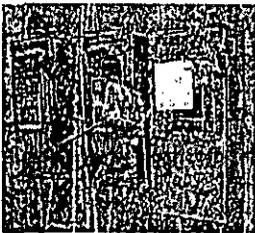


*Electrical cords attached to a Ground Fault Circuit Interrupter*

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)

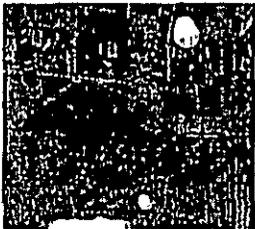


*Lockout/Tagout*

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.

- ▶ 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*

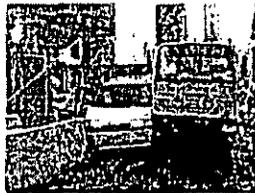
### 3.9 ILLUMINATION (CFR 1926.56)

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 newspaper.

### 3.10 STRUCK-BY AND FALL/FLYING OBJECTS

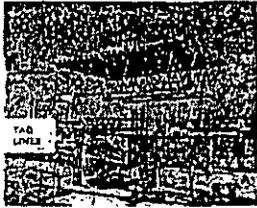
#### *Struck-by*

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.



*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))



*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)

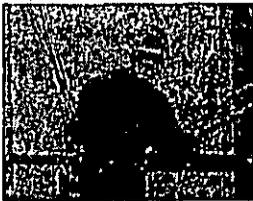
Facilities should be located no more than four stories or 60 feet above or below, nor more than 500 feet on the same level, from the work location of any person. Separate, clearly marked toilet facilities shall be provided for female employees.

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



Accessible fire Extinguisher

Fire extinguishers should be inspected regularly and kept clean and accessible. Hoses, horns, and dispensing components should be checked for blockage.

- ▶ 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*

<b>Top Rail:</b>	42" plus or minus 3"	200 lbs
<b>Mid Rail:</b>	1"x 6"	150 lbs
<b>Toe Board:</b>	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*

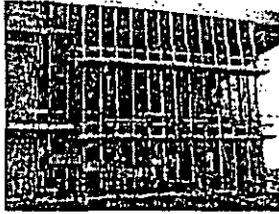
Where permanent or temporary stairways or suitable ramps are not provided, ladders to be used must meet the following guidelines:

- ▶ 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.)

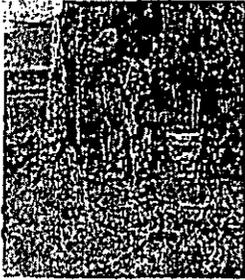
should be used when working, wheeling, dumping, shoveling, and handling concrete.

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:

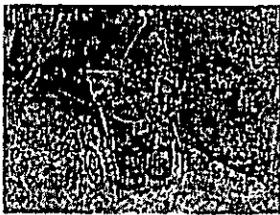


*Construction worker using a GFCI (Ground Fault Circuit Interrupter) with a power tool*

- ▶ 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)*

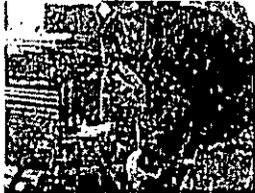


*Gas Cylinders*

- 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)*

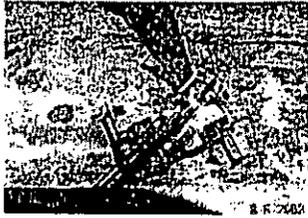


*Hot, eye protection and gloves*

- ▶ 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

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- 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: \_\_\_\_\_  
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\_\_\_\_\_

ACCIDENT:  
NONE REPORTED \_\_\_\_\_ YES \_\_\_\_\_ (see attached report)

VIOLATION/STOP WORK ORDER/ SUMMONSES: \_\_\_\_\_  
\_\_\_\_\_

NETTING INSPECTION \_\_\_\_\_





## 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	Resolution	Completion/Assigned Abatement
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				

\* See Tishman Safety Manager for additional instructions

INITIAL HERE  
6



**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.

#### RIDER "N"

#### 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.

**RIDER "N"**

## 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.
  - i. 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

## RIDER "N"

- 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.

**RIDER "N"**

- 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 (1) one or more of locations A through E on the diagram attached to these regulations as Exhibit A and (1i) 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: Doonway, 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

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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 2.1 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.

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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.

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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
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.

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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 PAPPD, 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.

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- 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.

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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 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.

### 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 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/Slow  
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

- v. 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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- 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.

Ex. 4

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RIDER "O"  
AVAILABLE DOCUMENTS  
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"  
NEW YORK, NEW YORK

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NEW YORK, NEW YORK

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Ex. 4

RIDER "Q"  
SITE LOGISTICS PLANS  
1 WORLD TRADE CENTER, "THE FREEDOM TOWER"  
NEW YORK, NEW YORK

October 17, 2007

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NEW YORK, NEW YORK

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**RIDER "S"**  
**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](http://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

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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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- 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

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**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).

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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.

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**EXHIBIT A**  
**WTC Identification Process - Disqualifying Crimes**  
**June 2006**

**Medium Level Access for Unescorted Access to Secure Access Control Areas**

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

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

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

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

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

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

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

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- (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

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WTC SITE SECURITY REQUIREMENTS  
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**EXHIBIT A**  
**WTC Identification Process - Disqualifying Crimes**  
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**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.

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- (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.

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Note \* No convictions in their lifetime since birth



RIDER "U"  
ADDITIONAL PROVISIONS  
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**RIDER "T"**  
**MILESTONE DATES**  
**1 WORLD TRADE CENTER, "THE FREEDOM TOWER"**  
**NEW YORK, NEW YORK**

June 12, 2008

TRADE: **ELECTRICAL (TOWER)**  
**Package E-1: Core and Shell**  
**Package E-2: Bus Duct & Load Side Fit-Out**  
**Package E-3: Medium Voltage Switchgear & Spot Networks**  
**Package E-4: Emergency Power System**

The following criteria defines the corresponding Milestone Dates included in the Lump Sum Trade Contract;

The Contractor has sufficiently completed all the **Electrical (Tower) - Core and Shell; Bus Duct & Load Side Fit-Out; Medium Voltage Switchgear & Spot Networks; and Emergency Power System** Work as necessary and required for the Construction Manager to commence Temporary Certificate of Occupancy Inspections on November 11, 2011.

A  




THE PORT AUTHORITY OF NY & NJ

# **Downtown Restoration Program The World Trade Center Site**

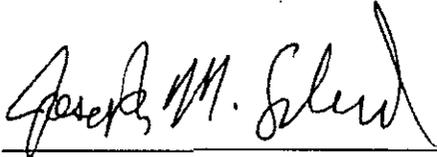
Revision Number 2.0 - 5/3/2010

## **Safety, Health and Environmental Program**

WTCC-PLA-026

## Approvals and Endorsements

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Date Issued: 5-3-2010

## Revision History

The following information describes changes made to this document. Entries should be made to the table below as information is added or revised.

Date	Revision	Description
5/5/2008	0	Initial Issue
5/19/2008	0.1	Comments Incorporated from Stakeholders
5/20/2008	0.2	Changes In Documentation Routing Between REO & SSD
5/20/2008	0.3	Reference To Subpart R Incorporated
5/20/2008	0.4	Tower Crane Information Incorporated
6/4/2008	1	Initial Issue Comments Incorporated
5/3/2010	2.0	Program Updated with Comments Incorporated

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## **1 Program Information**

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### **1.1 Safety and Health Policy Statement**

The safety and health of the World Trade Center Site (herein referred to as "WTC Site") employees, people working on our projects, and the general public is paramount. The Port Authority of New York & New Jersey (herein referred to as "Port Authority") is committed to safe and secure working conditions and employees working safely throughout the WTC Site construction projects. We demonstrate our commitment by implementing and continually improving a coordinated safety, health environmental program.

### **1.2 Program Objective**

The Port Authority has prepared this Safety, Health, and Environmental Program (herein referred to as "Program") to promote safety, and to mitigate and/or control all hazards associated with the construction at the WTC Site. The goals of this Program are to prevent personal injury, protect the public from construction hazards, protect adjoining properties, structures and utilities from damage, prevent environmental damage, and to control and reduce all direct and indirect costs and productivity losses attributable to accident and incident occurrences.

The overall WTC Site goals are to achieve and sustain "zero accident and environmental incident tolerance" through continuous improvement practices. The responsibility for safety and health must be in accordance with all applicable Federal, State and local codes and standards and is assumed by all contractors as specified by written contracts between the Port Authority, our tenants, other stakeholders at the WTC Site and their respective contractors and sub-contractors.

The sustainable goals established for this program include:

- a) Develop, implement and maintain a tracking tool that facilitates the ability to effectively and efficiently manage the safety program across all projects;
- b) Identify and remediate worker, public, property, and environmental hazards through the performance of site evaluations;
- c) Ensure work is performed consistent with WTC Site safety requirements, each contractor's health and safety plans, and applicable regulatory standards;
- d) Effectively communicate with contractor staff to ensure site safety requirements are understood and achieved;
- e) Promptly review each contractor's health and safety plans, work plans, and job hazard analyses;
- f) Evaluate the contractor's safety, health and environmental training programs to ensure workers are informed of the hazards and available controls for the task they are performing;

- g) Measure and track the injuries and observations followed by the implementation of appropriate control measures for continued program improvements.

The Port Authority reserves the right to revise this Program as required and necessary to ensure worker, public, property, and environmental protection, and to remain current with applicable regulations, technologies, and practices.

The Port Authority Construction Management Team (herein referred to as "CM") is responsible to protect all property, materials, supplies, and equipment existing, constructed or stored on the site pending the issuance of a Port Authority Permit to Occupy or Use unless otherwise expressly approved by the Port Authority. The CM includes the Engineer of Construction (EOC), Senior Program Manager (SPM), PA Resident Engineer/Resident Engineer's Office (RE/REO) and/or agents working on behalf of the Port Authority.

### **1.3 Program Approach**

The WTC Site requirements have been established by the Port Authority to ensure worker protection, public safety, the protection of adjoining properties/utilities/streets, and the environment. All tenants, contractors, employees, consultants, vendors, and external agencies shall be required to incorporate these Port Authority requirements into their project specific health and safety plans. Revisions to their health and safety plans, or portions therein, shall be as required in this Program. All provisions herein are intended to ensure regulatory compliance and best management practices during the performance of any work at the WTC Site.

All work performed at the WTC Site must be carefully coordinated as to not interfere with the construction activities of others working at the WTC Site, WTC Site maintenance and operations, or with the continuous operation and security of the PATH and MTA transit systems. Constant care must be exercised at all time to avoid any adverse impacts to PATH or MTA customers, employees, the general operation, security, structural integrity of the system, and emergency egress pathways, or impede emergency response.

### **1.4 Program Effectiveness and Cooperation**

The effectiveness of this Program is dependent on the active participation and cooperation between the Port Authority, all WTC stakeholders/owners and agencies performing or responsible for construction activities on or in the vicinity of the WTC Site including, WTC Site tenants and lessees, as well as respective employees, consultants, contractors, tradesmen, vendors, and authorized visitors.

The success of the Program, its implementation and maintenance requires the careful coordination of all construction activities on the WTC Site inclusive of the following items:

- a) All work must be planned prior to execution to ensure that an appropriate analysis and review is performed to anticipate and eliminate identifiable risks or potential for personal injury, property damage, and environmental damage;
- b) The means and methods employed for the performance of any work must comply with the safety requirements of all applicable federal, state and local jurisdictional rules and regulations, laws, ordinances, codes, statutes, industry standards, and Port Authority and PATH policies and procedures;

- c) Reliable, verifiable and uniform health and safety procedures must be established and maintained for the entire WTC Site to ensure the prompt detection and remediation of unsafe conditions or work practices. Those conditions/safety deficiencies shall be corrected on a timely basis, or as directed by the Resident Engineer's Office (herein referred to as "REO"), the World Trade Center Site Safety Director (herein referred to as "SSD"), or their designated representatives. Each contractor shall utilize the Port Authority Safety Management System Tracking Tool (herein referred to as "SMST2") as described in Section 5.0 herein.
- d) Comprehensive safety training programs must be established and maintained for WTC Site workers to enhance safety awareness, and to promote a cooperative approach in the identification and mitigation of unsafe or unhealthy conditions and work practices;
- e) Comprehensive, enforceable, and site specific Health and Safety Plans (herein referred to as "HASPs") and Job Hazard Analysis (herein referred to as "JHAs") must be established by each contractor, and be readily available at the worksite to ensure that all work is performed in a manner that eliminates predictable worker, public, property, and environmental hazards. All HASPs and shall be reviewed annually, and updated as necessary or as required by the REO, the SSD or their designated representatives based upon any changes in the scope of work, existing site conditions, regulation, or the intended method of execution;
- f) A comprehensive communications system must be established and maintained to ensure that all emergency response contacts and related information are readily available throughout the WTC Site for the prompt reaction to and investigation of all accidents/incidents.

## **1.5 Program Structure**

The following structure is in place at the WTC Site to ensure coordination across the Project.

### **1.5.1 Owner Controlled Safety Council**

The Owner Controlled Safety Council includes members from Port Authority Senior Management Staff, Silverstein Properties Inc., and other stakeholders, as appropriate. As necessary, this group shall meet to discuss the overall site program to ensure coordination and consistency for safety management across the WTC Site. The responsibilities of this council include:

- a) Ensures a Coordinated Safety Program;
- b) Sets Policy and Direction;
- c) Reviews and Adopts Annual Goals;
- d) Reviews Performance.

### **1.5.2 Senior Executive Working Group**

The Senior Project Executive Working Group includes members from Port Authority Senior Management Staff, Project Executive Staff, and other stakeholders, as appropriate. As

necessary, this group shall meet to discuss the site program. The responsibilities of the working group include:

- a) Consistently communicate and endorse safety program;
- b) Being responsible and accountable for safety program;
- c) Approve goals and objectives;
- d) Review the performance of the safety program.

### **1.5.3 Safety Director and Stakeholders Committee**

The Safety Director and Stakeholders Committee include members from the WTCC staff, Construction Manager, Owner Senior Safety staff, and other stakeholders. On a monthly or more frequent schedule this group shall meet to discuss the site program. The responsibilities of the committee include:

- a) Developing site wide initiatives;
- b) Developing project specific goals and objectives that feed site wide goals and objectives;
- c) Sharing best practices;
- d) Participating in the coordination of a training program(s);
- e) Review the performance of the safety program.

### **1.5.4 Operations Safety Committee**

Each CM, contractor, project manager, stakeholders/owner, safety representative, and represented trades, in addition to representatives from the Port Authority, will participate in the Port Authority monthly Operations Safety Committee.

The SSD shall prepare the agenda, document all meeting proceedings, and distribute a meeting report to all attendees for the Operations Safety Committee.

The responsibilities of the committee include:

- a) Reviewing and discussing site wide Initiatives;
- b) Sharing best practices;
- c) Participating in a training session during the meeting;
- d) Discuss site wide trends.

In addition to the agenda and topics to be presented by the SSD, each CM, CSSM, and contractor's safety supervisor shall be required to discuss their project's safety performance. This discussion is to include, but not be limited to, a review of accidents and incidents, corrective measures addressing accidents and incidents, training, and pre-task safety planning.

### **1.5.5 Project Specific Safety Committee**

The Project Specific Site Safety Committee is the safety committee for the project. Each project shall have a committee comprised of the CM, contractors, construction and project managers, safety representatives, and union representatives. On a weekly basis this group shall meet to discuss the project's safety program. The responsibilities of this committee include a review, at a minimum, of the following areas:

- a) Incident review from the prior week;
- b) Open safety observation notices and program trends;
- c) Construction plans and job hazard analyses for upcoming work;
- d) Construction look ahead for planning/coordination with other projects;
- e) Status of training programs and toolbox talks;
- f) Status update on Environmental Performance Commitments;
- g) Review performance of the program.

### **1.6 Safety Management System Tracking Tool**

An online web-based application has been implemented to be used as a tool to monitor, measure and enhance the safety performance at the World Center Site. The Safety Management System Tracking Tool (SMST<sup>2</sup>) shall be used by WTCC, CM, contractors and designated stakeholders to manage various safety, health and environmental key performance indicators such as observations, incidents, project work hours and other information.

#### **1.6.1 Safety Observation Notice Process**

The CM and/or contractor is responsible for ensuring that documented worksite safety, health and environmental observation findings are corrected, or at a minimum acknowledged, within 12 hours from notification.

- a) WTC Safety or designated stakeholders perform safety, health and environmental observations by visiting projects and performing a visual safety, health and environmental inspection to determine if there is any variance from contract requirements, the projects safety and health policies, plans, programs, and/or PA, local, State or Federal rules and/or regulations;
- b) Once an unsafe action/condition, health or environmental condition is observed, WTC Safety or designated stakeholders shall document the observations using the Safety Observation Notice (SON) or similar template in the field;
- c) Field observations are then entered into the SMST<sup>2</sup>. These observations will then be electronically sent to the CM/contractors;
- d) Upon receipt of the SON, the CM and/or contractor shall investigate the finding within twelve (12) hours of electronic receipt of such notification and develop a plan to correct

the action/condition. The CM and/or contractor will update the status (open, ongoing, corrected, corrected on site) of the SON in the SMST<sup>2</sup>;

- e) Once the CM and/or contractor has responded to the observation as resolved, WTC Safety or designated stakeholder will conduct a field verification confirming the action/condition has been corrected;
- f) After conducting the field verification, WTC Safety or designated stakeholder will document observations as resolved through the SMST<sup>2</sup>;
- g) By the 15<sup>th</sup> day of each month, each CM and/or contractor shall ensure the following information for the prior month is in the SMST<sup>2</sup>;
  - i) Total hours worked within the reporting period for the CM and/or contractor
  - ii) Total number of OSHA recordable injuries within the reporting period
  - iii) Total number of OSHA lost time injuries within the reporting period
  - iv) Total number of lost work days incurred within the reporting period
  - v) Total number of restricted work days incurred within the reporting period
  - vi) Total number of first-aid cases within the reporting period
  - vii) Total number of near misses within the reporting period
- h) All accident and incident investigations will be documented in the system.

## 1.7 Definitions, Acronyms and Abbreviations

Term	Definition
ASME	American Society for Mechanical Engineers
ASTM	American Society for Testing and Materials
ANSI	American National Standards Institute
CGC	Compressed Gas Cylinder
CM	Port Authority Construction Management Team
CFSM	Contractor Fire Safety Manager
CSSM	Contractor Site Safety Manager
EOC	Engineer of Construction
EOR	Engineer of Record
FDNY	New York City Fire Department
FRA	Federal Railroad Administration
HAZMAT	Hazardous Material
HASP	Health and Safety Plan
ISD-RM	PANYNJ Inspection & Safety Division – Risk Management

JHA	Job Hazard Analysis
LMDC	Lower Manhattan Development Corporation
MTA	Metropolitan Transportation Authority
NEC	National Electric Code
NFPA	National Fire Protection Association
NYCBC	New York City Building Code
NYCDOB	New York City Department of Buildings
OCME	New York City Office of the Chief Medical Examiner
NYCDOT	New York City Department of Transportation
TAA	PANYNJ Tenant Alteration Application
TCA	PANYNJ Tenant Construction Application
PSM	PANYNJ Project Safety Manager
ROW	PATH Right of Way
PATH SS&EM	PATH System Safety & Environmental Management Division
Port Authority or PA	Port Authority of New York and New Jersey
EOC	Port Authority Engineer of Construction
OIG	Port Authority Office of the Inspector General
PAPD	Port Authority Police Department
PATH	Port Authority Trans-Hudson
PA RE or RE	Port Authority Resident Engineer
REO	Port Authority Resident Engineer's Office
SPM	Senior Program Manager
SMST <sup>2</sup>	Safety Management System Tracking Tool
US DOT	U.S. Department of Transportation
OSHA	U.S. Occupational Safety and Health Administration
WTC Site	World Trade Center Site
SSD	World Trade Center Site Safety Director
Program	World Trade Center Safety, Health and Environmental Program
WTC Blue Book	World Trade Center Site Rules and Regulations
WTCC	World Trade Center Construction

## **2 Roles, Responsibilities and Program Management**

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### **2.1 Port Authority Chief Engineer**

The Chief Engineer of the Port Authority of New York & New Jersey is the final authority regarding the interpretation of all jurisdictional codes, regulations, and ordinances at the WTC site.

### **2.2 Engineer of Construction (EOC)/Senior Program Manager (SPM)**

The EOC/SPM is the duly authorized representative of the Director of the World Trade Center Construction Department and the authority regarding the application of all jurisdictional codes, regulations, and ordinances at the WTC Site. The EOC/SPM, or his/her duly authorized representative, is primarily responsible for ensuring that each CM and sub-contractor comply with the requirements of the Contract Specifications and Tenant Construction Applications issued by the Port Authority for work performed at the WTC Site. The day-to-day enforcement and administration of the Program, contractor HASPs and JHAs is the responsibility of the REO, the SSD, and their designated representatives.

### **2.3 Port Authority Resident Engineer (RE)/Port Authority Resident Engineer's Office (REO)**

The RE/REO is responsible for the daily monitoring of all work performed at the WTC Site. The issuance of all Port Authority approvals, acceptances and/or comments for all HASPs and JHAs submitted by the CM and contractors after review by the appropriate Port Authority personnel is completed through the REO.

The responsibilities of the RE/REO include, but are not limited to, the following:

- a) The suspension of any construction activities if warranted for the protection of life and/or property/or utilities, protection of the environment, or the elimination of any hazardous or potentially hazardous conditions;
- b) Notifying the contractor when unsafe working conditions, practices and behavior are detected (e.g., lack of good housekeeping practices, use of equipment in obviously poor condition, failure to adhere to rules, regulations, ordinances or policies regarding safety);
- c) Notifying the contractor of any noncompliance with safety requirements contained in either the Contract Specifications or the Tenant Construction Application;
- d) Reviewing all Daily Reports, Equipment Maintenance Log, Inspection Reports, and Accident Reports as appropriate. Such reports are to be promptly submitted and audited to ensure that the contractor takes immediate and prudent action to correct all anticipated or discovered safety deficiencies. Accident reports are to be submitted to the REO and SSD within twenty-four hours of the event;

- e) Reporting all accidents/incidents and all serious injuries to PATH patrons / employees to the Manager, PATH SS&EM

## **2.4 Port Authority WTC Site Safety Director (SSD)**

The Port Authority shall designate a person to serve as the WTC Site Safety Director. The SSD shall have access to all project staff, and is responsible for a fully coordinated, enforceable and uniformly implemented safety program throughout the WTC Site.

The SSD is also responsible for the promotion, planning and implementation of all safety awareness programs, practices, procedures, and training necessary to control, reduce, and eliminate hazards throughout the WTC Site. The SSD will report to the Director and Deputy Director, World Trade Center Construction Department.

The SSD ensures that all WTC stakeholders/owners, CM, contractors, and external agencies implement the Program as presented in this document, and that it is updated as required to address the changing conditions of the WTC Site that may affect the health and safety of the work environment. At a minimum, the SSD has the following responsibilities:

- a) Identifies, promotes, plans, develops, coordinates and modifies as required all site safety activities, programs and initiatives to preserve and protect the health and safety of all workers and employees within the WTC Site, the public, adjoining properties and utilities, and the environment;
- b) Develops and directs a comprehensive on-site inspection program to audit all construction activities within the WTC Site to ensure compliance with all applicable federal, state, and local regulations related to the health and safety of the workers and the public;
- c) Coordinates all activities among the Port Authority, WTC stakeholders/owners and external agencies and contractors to ensure that the work of one entity does not adversely impact the health and safety of another;
- d) Reviews and revises as required the Program and its associated health and safety requirements to improve overall worksite conditions, continually evaluate the effectiveness of its programs and initiatives, and initiate changes based on current industry trends;
- e) Ensures the appropriate preparation of site-specific HASPs and JHAs by all WTC stakeholders/owners, external agencies, and CM, and contractors prior to the implementation of such plan(s), and revisions thereto, as the project develops;
- f) Coordinates WTC Site safety training, and implements associated initiatives and objectives;
- g) Provides notification to Port Authority and WTC senior staff, as appropriate, of all accidents on the WTC Site. The SSD or designated representative participates in the investigation of incidents and provides the necessary support for investigative entities for purposes of conducting their investigation;
- h) Tracks and verifies that identified site safety deficiencies are corrected;

- i) In conjunction and cooperation with the Inspection and Safety – Risk Management Department serves as a Port Authority liaison to outside federal, state, and city agencies as it relates to WTC Site health and safety issues;
- j) Coordinates the activities of the various Project Safety Managers and Port Authority Safety personnel;
- k) Reviews and/or audits all documentation related to safety as required.

## **2.5 Port Authority WTC Site Manager**

The WTC Site Manager is responsible for the safe and orderly operation, maintenance, and security of the WTC Site on a 24-hour basis, 365 days per year, and at a minimum shall provide the following services:

- a) Establishes and enforces policies, procedures, rules and regulations governing the WTC Site operations and security to facilitate redevelopment;
- b) Approves access for authorized individuals and vehicles;
- c) Provides physical upkeep for common facilities;
- d) Provides an overall Site Traffic Management, and Site Security Plan;
- e) Maintains designated public areas, and common use areas on the WTC Site;
- f) Ensures WTC Site security/safety orientation is provided and current.

## **2.6 Port Authority Project Safety Manager (PSM)**

The PSM, in conjunction with the REO and the SSD, is responsible for the day-to-day environmental, safety and health operations of the assigned project for which they work ensuring the insurance stakeholders are coordinated and an integral part of the program working with the construction management contractor teams.

This is accomplished by:

- a) Performing comprehensive and focused safety, health, and environmental inspections;
- b) Reviewing CM and contractor HASPs, JHAs, and Means and Methods;
- c) Attending weekly tool box talks conducted by the CM and contractors;
- d) Participating in the weekly safety committee meeting chaired by the CM;
- e) Participating in the performance of accident and incident investigation;
- f) Audit training records and documents required to be maintained by the CM CSSM and sub-contractor's safety supervisor;

- g) Evaluate new procedures and practices to ensure compliance with regulation;
- h) Follow-up on the CM and contractor's use of the SMST<sup>2</sup>.

## **2.7 Port Authority Inspection and Safety Division – Risk Management (ISD-RM)**

The ISD-RM will advise and support the REO and the SSD in all matters of occupational and public safety, health and environment and at a minimum, shall provide the following support services as applicable:

- a) Routinely assess and monitor the safety performance of contractors performing work at the WTC Site and prepare written reports, as necessary;
- b) Utilize the Safety Observation Notification Online System to document findings and corrective recommendations for the protection of workers, the public, adjoining structures, utilities, and the environment;
- c) Review Port Authority contract, TAA/TCA drawings, specifications, and submittals to ensure compliance with all applicable safety standards and codes;
- d) Review and prepare written comments on all HASPs and JHAs provided by all CM, contractors, WTC stakeholders/owners and external agencies to ensure uniformity and completeness in accordance with all applicable safety standards and codes, and best management practices;
- e) Participate in the performance of accident investigations to identify the factors contributing to all incidents. Prepare an investigative report identifying the incident, contributing factors and the recommendations to prevent recurrence;
- f) Accompanies and assists outside regulatory agency representatives and insurance underwriters in the performance of their routine inspections and investigations;
- g) Performs Port Authority liaison responsibilities with outside federal, state and city regulatory agency representatives;
- h) Provide recommendations to the SSD to improve the effectiveness of the Program.

## **2.8 Port Authority Treasury-Risk Financing**

Treasury-Risk Financing will advise and support the REO and the SSD in all matters of insurance, and coordinate a cooperative approach to site safety with insurance company safety representatives and loss control managers. Under the Port Authority Owner Controlled Insurance Program (OCIP), qualified insurance company safety professionals who have significant years of field experience in accident prevention in the construction industry will focus their efforts on current health and safety issues, and potential impact to the Port Authority.

These safety professionals will work under the direction of Treasury-Risk Financing, and in cooperation with the SSD regarding all health and safety matters within the WTC Site.

Treasury-Risk Management personnel shall:

- a) Coordinate and maintain effective and routine communication with all parties involved in the safety and loss control efforts provided by the Port Authority and Insurers involved in the management and control of risk within the WTC Site;
- b) Analyze loss trends. Provide recommendations to increase the effectiveness of the Program;
- c) Routinely review and recommend changes and/or enhancements to the application and content of the HASP submitted by all WTC stakeholders/owners and external agencies and their prime contractors.
- d) Review incident data contained within the Safety Management System Tracking Tool and compare with OCIP Information. Notify SSD of any discrepancies.

## **2.9 PATH System Safety & Environmental Management Division (SS&EM)**

The PATH SS&EM will advise and support the REO and the SSD in all matters of occupational and public safety, emergency management, fire protection and environmental protection that affect the PATH, and at a minimum provide the following services:

- a) Routinely inspect and monitor the safety performance of contractor(s) on site in the PATH Right-of-Way (PATH ROW), Station and terminal areas, and prepare written reports documenting their findings with corrective recommendations concerning worker protection, the protection of the public, adjoining structures, utilities, emergency management, egress, fire protection concerns and the environment. Such written reports will be provided to the SSD immediately following any routine inspection;
- b) Review contract, TAA and TCA documents, drawings, specifications, and submittals involving PATH operations to ensure compliance with all applicable safety, environmental and transportation standards and codes;
- c) Participate in accident/incident/injury investigations within the PATH Right-of-Way, station/terminal areas to identify the factors contributing to the accident/incident/injury, and provide recommendations to prevent reoccurrences;
- d) Accompany outside regulatory agency representatives in the performance of routine inspections and investigations;
- e) Provide ongoing recommendations to improve the effectiveness of the Program.

## **2.10 WTC Stakeholders/Owners, External Agencies and Their Prime Contractors**

Consistent with Sections 2.11 through 2.13 herein, each CM and contractor shall have dedicated safety representatives assigned to their project. Safety representatives shall not have any other duties other than safety management through the enforcement of applicable regulation, implementation of this program, and compliance with their project's approved health and safety plans. Safety representatives shall have adequate knowledge and experience with the applicable safety, environmental, and building codes and regulations. The World Trade Center Construction Department Director and the SSD shall review the resume of any Contractor Site Safety Manager proposed by the CM. A personal interview may also be required with the WTC SSD and PA General Manager Operations Safety. Only an individual deemed to be competent by the Director of World Trade Construction Department and the SSD prior to the individual being hired shall assume this position.

The CM CSSM and/or contractor safety supervisor shall have the authority and responsibility to ensure the proper implementation of their company's HASP, and plans prepared for the project. Each CM CSSM and contractor safety supervisor shall have the authority to suspend operations where an imminent danger situation exists.

Safety management and enforcement shall be administered by a full-time employee of the CM licensed by the NYC DOB as a Certified Site Safety Manager. The CSSM shall work directly with the project's supervision, report to the Corporate Safety Director and/or CEO, and cooperate and work with the Port Authority in the implementation of all required WTC Site safety programs and initiatives. The responsibilities of the CSSM shall not be delegated nor contracted out to contractors, suppliers, consultants, or any other persons or agency without the express prior written approval of the Port Authority REO and SSD.

The responsibilities of all CM include, but are not limited to, the following:

- a) The planning and execution of all construction work in accordance with the objectives and safety requirements of the Program, the Contract Specifications issued by the Port Authority, approved Tenant Construction or Tenant Applications, Port Authority policies and procedures, and all applicable federal, state and local laws, rules, regulations, statutes, and ordinances. The scheduling of all construction work must be approved in advance by the REO to not interfere or conflict with PATH Maintenance and Operations or other construction operations;
- b) Develop and submit a hard copy and a non-modifiable electronic version of a written WTC HASP to the REO and the SSD within fourteen (14) working days of the Port Authority approval to proceed with construction;
- c) Suspending construction activities as warranted for the protection of life and/or the public, property, streets, utilities, the environment, and the PATH Rail Rapid Transit System;
- d) Ensure contractors conduct weekly tool-box safety meetings. All meetings shall be documented to identify the date of the meeting, the individual running the meeting, the issues discussed, follow-up actions, and a list of attendees present. All documents related to tool-box safety meetings shall be available for on-site review by CM, REO, SSD, PSM and OIG and Insurers.

- e) Ensure that all contractors, employees, workers, and visitors on the WTC Site are familiar with the provisions of the approved HASP including but not limited to working adjacent to an operational rail rapid transit system and energized third rail;
- f) Notifying the REO and the SSD immediately if any inspector or official from any industry, federal, state or local safety entity arrives on the job site for a formal safety inspection, or media inquiry;
- g) Ensure that if any conflicts are discovered between the approved HASP and any other federal, state, or local rules, regulations or ordinances, the more stringent requirement will be complied with. If a conflict is discovered, the contractor shall notify the REO and the SSD immediately;
- h) Provide the CSSM with a two-way voice communication system that provides direct and immediate contact with all emergency contacts.

## **2.11 Contractor Site Safety Manager (CSSM)**

The CM for each WTC stakeholder/owner and external agency shall designate for the duration of each work shift a full time site safety manager currently licensed by the NYC DOB as a Certified Site Safety Manager consistent with Chapter 33 - Safeguards During Construction and Demolition of the NYCBC. In addition to Chapter 33 enforcement, the Contractor Site Safety Manager (herein referred to as "CSSM") shall also enforce the applicable OSHA occupational safety and health standards.

A copy of the CSSM's valid and current certificate shall be contained in the contractor's HASP, as well as being submitted to the REO and the SSD.

At a minimum, the CSSM shall have the following responsibilities:

- a) Ensures that the site specific HASP appropriately addresses all applicable federal, state and local regulatory standards, ordinances, etc., and the site specific requirements of this Program, as well as the prime contractor's responsibilities for system safety and adherence to PATH safety rules and programs if applicable to the construction activities;
- b) Performs daily work site safety inspections with the appropriate contractor competent person to identify, document and correct any health and safety deficiencies, and to enforce the requirements of the HASP;
- c) Ensures that the CM and all contractors prepare appropriate JHAs for each task identifying the hazards and controls required to minimize the risk of injury;
- d) Verifies that all equipment has been inspected and maintained in accordance with applicable OSHA regulations and manufacturers' specifications, and maintains appropriate documentation on site of all such inspections;
- e) Maintains a current listing of all competent persons as defined by OSHA at all times during performance of work at the site. Competent person certifications shall be submitted to the REO and the SSD for review and comment prior to the start of any such work. Activities that require a competent person shall be immediately terminated if no such person is readily available or the applicable OSHA standard is not adhered to. An updated competent persons list shall be submitted monthly.

- f) Ensures that CM and contractors' work crew has a competent person(s) assigned during each work shift, and that the competent person remains on site with each work crew for the duration of the task;
- g) Ensures that each CM and all contractors working on the site adhere to all of the requirements of the Program, HASPs and JHAs;
- h) Ensures that each CM and contractor convene weekly safety meetings with employees to inform them of all site safety issues and initiatives implemented by the WTC Safety Committees (i.e., Project Specific, Operations Safety, etc.);
- i) Prepares weekly safety meeting minutes and a rolling action item list (RAIL) that includes information from WTC Safety Committees, Safety Bulletins, Safety Observations, Job Hazard Analyses and information pertaining to the project. Copies of which shall be provided to the REO, PSM and the SSD;
- j) Conducts initial and routine site and safety orientation programs for all employees and workers which, at a minimum, shall include a review of the approved HASPs and JHAs, a description of the hazards present at the WTC Site which they may be in contact with or exposed to, identification of the procedures and equipment needed to eliminate the hazards, and the availability of all required PPE necessary to perform the work, and emergency procedures;
- k) Maintains on the WTC Site all training documentation verifying that all CM and contractor workers are trained, experienced and proficient in the use, inspection, and maintenance of all equipment, aerial lifts, machinery, electric power tools, pneumatically driven tools, hydraulic power tools, fuel powered tools, and powder actuated tools in accordance with applicable regulations and the manufacturer's specifications;
- l) Maintains on the WTC Site all training documentation including the training date, name of instructor, training agenda, and training session sign-in sheets and list of all attendees including job title, trade and WTC Identification Number. As required, conducts and ensures that all CM and contractor employees, visitors or other personnel who work, inspect, or are engaged in construction activities on or adjacent to the PATH tracks or platforms are trained and annually certified in PATH's Roadway Worker Protection Program. All training documents shall be made available to the REO, SSD, and PSM upon request.
- m) Conducts accident and near miss investigations, followed by the preparation of a written report describing the incident, contributing factors, and actions to be taken to prevent recurrence. This report is to be submitted with 24 hours to the REO, SSD, and PSM;
- n) Ensures that the HASP and all associated JHAs are in compliance with all applicable federal, state and local rules, regulations, statutes and ordinances;
- o) At a minimum, performs inspections at a frequency as identified in 1 RCNY, § 3310-01, Chapter 3300: Safeguards during Construction or Demolition, and maintains the required documentation as required therein. Copies of such inspections shall be made available to the REO, SSD, and PSM upon request.

## **2.12 Construction Fire Safety Manager (CFSM)**

The CM and/or contractor for each WTC stakeholder/owner and external agency shall designate for the duration of each work shift a full time Contractor Fire Safety Manager. The CM shall notify the PSM who the designated CFSM is for each shift and of any changes to that designation. There is no specific prerequisite for the position, and the Contractor Site Safety manager may also be co-designated as the CFSM.

At a minimum, the CFSM shall be responsible for:

- a) Hot work compliance including permitting;
- b) Daily Fire Safety Inspections;
- c) Maintaining a Log of Fire Safety inspections and findings/follow up;
- d) Ensuring compliance with all applicable fire code requirements including but not limited to fire extinguishers, flammable/ combustible liquids and gases, trash and debris removal, edge protection, access/egress, fire safety plan implementation.

## **2.13 Contractor Safety Supervision**

As required, the Contractor shall have present at the worksite during all working hours a dedicated safety supervisor possessing at a minimum, a current and valid OSHA 30-Hour Construction Industry Training Card, First-Aid/CPR certification, and have at least five (5) years of documented experience as a safety professional with experience in the type of work to be performed. This safety supervisor shall be responsible for safety, health, and environmental compliance and shall have no other responsibilities other than safety management. The contractor shall provide a copy of the proposed candidate's resume and credentials for review and acceptance by the SSD, CM and REO.

As required, the Contractor shall designate, and will have present on site with each work crew for the duration of that work shift, at least one competent person as defined by the OSHA standard 29 CFR Part 1926.32, and as elsewhere referenced in other 29 CFR Part 1926 standards, and will at a minimum perform the duties as described in 29 CFR 1926.20(b) (2). The designated competent person shall be responsible, and have the authority from their employer to take prompt corrective action to eliminate the hazard(s). At a minimum, each competent person shall possess a current and valid OSHA 30-Hour Construction Industry Training card and First-Aid/CPR certification. The Contractor shall assign, when required by a specific 29 CFR Part 1926 standard, a qualified or authorized person as defined in OSHA standard 29 CFR Part 1926.32.

## **2.14 OSHA Competent, Qualified and Authorized Persons**

The CM and contractor shall maintain a current listing of all competent persons performing work on the project. Competent person documentation shall be submitted to the REO and the SSD on a monthly basis for review and comment. Activities that require a competent person shall be immediately suspended if no such person is readily available or the applicable OSHA standard is not adhered to.

If in the opinion of the SSD or CM a competent person, foreperson, or superintendent is not discharging his or her responsibility, or performing his or her job, the REO or SSD can order the removal of that person from his/her position at the WTC Site.

## **2.15 WTC Site Employees**

All WTC site employees shall have, at a minimum, the OSHA 10-Hour Construction Safety and Health certification card, valid for 5 years from date of card issuance, possess current and valid licenses and certificates applicable to their scope of work, and be available for review while on-site.

### **3 Program Requirements**

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The CM, contractors, and second tier contractors shall incorporate, at a minimum, the most recent version of the applicable requirements of the following regulatory agencies as they pertain to worker safety and health, environmental protection, protection of the public and property, waste management, and transportation. In the case of conflicting requirements, the most stringent shall be followed:

- a) U.S. Department of Labor, Occupational Safety and Health Administration: Title 29 CFR, Parts 1903, 1904, 1908, 1910, and 1926
- b) U.S. Department of Labor, Mine Safety and Health Administration: Title 30, Chapter 1
- c) U.S. Environmental Protection Agency Title 40 CFR
- d) U.S. Department of Transportation Title 49 CFR
- e) NYS Department of Environmental Conservation
- f) NYS Department of Transportation
- g) NYS Department of Labor
- h) NYC Department of Buildings
- i) NYC Fire Department
- j) NYC Department of Health and Mental Hygiene
- k) NYC Department of Environmental Protection
- l) NYC Department of Sanitation
- m) NYC Department of Transportation
- n) NYC Department of Consumer Affairs

Additionally, work performed at the WTC Site shall at a minimum comply with the most recent version of the applicable consensus standards/recommendations from the following organizations, institutes, and associations as they pertain to worker health and safety health, environmental protection, protection of the public, waste management, and transportation. Where there are more than one consensus standards/recommendations, the more stringent shall be followed.

- a) American Concrete Institute
- b) American Industrial Hygiene Association (AIHA)
- c) American Red Cross

- d) American National Standards Institute (ANSI)
- e) American Society of Mechanical Engineers (ASME)
- f) American Society for Testing Materials (ASTM)
- g) American Welding Society
- h) Compressed Gas Association
- i) Institute of Makers of Explosives
- j) Manual of Uniform Traffic Control Devices (MUTCD)
- k) National Institute of Standards and Technology (NIST)
- l) Underwriters Laboratories (UL)
- m) U.S. Army Corp of Engineers
- n) NFPA

Note: Port Authority rules, standards and agreements outlined in this Program including addendums, any other specific governmental regulations and requirements (as applicable), and this Program will be followed when determining safe work practices and protection of workers and the environment. If any of these standards, requirements, rules or procedures conflict, the most stringent one will prevail.

### **3.1 WTC Site Rules and Regulations**

All WTC Site personnel shall follow the World Trade Center Site, Rules and Regulations (WTC Blue Book).

### **3.2 Site Safety Orientation and Training**

All WTC CM, stakeholders/owners, external agencies, contractors, supervisors and employees must complete the Port Authority WTC Site Orientation Program prior to performing work at the WTC Site and before obtaining a WTC Site ID or Vehicle Pass.

All CM and contractors shall be responsible for enrolling staff that will be assigned to work on or adjacent to the PATH Right of Way in the PATH On-Track Safety Program. Upon successful completion of this required safety training program, the employees will receive a PATH Roadway Worker card, which must be on their person at all times when working on or near the PATH ROW. The Roadway Worker training and card must be renewed annually. There are similar requirements for any work on or adjacent to the MTA system, in which case MTA training will be required.

The CM and contractor shall ensure workers, and all sub-contractor workers are properly trained, and as required possess valid and appropriate license(s), and/or certificate(s) consistent with regulations, laws, and best industry practices specific to their work activities

and the tools/equipment being used as per manufacturer specifications. At a minimum, employees working at the World Trade Center site shall have a valid OSHA 10-Hour or 30-Hour Construction Safety and Health Certification card in their possession while on-site. This certification must be renewed every five (5) years. A training matrix shall be maintained by each entity and readily available for review on site.

### **3.3 Substance Abuse and Weapons Policy**

The Port Authority is committed to providing a safe, drug/alcohol free work place for all employees. This policy applies to all tenants, lessees, contractors, vendors and other third party employees, including management working on or visiting the project.

It is the responsibility of each CM and contractor to institute a Drug and Alcohol Program for its on site employees. Illegal drug and alcohol use on site is strictly prohibited. Any on site employee who is found to be under the influence of or ingesting illegal drugs or alcohol or carrying weapons will be reported immediately to the PAPD, and permanently removed from the WTC Site.

As drug and alcohol use on the job can contribute both to incidents and to greater risk for all individuals employed at the WTC site, as well as the general public, the following is prohibited at the WTC Site where work is being performed in support of WTC Site construction:

- a) The consumption of alcohol, or use of an illegal drug during scheduled working hours, either on the WTC Site or off-site, is strictly prohibited. Scheduled working hours, for these purposes, shall be presumed to be eight (8) consecutive hours from the time the worker enters the WTC Site and begins work. Carrying an open or closed container of an alcoholic beverage or smoking anywhere on the WTC Site at any time is strictly prohibited. Any violation of this policy will result in immediate and permanent removal from the WTC Site.
- b) The use of a legal medication which may impair a worker during the course of a work shift, either prior to, during, or upon returning to the WTC Site;
- c) The use, sale, offer to sell, purchase, transfer, storage, disposal, distribution or possession of illegal drugs, drug paraphernalia or alcohol products;
- d) Possession of any firearm or other dangerous weapons;
- e) Smoking anywhere within the WTC Site.

Each CM and contractor shall promote a Drug Free Workplace with their employees and will communicate what constitutes prohibited activities during their safety orientation and occasionally at tool box talks.

Workers that are found to be under the influence of or in possession of alcohol, illegal drugs, in possession of weapons or smoking anywhere within the WTC site as described above shall be immediately removed and dismissed from the WTC Site and their WTC Site access credentials will be revoked, and/or subject to criminal prosecution as warranted by their action(s). As per the NYC Fire Code, section 1404.1 and NYC Building Code, sections 3301.1.2 and 3303.7 smoking on any construction site, including the WTC Site, is strictly prohibited and violations may be issued to the contractor and/or other relevant parties.

### **3.4 Disciplinary Action Program**

Each CM and contractor shall have a progressive disciplinary action program for all personnel who fail to enforce, follow or comply with established policies and procedures. Disciplinary action shall be handled through a 3-Strike Policy (i.e., 1-verbal, 2-written and/or limited removal from the WTC site, 3-limited to permanent removal from the WTC site), however, depending on the seriousness of the violation, immediate revocation of the employee's WTC Identification Badge can occur, as referenced in section 3.3.

An investigation shall be conducted to determine if an individual's action, lack of action, or conduct created, contributed to, or allowed an Imminent Danger Situation to exist as referenced in 29 CFR 1903 and 1908; disobeyed, disregarded, or other refused a directive from the PAPD; or disobeyed or disregarded a rule or regulation as listed in the WTC Blue Book. Records are to be maintained by each CM and contractor and shall be available for review by the Port Authority.

### **3.5 Penalties**

All CM and contractors shall be subject to and include in their disciplinary action program provisions that hold the violating contractor(s) accountable for safety infractions.

Failure to comply with the safety requirements of the Program may result in the following amounts being deducted from the Contract Price for each specific non-compliance with a provision of the Program:

- a) First Offense: Warning – no monetary deduct
- b) Second Offense: \$500.00
- c) Third Offense: \$1,000.00
- d) Further Offense: \$2,000.00 for each additional offense

Deductions shall be non-cumulative for violation of multiple provisions of the Program. All penalties collected shall be put back into the contractor's safety program.

### **3.6 Responsibility and Accountability**

The Port Authority is committed to creating a work environment absent of incidents and injuries. Everyone associated with this project must understand their responsibilities with regard to health safety and the environment. These responsibilities must be clearly defined and project management, supervision, contractors and workers will be held accountable for their health and safety performance. The following table outlines accountability and responsibility around key benchmarks:

SUBJECT	PROJECT MANAGEMENT	* FIRST-LINE SUPERVISION	WORKER	CONTRACTOR SITE SAFETY MANAGER
	WILL ENSURE THAT:	ENSURE THAT:	WILL:	WILL:
Program:	The Program is understood, implemented, and strictly complied with and that The Port Authority, Construction Managers, Contractors, vendors, and third party individuals are in conformance to the Program.	The Program is fully understood, implemented in work planning and communicated to workers.	Understand the contents of the Program and follow the established rules and procedures.	Advise project management and supervision as to status and conformance with the project Program. Support in administration of the Program.
Work Practices:	First-line supervision is communicating safe work practices to workers.	All work tasks are communicated to workers and there is compliance with the same.	Safe work practices are followed as communicated to them by their supervisor.	Assess project is compliant with safe work practices and federal, state, local, and regulations, rules and other procedures that must be subscribed to.
Site-Specific Safety Rules:	The site-specific safety rules and procedures are implemented and enforced.	The site-specific safety rules and procedures are understood and implemented.	Understand and follow the site-specific safety rules and procedures.	Assess project conformance to site-specific safety rules and procedures.
Emergency Action Plan:	Project team develops and implements the project Emergency Action Plan and the Crisis Management Plan.	Communicates the project Emergency Action Plan.	Understand the project Emergency Action Plan.	Assess project Emergency Action Plan and Crisis Management Plan.
Training:	Resources are available to implement safety and health training. Training programs are developed and implemented.	Receive a project-specific supervisor safety orientation prior to start of work. All workers under their direction are properly trained in hazard recognition and safe work practices.	Attend required project safety and health training. Understand and follow the work practices and guidelines discussed during the training.	Assess that project management, first-line supervision and workers have received proper health and safety training. Assist project supervision in training workers on hazard recognition and safe work practices. Monitor weekly "toolbox" safety meetings.
Risks/Hazards:	All first-line supervision identifies, evaluate, and control the work site	All risks/hazards are identified, evaluated and	Understand the hazards of the work and follow	Assist in evaluating risks/hazards and determining methods

	hazards, and resources are available to implement controls.	controlled. Institute a daily assessment program to identify, evaluate and correct work site risks/hazards.	the safe work practices and controls developed for those hazards.	of eliminating or reducing the risk/hazard.
Incidents:	All incidents are investigated properly and thoroughly.	Conduct a thorough and proper incident investigation and develop solutions to prevent similar occurrences.	Cooperate and participate in the incident investigation and contribute ideas and solutions.	Assist first-line supervision in investigating incidents. Maintain monthly incident statistics.

\* First-line Supervision includes general superintendents, superintendents, field engineers, general foreman and foremen.

## **4 Accident/Incident Notification, Investigation and Response**

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The CSSM shall ensure that all accidents, incidents described in this Section, or as requested by the REO or SSD are reported, verified, investigated, and analyzed with preliminary reports provided to the PAPD, REO, SSD, and PSM within twenty-four (24) hours of the incident. The CSSM shall provide assistance, information and documentation as required by the Port Authority and/or its insurance company representatives investigating the incident. If required by the Port Authority, additional investigation and follow-up reports shall be provided by the CSSM.

Only Port Authority authorized personnel, such as the PAPD, ISD-RM, Office of the Inspector General (herein referred to as "OIG"), REO, SSD, PATH SS&EM, Law Department Claims Division, and other duly authorized Port Authority representatives, and/or its insurance company representatives, and/or authorized regulatory agency representatives shall be given information pertaining to the event.

### **4.1 Emergency Response**

The CSSM or designee shall immediately notify the PAPD at (212) 608-5111 or 212-608-5115, followed by notification to the REO, SSD and PSM as to any and all injuries and accidents, including but not limited to following:

- a) Medical emergencies (e.g., amputations, thermal or chemical burns, unconsciousness, electrocution, poisoning, breathing difficulties, traumatic impact) requiring emergency medical services
- b) Fatalities
- c) Fires
- d) Bomb threats
- e) Workplace violence
- f) Civil disturbances
- g) Damage to or theft of property or equipment
- h) Hazardous materials incidents
- i) Environmental contamination
- j) Property/Utility damage
- k) Pedestrian injuries
- l) Structural failures and collapses

- m) Crane failures/Holisting incidents
- n) Suspicious activities, items or deliveries
- o) Vehicular accidents
- p) Lightening strikes
- q) Findings of Possible Human Remains
- r) Any other events that would potentially impact the health and safety of those working at the site or the general public.

## 4.2 Emergency Notification

When notifying the PAPD, as presented on the World Trade Center Site "In Case Of Emergency" notification card, each caller will be required to provide the following information:

- a) Location of accident or incident;
- b) Caller name;
- c) Company working for;
- d) Call back cell phone number;
- e) Location of injured worker;
- f) Number of injured;
- g) The body part affected;
- h) Cause of the injury.

Except for police, rescue and emergency personnel, the CM CSSM shall immediately secure the area and restrict access. The accident scene shall not be disturbed, nor will any equipment, machine, system component, or tool be removed or repositioned until it has been released by the PAPD, ISD-RM, OIG, REO, and PATH SS&EM (as appropriate).

Actions to be taken during emergencies should be included in each CM and contractor's Emergency Action Plan, and be discussed regularly with site supervision and at "tool box" safety meetings. WTC Site emergency telephone numbers and procedures shall be posted in conspicuous locations at the job sites and contractor shanties. Any emergency situation which impacts the operation of the PATH Rail Rapid Transit System must be immediately communicated by the designated Employee-In-Charge to the REO. The REO shall then notify the PATH Trainmaster.

The CM and contractor emergency procedures shall be reviewed, revised, and drilled as required to provide maximum effectiveness. The CM CSSM shall review these procedures quarterly, and revised accordingly or as required by the REO or SSD based upon any changes in the scope of work, existing site conditions, or the intended method of execution. Revised copies shall be forwarded to the REO and the SSD.

### **4.3 Findings of Potential Human Remains**

Upon the discovery of any items which appear to be potential human remains, all work in the vicinity is to be stopped immediately. The area is to be quarantined, and under no condition are the remains to be disturbed. The individual making the discovery shall immediately notify their foreman, general foreman or superintendent.

Upon such notification, the foreman, general foreman, or superintendent shall immediately notify the REO.

The REO will be responsible for contacting the PAPD, who will then notify the Office of the Chief Medical Examiner (OCME). Only upon notification by PAPD that the OCME has successfully recovered the potential human remains may work recommence in the area.

### **4.4 Emergency Action Plan**

Each CM and contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable Emergency Action Plan addressing, at a minimum, locations of all emergency egress routes, emergency vehicle access routes, alarm systems, evacuation routes, post-evacuation assembly locations and personal accounting, responses to medical emergencies and body fluid releases;

The CM and contractor shall review and revise this plan quarterly, or as required by the REO or PSM based upon any changes in the scope of work, existing site conditions, or the intended method of execution. A hard copy, and a non-modifiable electronic version of all revisions shall be forwarded to the REO and PSM.

The Emergency Action Plan shall be communicated to all first-line supervisors, and shall be posted throughout the jobsite and contractor shanties, and communicated to workers during the Safety Orientation and weekly safety meetings.

Each CM and contractor shall maintain the following documents at their jobsite, and shall make the following available to all responders:

- a) Twenty-four hour contact list for project supervisory staff;
- b) Site plans identifying stairs, scaffold stairs, hoists, flammable and combustible liquid storage, compressed gas cylinder storage;
- c) Copies of Material Safety Data Sheets.

## **5 Site Specific Orientation, Plans and Submittals**

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### **5.1 Site Specific Orientation**

All employees shall have a WTC Site Project specific safety orientation given by the CM or contractor that includes, but not be limited to, the following topics:

- a) The recognition, avoidance, and control of actual or potential unsafe or unhealthy worksite conditions;
- b) PATH On Track Safety Training for working on or adjacent to the PATH Rail Rapid Transit System;
- c) Hazard communication training in the labelling, handling, storage, use, spill response, and disposal of hazardous materials, chemicals, products, and wastes (i.e., flammable, combustible, toxic, caustic, pressurized, cryogenic, explosive, etc.). Copies of each chemical product Material Safety Data Sheet shall be maintained at a location within the worksite, and made available to all workers during all shifts;
- d) The selection, use, limitations, inspection, maintenance, care, and storage of all personal protective equipment (PPE);
- e) Fire prevention, protection, and response training. This training shall be provided every 6-months;
- f) The selection, use, erection, inspection, maintenance, disassembly, and fall protection requirements for the use of ladders, scaffolds, and aerial lifts (i.e., extensible boom platforms, aerial ladders, articulating boom platforms, vertical towers, man-buckets, etc.);
- g) Flagman training for roadway closures and traffic and pedestrian diversions;
- h) The use, inspection, and maintenance of all equipment, machinery, electric power tools, pneumatically driven tools, hydraulic power tools, fuel powered tools, and powder actuated tools in accordance with applicable regulations and the manufacturer's specifications;
- i) Requirements of the Program, and approved HASPs and JHAs and disciplinary actions for worker safety infractions;
- j) Responses to blood and bodily fluid releases;
- k) Zero tolerance for substance abuse/weapons possession;
- l) No smoking policy;
- m) Emergency Action Plans addressing, at a minimum, locations of all emergency egress routes, emergency vehicle access routes, alarm systems, evacuation routes, post-evacuation assembly locations and personal accounting, and responses to medical emergencies.

## **5.2 Site Specific Plan (HASP)**

All WTC Site stakeholders, CM, contractors, and external agencies shall be required to submit a written detailed project-specific Safety, Health and Environmental Plan to the REO and PSM within the timeframe provided, or as specified by the REO prior to the commencement of field work. The REO and PSM shall review the HASPs and plans, and provide comments as required addressing the contractor's overall compliance with the requirements of this Program.

The Safety, Health and Environmental Plan will:

- a) Identify each component of the work that the contractor is responsible for completing;
- b) Identify hazards associated with the work and the proper equipment and tools to perform the work;
- c) Plan adequate and sufficient controls to protect their work crews and property.

The REO, SSD, PSM, and Port Authority Inspection and Safety - Risk Management shall review and accept the project Safety, Health and Environmental Plan. If the Safety, Health and Environmental Plan require revision due to unanticipated or new hazards, or other condition changes, then all work pertaining to that work component shall be suspended until the Safety, Health and Environmental Plan is revised, reviewed and accepted.

### **5.2.1 Performance of Job Hazard Analysis**

If based on the opinion of the REO, SSD, or PSM a particular task, operation, or activity is not addressed, or not addressed fully in the submitted plans, a Job Hazard Analysis (JHA) must be prepared and submitted to the REO and PSM for review and acceptance prior to performing that task, operation, or activity. The JHA must be prepared by the sub-contractor's safety supervisor or designated employee, be reviewed and approved by the CM, then submitted via a Transmittal Letter to the REO and PSM for acceptance prior to the performance of work. A copy of the JHA shall be maintained at the job site.

At a minimum, the JHA must include the following:

- a) Task, Operation, or Activity the JHA is being prepared for;
- b) Description of how work is to proceed;
- c) Crew size and members / Identification of crew foreman;
- d) Identification and analysis of hazards / exposures;
- e) Identification and implementation of hazard / exposure controls; which are to include but not be limited to tool and equipment selection, and personal protective equipment use;
- f) Specific training provided / To be provided;
- g) Employee review and sign-off.

### **5.2.2 Preparation of Regulatory Plans and Programs**

The CSSM and the safety supervisor for each sub-contractor performing work on the WTC Site shall determine when occupational exposure assessments are required for physical, chemical, and radiation hazards such as noise, silica dust, metals, fumes, carbon monoxide, solvent vapors, particulates, and ionizing and non-ionizing radiation, etc. in accordance with the requirements of 29 CFR Part 1926. At a minimum, the exposure assessment will be based on 29 CFR 1926.55: Gases, Vapors, Fumes, Dusts, and Mists, and the Threshold Limit Values of Airborne Construction Table provided therein. The CSSM shall arrange all such monitoring during the performance of work and ensure compliance with OSHA personnel exposure assessment requirements. Each affected employee shall be notified in writing of the results. Copies of sampling results shall be forwarded to the REO, SSD and PSM.

The CSSM and sub-contractor safety supervisor shall ensure that all exposure monitoring is performed using accepted analytical methodologies (e.g. OSHA and National Institute of Occupation Safety and Health), and that the sampling frequency and results is representative of the work exposure. All sampling instrumentation used shall be properly calibrated.

Samples collected shall be submitted to a laboratory maintaining appropriate qualifications, state licensing, and current certifications (e.g. American Industrial Hygiene Association). The laboratory director or a certified industrial hygienist must sign all sampling reports.

The results of these exposure assessments shall be compared to the Threshold Limit Values of Airborne Contaminants for Construction, 29 CFR 1926.55 Appendix A, or other governmental, industry, or accepted and recognized exposure limits. The CSM shall determine if exposures exceed acceptable limits, and develop a remediation plan to reduce those exposures.

### **5.2.3 Safety Plan Submittal Requirements**

All WTC Site stakeholders, CM, contractors, and external agencies shall be required to submit their HASP and related safety plans to the REO, PSM and the Office of the Inspector General (OIG) within the timeframe provided, or as specified by the REO. Submittals shall be in accordance with the process outlined below:

- a) Contractor submits plans to CM
- b) CM reviews and comments on the plan
- c) CM transmits documents with comments to the PA REO and SSD for review
- d) PA REO and SSD reviews and provides comments as warranted
- e) CM consolidates comments and transmits back to contractor for re-submittal, as necessary
- f) Contractor resubmits to CM
- g) CM reviews the submittal, ensuring comments are integrated into the plan and transmits to contractor, PA REO and SSD

Unless otherwise directed, the CM and contractor shall provide a hard copy and a non-modifiable electronic version of a written site specific HASP within fourteen (14) working days

of Port Authority approval to proceed with construction. At a minimum, the HASP shall include the following:

- a) Fall Protection and Prevention
- b) Lockout / Tagout and Permit-Required Confined Spaces
- c) Organization Details
- d) Fire Protection and Prevention
- e) Site Plan
- f) Hazard Communication
- g) PATH Operations
- h) Housekeeping
- i) Material Protection
- j) Electrical Protection
- k) Site Demarcation
- l) Scaffolds
- m) Hot Work
- n) NYCBC Chapter 33 Inspections
- o) Abrasive Blasting
- p) Personnel Protective Equipment
- q) Emergency Contacts
- r) Cranes and Derricks

For further information, refer to Section 6, Program Element Requirements.

## **6 Program Element Requirements**

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### **6.1 Fall Protection and Prevention**

All work at height, except those activities regulated under 29 CFR 1926 Subpart R: Steel Erection, performed on vertical or horizontal surfaces or ledges that are equal to or greater than six feet above a lower level, including work on scaffolds, shall require fall protection.

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable 100% Fall Protection and Prevention Program consistent with 29 CFR 1926 Subpart M: Fall Protection. This program shall be followed by all employees, vendors, consultants, and external agencies when working or walking on all unprotected vertical or horizontal side and edge, scaffold, and locations as identified in 29 CFR 1926.501: Duty To Have Fall Protection, at a height equal to or greater than six feet above a lower level, or at any height above a dangerous process, operation, or piece of equipment. Fall protection systems shall be designed by a qualified person, and installed and maintained by a competent person.

The CM and contractor shall review and revise the Fall Protection and Prevention Program quarterly, or as required by the REO or PSM based upon any changes in the scope of work, existing site conditions, or the intended method of execution. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO and PSM.

### **6.2 Lockout / Tagout**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable Lockout/Tagout Program for the performance of any operation in which a piece of machinery, equipment, system, or component thereof could unexpectedly start-up or become energized and release a form of energy (e.g.: electrical, mechanical, hydraulic, pneumatic, chemical, or thermal) while being serviced.

If the scope of work or the need to provide continued electrical service, work on a live (energized) electrical system or component (e.g. conductor, piece of equipment, transformer, switch gear, vault, panel) is required, a qualified person as defined and referenced in 29 CFR 1926.449 shall prepare and submit to the CSSM an Arc Flash Protection Work Plan which includes, but not limited to:

- a) A description of the work location, scope of work, duration, contractor performing the work, crew size, and reason why the system cannot be de-energized;
- b) The identification of the actual and potential arc flash hazards present, and a determination of flash intensity;
- c) The establishment of an arc flash protection boundary identifying the personnel protective equipment (PPE) requirements and worker qualifications for each boundary;
- d) The performance of a hazard assessment to identify the type of PPE and tools required to protect the worker from arc flashing;

- e) The type of training provided to the work crew in the use of PPE and tools required to perform the work;
- f) Written procedures describing the sequence of work;
- g) An emergency action plan in the event of an accident.

Prior to the start of any work, the Arc Flash Protection Work Plan, which is specific for the system being worked on, must be reviewed and signed off as "Approved" by the qualified person, forwarded to the CSSM for review and transmittal to the REO and PSM for review and comment prior to the commencement of that task.

The CM and contractor shall review and revise the Lockout/Tagout Program quarterly, or as required by the REO or PSM based upon any changes in the scope of work, existing site conditions, or the intended method of execution. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO and PSM.

### **6.3 Permit-Required Confined Spaces**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable Permit-Required Confined Space Entry Program prior to the performance of any operation in which entering to inspect, work, or monitor a space meeting the criteria of an OSHA permit-required confined space is required.

### **6.4 Organization Details**

Each CM shall provide to the REO, the SSD and PSM, and WTC Site Manager prior to the start of work its company name, address, onsite organizational structure including specific job titles and functions, and 24-hour phone numbers. The same information shall be provided for all contractors working at the WTC Site.

### **6.5 Fire Protection and Prevention**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable Fire Prevention and Protection Plan, to be enforced by the CFSM, to include, at a minimum, locations of all fire extinguishing devices, standpipes, emergency egress routes, emergency vehicle access routes, alarm systems, chemical and compressed gas storage locations and associated containment and spill control measures, worksite evacuation routes, post-evacuation assembly locations, methods to eliminate fire hazards, maintenance of egress and exit ways, procedures to respond to a fire, and etc.

Existing fire protection systems within the PATH WTC Station shall not be impacted or impeded unless specific contractual work is required and previously scheduled and approved by PATH. The PATH Fire Safety Director monitors the fire protection systems 24/7, and all activities shall be coordinated with the PATH Fire Safety Director through the REO.

Prior to an activity which will impede, alter, impair, block, or in any way deactivate an active standpipe, sprinkler system, smoke detection system, hydrant, or existing fire protection or prevention system the CFSM shall notify the REO and the ISD-RM.

The CSSM, CFSM, and contractor shall review and revise this plan quarterly, or as required by the REO or PSM based upon any changes in the scope of work, existing site conditions, or the intended method of execution. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO and PSM.

## **6.6 Site Logistics Plan**

Each CM and contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan identifying all proposed access routes, staging areas, crane locations, temporary traffic signal controls, worker and pedestrian crossings, vehicular and pedestrian gates for exit and entry, barriers, barricades, lighting, and fencing.

When working in an active roadway (e.g., erecting, using or dismantling a platform scaffold, using or moving an aerial lift, excavations, manhole entries, roadway paving, utility mark-outs, boring operations, surveys) a flag person and/or an impact resistant barrier (e.g. jersey barrier) shall be in-place for the duration of work. If the barrier is to remain in place during overnight hours, appropriate lighting shall be installed.

The CM and contractor shall review and revise this plan quarterly, or as required by the REO or WTC Site Manager based upon any changes in the scope of work, existing site conditions, or the intended method of execution. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO, WTC Site Manager, and PSM.

## **6.7 Hazard Communication**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable Hazard Communication Plan.

The CM and contractor shall review and revise this plan as additional chemical products are introduced, or if chemical product use deficiencies are identified. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO, and PSM.

## **6.8 PATH Operations**

When applicable, each CM and contractor shall submit to the REO and PATH SS&EM prior to the start of work a comprehensive and enforceable plan addressing compliance with the PATH Book of Rules, and the PATH On Track Safety Program. The plan should include any requirements that are in addition to the PATH power removal guidelines and method to achieve traction system Lockout / Tagout.

The CM and contractor shall review and revise this plan quarterly, or as required by the REO or PATH SS&EM based upon any changes in the scope of work, existing site conditions, or the intended method of execution. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO and PATH SS&EM.

## **6.9 Housekeeping**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan addressing the general housekeeping of the worksite including, but not limited to, the appropriate storage and/or security of all new and waste materials, the

continued maintenance of clear access and egress paths, walkways, and traffic areas, the maintenance of all permanent and temporary structures and buildings, maintaining work areas free from accumulations of waste materials, rubbish, debris, or other refuse and/or equipment discarded during the performance of work, and the removal, disposal and/or control of all rogue water, snow, dust, other transient materials with a potential for release from the WTC Site.

A dedicated resource will be tasked with the responsibility for the removal of debris, scrap material, trash, and other unusable materials on a daily basis at the end of each work shift.

The CM and contractor shall review and revise this plan as housekeeping deficiencies are identified, or if control measures are ineffective. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO, and PSM.

### **6.10 Materials Protection**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan outlining the securing and anchorage of all materials and equipment to resist uplift attributable to high wind hazards.

### **6.11 Electrical Protection**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan to address the grounding of all temporary electrical services, panels, tools and equipment in accordance with all applicable OSHA regulations and the National Electrical Code (NEC). All electrical tools, extension cords and equipment must be appropriately grounded in accordance with the requirements of OSHA and the NEC.

All CM and contractors are advised that appropriate personnel protective precautions and restricted access areas must be established for work within specific locations of PATH adjacent to unguarded electrical equipment. Such access will be restricted to personnel deemed qualified by the REO and the PATH SS&EM.

### **6.12 Site Demarcation**

Each CM and contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan to address the installation and maintenance of appropriate fencing, barricades, signage, markings and lighting in all work areas, including tunnels, to mitigate hazardous conditions.

### **6.13 Scaffolds**

For all temporary construction, including but not limited to, scaffolding, hoisting systems, stairs, etc, the contractor's EOR drawings need to be submitted to Port Authority for record retention prior to construction. After erection, the contractor's EOR needs to issue to the REO a signed and sealed letter stating that he/she has inspected the temporary construction, it complies with his/her drawings, and it is now accepted by him/her for use.

The following outlines the criteria for scaffold design:

- a) Support scaffolds and stair towers erected to a height of forty (40) feet shall be designed by a qualified person ("qualified" as defined in 29 CFR 1926, Subpart L; 1926.450(b) or a scaffolding company.
- b) Support scaffolds and stair towers erected to a height of forty (40) feet to seventy-five (75) feet, or that are repaired, maintained, modified, or removed at these heights shall be designed by a scaffolding company or a NYS licensed professional engineer.
- c) Support scaffolds and stair towers erected to a height of seventy-five (75) feet or greater, or that are repaired, maintained, modified, or removed at these heights shall be designed by a NYS licensed professional engineer.

Each contractor whose workers will be utilizing the scaffold shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan to address, erection, use, maintenance, daily inspections, and disassembly of the scaffold.

The contractor shall review and revise this plan if deficiencies in scaffold use are identified, or as requested by the REO or PSM. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO and PSM.

#### **6.14 Hot Work**

Each CM and contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan to comply with the Hot Work Permit requirements established by the REO, and shall be responsible for any consequences or penalties for not complying with those requirements. The REO and PSM shall monitor and verify that proper fire protection measures, including fire watch, have been provided prior to, during, and at the completion of any hot work. The CM and contractor shall submit a plan, to be enforced by the CFSM, to the REO and PSM providing the following:

- a) Copy of the FDNY Pre-Hot Work Checklist;
- b) Name of torch or equipment operator;
- c) Name of fire watch;
- d) Company working for;
- e) Type of welding, compressed gases or equipment to be used;
- f) Compressed gas cylinder storage location;
- g) Applicable licenses, permits, and certificates of the torch operator for the type of activity;
- h) FDNY Certificate of Fitness for the assigned fire watch;
- i) Location of work;
- j) Duration;
- k) Copy of emergency procedures developed for this activity.

Completed copies of a Port Authority Cutting and Welding Permit for each torch operator, welder, and fire guard must be prepared and submitted to the REO. These Permits must be reviewed and approved by the REO prior to the start of this work in the field.

### **6.15 NYC Building Codes - Chapter 33 Inspections**

On a quarterly schedule, the CSSM shall submit to the REO and PSM copies of all required NYCBC Chapter 33 inspections performed relative to the project. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO and PSM and be readily available for on-site review.

### **6.16 Abrasive Blasting**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan addressing the performance of any abrasive blasting, surface scarification, steam or water blasting, or high pressure water cutting. At a minimum, the plan shall address:

- a) The selection and use of respiratory and personal protective equipment;
- b) Methods to achieve and maintain work area isolation, and to establish ventilation and water drainage control;
- c) The type of equipment to be used, its power source and requirements, and the type of blasting or cleaning agent;
- d) The engineering controls for dust control and debris containment/collection methods to be used;
- e) Personal and environmental monitoring requirements for airborne contaminants;
- f) Methods to achieve dust suppression during freezing temperatures or high wind conditions.

The CSSM and contractor safety supervisor shall review the plan quarterly and revise accordingly, or as required by the REO or PSM based upon any changes in the scope of work, existing site conditions, or the intended method of execution. A hard copy and a non-modifiable electronic version of all revisions shall be forwarded to the REO and SSD and PSM.

### **6.17 Personal Protective Equipment**

Each contractor shall submit to the REO and PSM prior to the start of work a comprehensive and enforceable plan addressing the training, selection, use, and maintenance of the personal protective equipment (PPE) issued to their workers. While performing work at the WTC Site, the minimum PPE requirements include the use of a hard hat, safety glasses, reflective vest or clothing, and work shoes. If based on the specific hazard(s) of the task, additional PPE may be required, each contractor shall provide required equipment and training in its use.

## **6.18 Emergency Contacts**

Each CM and contractor shall submit to the REO and PSM an emergency contacts list, which shall include, as applicable, 24 hour contact numbers for the following:

- a) Superintendants;
- b) General foreman;
- c) Foreman;
- d) Contractor Site Safety Manager;
- e) Fire Safety Manager;
- f) Contractor Safety Supervisor;
- g) Contractor Safety Foreman;
- h) Competent Persons;
- i) Hazardous materials response contractor.

## **7 WTC Site Specific Health and Safety Requirements**

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Each CM, contractor, and external agency performing work at the WTC Site shall be required and responsible to prepare and implement the requisite programs, plans, and procedures necessary to protect worker health and safety, and to comply with all applicable federal, state, and local codes, rules, regulations, and ordinances. In addition to regulatory compliance, the following WTC Site-specific requirements shall be followed.

### **7.1 General Duty Clause**

Each CM, contractors, second tier contractors, workers and employees performing work shall comply with the requirements of the OSHA, Section 5 (a) and (b): General Duty Clause.

Section (a): Each employer:

- a) "Shall furnish to each of his employees employment and a place of employment which are free from recognized hazards that are causing or are likely to cause death or serious physical harm to his employees.;"
- b) "Shall comply with occupational safety and health standards promulgated under this Act."

Section (b): Each employee:

- a) "Shall comply with occupational safety and health standards and all rules, regulations, and orders issued pursuant to this Act which are applicable to his own actions and conduct."

### **7.2 Recordkeeping and Reporting Occupational Injuries and Illnesses**

Each CM and contractor performing work shall maintain records, reports, and posting consistent with the requirements specified in OSHA 29 CFR Part 1904.

### **7.3 General Safety and Health Provisions**

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926, Subpart C: General Safety and Health Provisions.

### **7.4 Occupational Health and Environmental Controls**

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926, Subpart D: Occupational Health and Environmental Controls, in addition to the following mandatory specific worksite requirements:

- a) For hand washing purposes, all temporary lavatories shall provide either hand soap with running hot and cold or tepid potable water, or a sanitizing hand wash. Remote hand wash stations providing running hot and cold or tepid potable water will be permitted

provided that they are located in close proximity of the lavatory. Paper towels must be provided;

- b) A break area furnished with tables, chairs, hand wash stations, temporary lavatories, lights, and trash containers must be provided;
- c) Trash, refuse, and construction debris shall not be allowed to accumulate for more than one day in areas of assembly, such as but not limited to locker rooms, lunch rooms, storage areas, and each jobsite location. A sufficient number of trash containers and construction dumpsters shall be provided, and their contents disposed of on a daily basis;
- d) Lighting for each work location, including tunnels, which at a minimum, complies with the requirements as referenced in 29 CFR Part 1926.56;
- e) Provisions for the quick flushing of the eye with a minimum of 15 minutes of continuous flow shall be provided and maintained;
- f) Consistent with U.S. OSHA publication #3154: Heat Stress Card, during periods of hot weather (equal to or greater than 85 degrees F and 40% Relative Humidity), each contractor's safety manager shall be required to develop a plan to prevent heat stress disorders. At a minimum, the plan shall address providing an adequate supply of drinking water with individual drinking cups, a shaded rest/break area, and training information on the signs and symptoms of heat stress; Contractors will provide daily, fresh clean drinking water to their employees. Drinking water will be dispensed in containers with a tight sealing lid and labeled as Drinking Water. Drinking water containers are to be cleaned daily.
- g) Adequate cups will be made available at each drinking water container. Cups will be stored in a durable clean dispenser. A trash can or other type receptacle will be provided to collect used cups. Contractors are responsible for cleaning up around the water container area. The use of a common cup, soda cans and bottles, drinking directly from the spout, and the placing of hands or material into drinking water is prohibited.
- h) Consistent with U.S. OSHA publication #5156: Cold Stress Card, during periods of cold weather (equal to or less than 30 degrees F), each contractor's safety manager shall be required to develop a plan to prevent frostbite and hypothermia. At a minimum, the plan shall address providing a warm sheltered area, an adequate supply of drinking water with individual drinking cups, and training information on the signs and symptoms of hypothermia.

- i) Contractors will ensure adequate chemical toilets are available on the jobsite for the use of workers. Toilets should be located on or within two hundred (200) feet of each work area within the project. The following is the minimum requirement for toilets on this project:

Number of Employees	Number of Toilets Required
20 or Less	1 Toilet and 1 Urinal
20 or More	1 Toilet and 1 Urinal per 40 Workers
200 or More	1 Toilet and 1 Urinal per 50 Workers

- j) Chemical toilets shall be serviced often enough to prevent overflowing, creation of an unsanitary condition, a health hazard or nuisance, and shall be maintained in good repair so as to prevent leakage of the contents to the surrounding ground or onto the floor or other portions of the structure.

### 7.5 Personal Protective Equipment

Prior to the issuance of personnel protective equipment, each contractor shall require the competent person for each work crew to perform a JHA to determine the type(s) of personnel protective equipment required and provide training.

At a minimum, each CM and contractor shall comply with the requirements of 29 CFR Part 1926, Subpart C: General Safety and Health Provisions; Subpart D: Occupational Health and Environmental Controls (1926.57 - abrasive blasting; grinding, polishing, and buffing operations; spray finishing operations; 1926.60 - methylenedianiline; 1926.62: lead:); Subpart E: Personal Protective and Life Saving Equipment; Subparts M and R: Fall Protection; and Subpart Z: Toxic and Hazardous Substances, in addition to the following mandatory specific worksite requirements:

- a) Upon entrance to designated work areas, the minimal personal protective equipment requirements for work at the WTC Site are hard hats, reflective safety vests, construction sturdy/steel tip/composite tip shoes, and eye protection. A flashlight is required when working on or adjacent to PATH track areas and platforms;
  - i) When working on or around PATH tracks, steel tipped safety shoes as per ASTM F2412-05 and F2413-05: Standard Specification of Performance Requirements for Foot Protection, are required.
- b) Each CM and contractor performing work shall issue to their employees all PPE identified in approved JHAs. All JHAs shall be documented, maintained at the worksite, and on file with the CSSM;
- c) All selected PPE shall comply with the most recent ANSI requirements;
- d) Where work may require the use of respiratory protection, the requirements under 29 CFR 1926.103/1910.134 shall be followed.

- e) Full-length pants and shirts with sleeves that cover the entire shoulder must be worn at all times within the WTC Site.

## 7.6 Fire Protection and Prevention

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926, Subpart F: Fire Protection and Prevention, and the NYC Fire Code.

The Contractor shall comply with the Rules of the City of New York (3RCNY§11-01) whereby all buildings under construction are subject to regular inspections conducted by the NYC Fire Department, Administrative Fire Company and the Bureau of Fire Prevention Construction, Demolition and Alteration (CDA) group.

The contractor CFM shall have overall responsibility to develop, implement, and maintain a fire protection and prevention program addressing 29 CFR Part 1926: Subpart F, and the NYC Fire Code, plus the following mandatory specific worksite requirements:

- a) Flammable and combustible liquids shall only be stored and transported in approved 1, 2, or 5-gallon Type I and II safety cans with spring loaded closing lids and flashback protection, or, in the alternative, United States Department of Transportation (US DOT) approved containers;
- b) All safety cans and containers shall be protected from fire, spark, impact, falls, and falling objects. Appropriate color-coding and permanent labeling such as "Gasoline", "Kerosene", "Diesel", or "Mixed-Fuel" shall adorn all safety cans and containers to designate its contents;
- c) Flammable and combustible liquid storage cans will be stored in approved fire cabinets, protected from fire, spark, impact, falls to lower levels, and falling objects. Up to 60 gallons of a flammable liquid and 120 gallons of a combustible liquid shall be permitted within a storage cabinet. No more than three storage cabinets will be allowed in any indoor storage area;
- d) All stationary and mobile fuel tanks with a storage capacity of greater than 5-gallons shall be equipped with secondary containment either integral to the unit, or by the installation of an impervious membrane and containment barrier (e.g., berm/dike system). The following information must be submitted to and approved by the REO and the PSM prior to a fuel tank being delivered and used at the WTC Site:
  - i) Provide the name of the tank manufacturer, fuel capacity, and product to be stored;
  - ii) Identify the type of tank leak protection - is the tank double walled or will secondary containment be required; if secondary containment is required, detail its construction;
  - iii) Identify the method to fill the tank; method to dispense the product for use;
  - iv) Identify if the tank will be stationary or mobile. If the tank is mobile, documentation verifying the tank was manufactured for lifting, plus the method to move the tank, such as rigging, attachments, and equipment to be used must be submitted to the REO and PSM. If the tank is not mobile, identify where it will be located;

- v) Identify the fire protection equipment associated with tank; include number, type, and location of fire extinguishers;
- vi) Provide a grounding and bonding plan for flammable liquids;
- vii) Identify what postings / labels / placards will be used for identification and warnings; identify the individual responsible to inspect the tank(s) and frequency.
- e) At a minimum, an actively charged 20-B:C portable fire extinguisher shall be permanently mounted in plain view, with unobstructed access within 25 feet of every flammable and combustible liquid storage & use locations;
- f) During construction, a 2-A rated portable fire extinguisher shall be located on each floor adjacent to each stairway; an additional 2-A rated portable fire extinguisher shall be provided for each 1500 square feet of building area, with a maximum unobstructed travel distance not to exceed 75 feet;
- g) At least half of the distributed portable fire extinguishers shall be A:B:C rated. All portable fire extinguishers with a classification of B:C, or multiple classifications of A:B:C portable fire extinguishers shall be rated not less than 20-B;
- h) Pressurized water-can extinguishers, if used, shall be provided with an approved anti-freeze solution in areas open to ambient temperatures during cold weather;
- i) Appropriate, material-specific portable fire extinguishers shall be provided for any hazards not specifically noted elsewhere in this document;
- j) All self-propelled equipment (forklifts, cranes, rollers, etc.) shall be provided with appropriate portable fire extinguishers;
- k) Portable fire extinguishers that are not mounted, such as those specifically used by the fire watch during cutting & welding operations, or mounted on self-propelled equipment shall not fulfill the requirements for distributed and mounted portable fire extinguishers;
- l) All portable fire extinguishers shall be mounted off the floor, clearly visible with signs noting location where necessary, and have unobstructed access to them;
- m) All portable fire extinguishers shall be maintained in a state of readiness. All required inspections, tests and maintenance shall be not less than that required by applicable codes and standards (NFPA 10 - Standard for Portable Fire Extinguishers, as referenced by the NYC Fire Prevention Code). A contract with an approved fire extinguisher contractor is recommended for inspections, testing, and maintenance. Used or defective extinguishers shall be removed and replaced with new units immediately after use or discovery of the defect;
- n) All portable fire extinguishers shall be provided with an inspection tag upon installation and shall have the installation date noted in permanent marker the date of installation. Alternate inspection records are acceptable in accordance with the Fire Code;
- o) Smoking is strictly prohibited at the WTC Site as per NYC Fire Code FC 1404.1. Durable "No Smoking" signs shall be conspicuously posted throughout all areas;

- p) Combustible materials, including but not limited to wood, paper, cardboard, plastic, trash, refuse, etc., shall not be allowed to accumulate in storage locations, or on floors being constructed. A designated refuse area shall be established for accumulation awaiting pickup. All combustible materials must be removed from each floor under construction and the worksite on a daily basis. Flammable and combustible oil-soaked rags must be deposited into fireproof containers;
- q) Active stairways, aisles, and all egress pathways shall remain unobstructed, and free from the storage of debris, combustible materials, flammable liquids, compressed gas cylinders, and equipment;
- r) The use of space heaters for comfort, and construction curing and drying shall at a minimum comply with NYC Fire Code FC 1403. For comfort heating, only electric space heaters shall be permitted. For construction curing and drying, propane and liquid fuel sources shall be permitted.
- s) When in use, generators and associated exhaust outlets such as but not limited to piping, stacks, and manifolds shall be properly vented, and positioned away from combustible materials;
- t) Compressed gas cylinder, flammable and combustible liquids, and all chemical products shall be stored and signed/labeled in accordance with the hazard class. The co-mingling of different hazard classes in storage is prohibited;
- u) When required, storage areas shall be protected from vehicular impact by the use of "jersey barriers" or a similar impact resistant material;
- v) Enclosed facilities (e.g. trailers) used for the storage of flammable gases or liquids shall be properly ventilated by either mechanical or natural means based upon the characteristic of the chemical product being stored. If lighting and/or power is installed, explosion proof, intrinsically safe wiring is required.
- w) All cylinders shall have regulators removed and cylinders capped when not in use. Any cylinder not in use shall be properly stored. Cylinders may remain on an approved cart for no more than 24 hours unless used during that period.

### **7.6.1 Space Heaters**

Prior to the use of space heaters, the contractor shall submit to the CM and PSM the following for review and acceptance:

- a) Space Heaters for Comfort
  - i) A description of the proposed application for heater use;
  - ii) Identification of the locations where the heater will be used, and duration of use;
  - iii) A description as to the type of heater, size, emergency cut-off, and method of installation
- b) Space Heaters for Construction Curing and Drying
  - i) A description of the proposed application for heater use;

- ii) Identification of the locations where the heater will be used, and duration of use;
- iii) Specify the locations where the propane and/or liquid fuel will be stored;
- iv) When portable fueled space heaters will be used for construction related drying, provide:
  - (1) The number of heaters to be stored and size of fuel tank
  - (2) Amount of liquid fuel to be stored
  - (3) Means of fire protection and spill control
  - (4) Type, size, and location of fire extinguishers
- v) Specify the postings / labels / placards that will be used for product identification and warning; identify the individual(s) responsible to inspect the storage area and frequency of inspection;
- vi) Describe how the fuel system will be set up; provide the name(s) of the FDNY Certificate of Fitness holder where required or competent person who will set up, monitor and inspect the system; identify what fire protection / prevention measures will be in-place;
- vii) Affix to each propane tank and/or liquid fuel heater a tag identifying the name of the contractor using the unit;
- viii) Describe the type of training that will be provided addressing fuel heating unit use;
- ix) Submit a Job Hazard Analysis for use. The JHA must include:
  - (1) Method of refueling consistent with manufacturers instructions and fire code requirements;
  - (2) Method of transporting propane tanks and/or liquid fuel from storage to the work area;
  - (3) Details for ventilation of enclosed space(s) where heaters will be used;
  - (4) Scheduled inspection of heating units;
  - (5) Assessment to verify fire protection / prevention preparedness;
  - (6) Manufactures recommendation for operational distances from combustibles.

## **7.7 Signage**

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart G: Signs, Signals, and Barricades.

## 7.8 Materials Handling

Each contractor shall comply with the requirements of 29 CFR Part 1926 Subpart H: Materials Handling, Storage, Use, and Disposal, in addition to the following mandatory specific worksite requirements:

- a) The competent person for each work crew using alloy steel chain hoists, wire rope, natural and synthetic fiber rope, nylon/polyester/polypropylene webs (slings), shackles, eye-bolts, and hooks for the hoisting, lifting, supporting and suspension of materials shall at a minimum, inspect, maintain, and store the above elements at a frequency consistent with 29 CFR Part 1926.251: Rigging Equipment For Material Handling;
- b) The competent person shall document all sling inspections (daily, routine, and annual), maintain a copy of the inspection report at the worksite, and provide a copy of the inspection report to the CSM;
- c) Debris chutes with dumpsters manned by watch persons are required where the debris being removed is 20 feet or more from the point of deposit;
- d) Tag lines shall be used to control all suspended loads;
- e) Softeners shall be applied to all sharp edges when using synthetic and wire rope slings;
- f) Multiple loaded lifts (Christmas treeing) are prohibited;
- g) Prior to the raising or lowering of loads, the path of the load and landing pad shall be identified in advance of the lift. Lifts shall be coordinated in such a way as to avoid transporting the load above workers. Lifting loads over pedestrians, active roadways, and the PATH System is strictly prohibited;
- h) When erecting, dismantling (including jumping) a tower crane, rigging materials that use synthetic slings should only be used if the manufacturer's manual recommends synthetic slings to be used. Synthetic slings shall never be used unless softening mechanisms have been applied to all sharp edges;
- i) Where applicable, all loads shall be lifted in accordance with the manufacturer's rigging specifications and lifting requirements.
- j) Fuel cells designed to be lifted with contents present shall be used. All other fuel cells are considered to be stationary and shall not be lifted unless empty.

## 7.9 Hand and Power Tool Use

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart I: Tools - Hand and Power, in addition to the following mandatory specific worksite requirements:

- a) Prior to the performance of work, the competent person for each work crew shall inspect all hand and power tools to ensure that workers are protected from the tool's point of operation. Workers shall be protected from open and exposed belts, gears, shafts, pulleys, sprockets, spindles, drums, fly wheels, reciprocating and rotating parts, and abrasive wheel explosions;

- b) Prior to use, the competent person shall ensure that all workers are trained and where required, certified in the use, inspection, and maintenance of all equipment, electric power tools, pneumatically driven tools, hydraulic power tools, fuel powered tools, and powder actuated tools in accordance with applicable regulations and the manufacturer's specifications.

As it pertains to the use of powder actuated tools, the contractor shall submit to the REO and the SSD prior to use the following:

- i) Name of the tool operator;
  - ii) Work location;
  - iii) Copy of FDNY Certificate of Fitness, and verification of manufacturer's training;
  - iv) Storage location and method for tool and shots;
  - v) Plan to retrieve spent or unfired shots.
- c) As referenced in 29 CFR Part 1926.300(b)(4)(iv), each competent person needs to additionally evaluate the types of power tools noted therein;
  - d) All power tools shall be inspected by the competent person to verify all switches and safety devices and guards are operational, and all power cords are firmly attached and in good repair;
  - e) To prevent displacement, all pneumatic or pressurized airlines and hoses shall be secured to each other and the tool through the use of whip lines, cotter pins, retainers, or a similar securing mechanism;
  - f) All hoses exceeding ½ inch inside diameter shall have a safety device (i.e., whip check) at the source of supply or branch to reduce pressure in case of hose failure.
  - g) All electrical hand and power tools shall be double-insulated or three-wire with a ground and connected to a ground fault circuit interrupter (GFCI).

## **7.10 Welding and Cutting Operations**

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart J: Welding and Cutting, in addition to the following mandatory specific worksite requirements:

- a) At no time shall free standing, unsecured compressed gas cylinders be present at the WTC Site;
- b) A tag secured around the valve stem, or other durable identification device indicating ownership shall be affixed to each compressed gas cylinder identifying the contractor as the cylinder user;
- c) Compressed gas cylinders shall be secured to a welder's handcart through the use of chains or a bracket. If the handcart is not to be used within 24 hours, the cylinders must be removed, and securely fastened (chained) within a designated and secured storage cage;

- d) Flammable and oxygen gas cylinders when stored must be separated by at least 20 feet or by the construction of an approved 30-minute fire-resistant barrier at least 5 feet in height. If stored on cylinder carts, the cart must have an approved 30-minute fire resistant barrier at least 5 feet in height;
- e) Storage cages shall be labeled with contents, hazard class, and contractor and contact number;
- f) Compressed gas cylinders shall not be secured to building components such as structural columns, scaffolds, ladders/stair towers, guardrails, hand/stair rails, and re-bar;
- g) All compressed gas cylinders when not in use shall be stored with the valve protection cap in place;
- h) During all hot work operations, a fire watch with an adequately sized and proper class fire extinguisher shall be provided in the immediate vicinity and all locations that could be impacted by spark or slag. In areas where sparks or slag may fall to lower levels, an additional fire watch person may be required at the lower level. All combustible materials and flammable liquids and gases shall be either removed from the vicinity, or protected in-place. For a minimum of 60 minutes after the completion of the hot work operation, the fire watch shall remain in-place until such time there is no potential for combustible material ignition. The fire watch shall not perform any other duties when acting as a fire watch. At any time the fire watch must depart their assigned area of responsibility, a qualified replacement must assume the duties of fire watch. At no time shall hot work proceed with no fire watch in place;
- i) During welding and cutting operations, surrounding employees, workspaces and the public shall be protected from spark and glare through the use of welders screens;
- j) Welding clamps shall not be connected to any electrical conduit, wiring, or component;
- k) For each individual torch operation, a Port Authority Cutting and Welding Hot Work Permit shall be requested, and issued by the EOC through the REO prior to the performance of work. Prior to all torch operations, the CFSM shall submit the FDNY Certificates of Fitness for the torch operator and fire watch, and NYC DOB, NYC DOT, ASME permits for the welder to the REO for review and approval;
- l) Compressed gas cylinders shall not be stored in direct sunlight, in the snow or ice, or in locations where they cannot be seen or subject to impact;
- m) All fuel-gas lines (oxygen/acetylene) shall have installed at the regulator and torch a flash-back protection device that will prevent flame from passing into the fuel-gas system.

## 7.11 Electrical

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart K: Electrical, and NFPA 70E, in addition to the following mandatory specific worksite requirements:

- a) On a daily basis, prior to the performance of each shift, the competent person shall inspect all extension cords, pig-tail power cords and light stringers, plug and cord sets, outlets, tools, and generators. Damaged or defective cords, plugs, outlets, tools, and

generators shall be removed from service. All extension cords must be three-pronged grounded and have a heavy duty rating. Extension cords that cannot be elevated shall be protected from impact and damage;

- b) Extension cords with missing ground plugs must be removed from service and destroyed;
- c) All extension cords, including those attached to generators shall be connected to in-line ground fault circuit interrupter. The competent person shall test each line to verify that it is ground faulted protected prior to use;
- d) Where work is in, on, or around water, all extension cords, plugs and receptacles must be waterproof;
- e) The use of spliced (taped) electric or power cords is prohibited;
- f) Temporary light stringers shall have bulb protectors.

## **7.12 Scaffolding – Supported, Suspended, and Aerial**

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926 Subpart L: Scaffold, in addition to the following mandatory specific worksite requirements:

- a) Workers involved with the erection, dismantling, repair, maintenance, moving, modification, or use of a support scaffold equal to or greater than 40 feet in height shall possess the applicable support scaffold construction training certification from the NYC DOB. Only a trained work crew under the supervision of a competent person shall be permitted to erect, use, modify, move, or dismantle any support, suspended, or aerial scaffold;
- b) Workers working on support scaffolds at any height shall possess the applicable support scaffold training certification from the NYC DOB;
- c) Fall protection shall be required on all platform, suspended, and aerial scaffolds when the working platform is equal to or greater than 6 feet above a lower level;
- d) The CSSM shall maintain a list of the names and training experience of all prime and sub-contractor workers and/or employees competent to erect, use, and dismantle a scaffold and scaffolding system, and use of aerial lift;
- e) The competent person for the work crew erecting, using, or dismantling a scaffold, or using an aerial lift shall inspect the scaffold on a daily basis, or as required, prior to the performance of work by each shift, to ensure the scaffold or aerial lift complies with all applicable regulation and is acceptable for use;
- f) The competent person for the work crew erecting, using, moving, dismantling a scaffold or aerial lift shall document the daily inspection using a checklist, keep a copy of the completed checklist at the jobsite, and provide the CSSM with a copy;
- g) The working platform on all mobile scaffolds (i.e. bakers scaffold) shall be secured from displacement or upset by the use of a retaining clip or similar device. Lockable casters shall be provided on all mobile scaffolds;

- h) At a minimum, on a weekly basis or following an incident that could have affected the integrity of the scaffold or aerial lift, the competent person for the work crew erecting, using, dismantling a scaffold and scaffolding system, or an aerial lift shall affix a notification sign or tag to the scaffold or system indicating:
  - i) If scaffold use is Approved, Restricted, or Prohibited;
  - ii) The date of the inspection;
  - iii) The name of the person inspecting the scaffold.
- i) When using cross-bracing as a component of a guard-rail system:
  - i) Cross-brace For Top-Rail Protection:
    - (1) The cross-brace intersect shall be at a height of 38 – 48 inches above the working or walking platform. An additional rail will be required as a mid-rail at a height midway between the cross-brace intersect and the working or walking platform
  - ii) Cross-brace For Mid-Rail Protection:
    - (1) The cross-brace intersect shall be at a height 20 – 30 inches above the working or walking platform. An additional rail will be required as a top-rail at a height of 38 – 45 inches above the working or walking platform
- j) Toe boards shall be required on all scaffolds;
- k) When determined by the competent person of a work crew erecting or dismantling a scaffold that fall protection is Infeasible, consistent with U.S. OSHA 29 CFR 1926.451(g)(2), the competent person shall substantiate in writing the following, have it signed by a principal of that company, and forward the document to the prime contractor's CSSM. The CSSM shall review and approve the plan, and forward it to the REO and SSD for review and comment as required:
  - i) The type, location, and height of the scaffold being erected, used or dismantled;
  - ii) The size of the work crew for scaffold erection, use or disassembly;
  - iii) The duration of the task requiring scaffold erection, use or disassembly;
  - iv) The conditions and reasons why fall protection is infeasible;
  - v) The methods used to inform, train and protect the workers from falls in the absence of fall protection.

### **7.13 Fall Protection**

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926 Subpart M: Fall Protection and Subpart R: Steel Erection, in addition to the following mandatory specific worksite requirements:

- a) Each employer shall develop and implement a policy statement that provides general goals and guidance for a managed fall protection program and emphasizes management's commitment to providing a safe workplace for employees exposed to fall hazards. Employers shall provide adequate and timely resources necessary to support their managed fall protection program;
- b) Prior to the use of any personal fall arrest equipment, the prime and contractor shall prepare a JHA for the activity requiring the personal fall arrest;
- c) When a personnel fall arrest system (PFAS) is selected as a means of personnel fall protection, to maintain continuous fall protection double lanyards shall be required where compatible with the PFAS and design in use;
- d) When using the top wire of a wire rope guardrail system, or a wire rope perimeter cable as a horizontal lifeline, the guardrail / perimeter cable must be engineered, installed, and maintained to meet lifeline and anchorage loading requirements;
- e) PFAS shall be designed, installed, and maintained to ensure that if a worker experiences a fall, the lanyard shall engage to arrest the fall prior to any portion of the workers body impacting a lower level, structure or surface;
- f) Prior to each use, the competent person for the work crew shall ensure that his employee's personal fall arrest system (full body harness, connectors, D- rings, snap hooks, lanyards, lifelines, and anchorage points) are properly inspected, in good condition, and have the required tensile strength and load bearing capacity;
- g) All persons walking or working at any height above a dangerous process or piece of equipment shall be protected from falling through by the use of guardrails, personal fall arrest, or safety nets;
- h) All persons exposed to falling objects shall be required to wear a hardhat, and be protected from falling objects through the use of screens, toe boards, safety nets, canopies, or restricted access;
- i) Personal fall arrest shall be required for all workers and employees working in vehicle mounted aerial platforms, extensible boom platforms, articulating boom platforms, vertical towers (scissor lifts), and aerial ladders;
- j) A qualified person as defined by 29 CFR Part 1926.32 must design the required lifeline and anchorage systems. The competent person shall be required to install, inspect, and maintain the system as designed;
- k) The CSSM and the safety supervisor for each sub-contractor performing work on site shall develop an emergency response plan in the event a worker who experienced a fall wearing a personal fall arrest harness needs to be rescued;
- l) All exposed vertical and horizontal structural re-bar, and protruding pieces of metal shall be either be capped or covered with an impact resistant material;
- m) All surface openings, including but not limited to floor, wall, shaft way, utility, duct, skylight, roof, and conveyor shall be protected with a cover capable of supporting without failure at least twice the weight of workers, equipment, and materials imposed on it. All covers shall be secured from displacement caused by vertical or lateral impacts

and wind load. All surface covers shall be identified, i.e., "Hole", "Hole Cover - Do Not Remove." The competent person for the work crew will inspect each covered surface prior to and during the performance of work. Any missing cover will be replaced, damaged covers repaired, and loose covers secured. Covers to be used in active roadways shall be capable of supporting without failure twice the maximum intended axle load of the largest vehicle;

- n) The CSSM for the CM shall notify the REO and the PSM in advance of all safety net drop tests are required under 29 CFR 1926.502(e)(2), and provide written reports of each drop test result;
- o) The CSSM and contractor safety supervisor shall develop a safety net retrieval plan for personnel and debris;
- p) Documented fall protection training shall be maintained by the CSSM and sub-contractor's safety supervisor, and shall submit to the PSM for review upon request.
- q) Documented training is required for all personnel with regards to PFAS and requirements for anchorage and tie off points with the employee to acknowledge: "I acknowledge that I have been provided a harness and lanyard for use at the site. I have been advised to use this protection whenever I am exposed to a fall of 6' or greater while working at the site". The text shall be included as written as part of all fall protection training documentation;
- r) Workers will not tie off to a perimeter cable or wire rope handrail unless the requirements of (d) above are met;
- s) Each CM and contractor shall submit engineered documentation on horizontal and vertical lifelines to the Port Authority for review and approval. Non-wire rope (i.e.: fibrous) will not be approved as a component of a horizontal lifeline without approval of a PE qualified in fall protection system design. All horizontal lifelines will be installed under the direct supervision of a qualified person.
- t) Lanyards are not to be tied back to themselves unless the lanyard is specifically manufactured to tie back to itself.

## 7.14 Steel Erection

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926, Subpart R: Steel Erection, in addition to the following mandatory specific worksite requirements:

- a) Multiple erection loads (Christmas treeing) is prohibited;
- b) Prior to the raising or lowering of loads, the path of the load shall be identified in advance of the lift. Lifts shall be coordinated in such a way as to minimize transporting the load above workers. Lifting loads over pedestrians or active roadways is strictly prohibited.
- c) Personnel platforms must have a positive-lock latch with a locking bolt and nut assembly, or provide a cable between the master links and hook block or headache ball;
- d) Fall protection shall be enforced by the work crew's competent person.

- e) The steel erection contractor shall use best available technologies and practices in achieving compliance with the fall protection requirements of Subpart R.

## **7.15 Motor Vehicle and Mechanical Equipment**

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926, Subpart O: Motor Vehicles, Mechanized Equipment, and Marine Operations, in addition to the following mandatory specific worksite requirements:

- a) Each operator of motor vehicles on the WTC Site shall have a valid and current driver's license with appropriate vehicle classification and each motor vehicle shall display the required annual safety inspection sticker;
- b) Only properly identified company vehicles with valid proof of proper vehicle registration and insurance shall be allowed on the WTC Site. Vehicles shall have required identification properly displayed on each side of the vehicle. Markings can be either decal, magnetic or painted on the vehicle;
- c) All vehicles must be properly insured and documentation must be made available upon request. Signs on vehicles shall be sufficient size to be readable from 100 feet. At a minimum, vehicle signs shall contain:
  - i) Company name;
  - ii) Company address;
  - iii) Company telephone number.
- d) Each CM and/or contractor shall furnish, at their own expense, a qualified traffic flag person as necessary to control the work traffic, unless otherwise directed by the REO or WTC Site Manager. Flag persons shall be provided with appropriate PPE;
- e) All vehicles shall be equipped with a functioning back-up alarm;
- f) Employee owned vehicles and/or equipment shall be parked only in locations designated by the Port Authority. Illegally parked vehicles/equipment are subject to removal. The Port Authority shall not assume any costs respective of towing fees, vehicle damage and/or any costs associated with this action;
- g) The windshield, side view mirrors, back up mirrors, and overhead windows (as required) on all vehicles used on the WTC Site shall be intact, in good repair, undamaged, and clean. Vehicle safety equipment such as driver and passenger seatbelts, back-up alarms, head/tail/brake/back-up/and clearance lights shall be in good repair, clean and tested daily, or at the beginning of each shift. Vehicles with deficiencies will be removed from service pending repair;
- h) All operators of construction equipment shall be properly licensed, and approved to use that equipment by the CSSM. Copies of certifications, licenses, etc. shall be maintained onsite by the CSSM and made available upon request by the REO or the PSM;

- i) Vehicles used to transport personnel shall have seats firmly secured and adequate for the number of individuals to be carried. All vehicle occupants shall be properly seated utilizing a manufacturer installed restraint device. Standing, kneeling or riding on the outside of moving vehicles is prohibited.

## 7.16 Excavations

Each contractor shall comply with the requirements of 29 CFR Part 1926 Subpart P: Excavations, in addition to the following mandatory specific worksite requirements:

- a) A minimum of two (2) business days prior to any excavating, the contractor shall notify the CM. The contractor shall notify the NYC One Call Center to allow member agencies to mark locations of underground utilities prior to any excavating and confirm such notifications with the CM.
- b) No subsurface penetrations, core drilling, pilot holes, trenching or excavations operations are to be performed before either the Port Authority or an outside agency or utility performs a mark-out. All underground utilities that are to remain must be protected for the duration of the operation;
- c) At a minimum, the competent person for each crew performing excavation and trenching operations shall:
  - i) Be present at the worksite at all times when workers are within the excavation or trench;
  - ii) Provide a means of access and egress once the excavation or trench reaches a depth of 4 feet shall be provided, and depending upon the soil classification and worksite conditions provide cave-in protection when the depth reaches 5 feet, and fall protection if the depth of the trench or excavation equals or exceeds 6 feet;
  - iii) Establish a warning system to protect workers within the excavation or trench from vehicles;
  - iv) Ensure there is no overhead hoisting operations over occupied trenches or excavations;
- d) At a minimum, on a daily basis prior to the performance of work by each shift, or following an incident that possibly could affect the integrity of the protective system, inspect the excavation, protective system, egress ways, and adjacent areas. All inspections shall be documented, with a copy maintained at the jobsite and a copy provided to the CSSM.
- e) Prior to the commencement of any trench work, a plan showing the location, route, width and depth of the trenching is to be submitted to REO and the PSM for review. As and when required by regulation, if trench shoring or shielding is required, a design prepared and stamped by a licensed NYS Professional Engineer is to accompany the plan;
- f) Open trenches, excavations, and stockpiled material at the construction site shall be appropriately barricaded, posted, and lighted;

- g) At a minimum, spoil piles and stockpiles shall be set back at least 2 feet from the edge of the trench or excavation, or at a greater distance as determined by the competent person;
- h) There shall be no work in trenches or excavations where there is the presence of water unless:
  - i) The flow of water is controlled by the use of pumping devices, and that the work crew's competent person monitors pumping operation;
  - ii) The competent person has performed a inspection of the cave-in protection and prevention measures in place and has verified they have not been compromised;
  - iii) The competent person informs the CSSM of the actions taken to support trench or excavation entry;
  - iv) The CSSM approves the entry.
- i) All coverings for open trenches or excavations shall be appropriately anchored or pinned to prevent displacement, and be of sufficient strength to support at least twice the maximum axle load of the largest vehicle expected to crossover the cover.
- j) Working within a covered trench or excavation without prohibiting vehicle traffic over it is prohibited.

### **7.17 Concrete and Masonry Work**

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926 Subpart Q: Concrete and Masonry Construction.

### **7.18 Underground Construction, Caissons, Cofferdams and Compressed Air**

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart S.

### **7.19 Demolition**

Each contractor shall comply with the requirements of 29 CFR Part 1926 Subpart T: Demolition, in addition to the following mandatory specific worksite requirements:

- a) Prior to the demolition of any structure, a licensed NYS Professional Engineer and the competent person of the demolition crew shall perform and document a pre-demolition inspection, followed by the preparation and submittal of a Demolition Plan to the CSSM for review and approval. Once approved by the CSSM, the plan shall forward the plan to the REO for review. At a minimum, this plan will include a detailed description as to the means and methods, controls, and safety measures to be used for the demolition, and the following:
  - i) Verification of the location and condition of any remaining utilities in the structure. Prior to demolition, all active utilities and services need to be removed, de-energized, isolated, re-located, or guarded;

- ii) Verification of the stability of the existing, and adjacent structures. If required, such structures must be properly braced, shored, and supported to prevent unexpected collapse;
- iii) Identification of personal and debris fall hazards, and establishment of the appropriate controls suitable for each phase of the demolition;
- iv) Indication of whether waste chutes will be used, and if used, their location, construction, installation, and maintenance;
- v) Identification of the protective measures to be provided for the protection of pedestrians and adjacent roadways, buildings and other structures in accordance with the provisions of the NYCBC.

## **7.20 Blasting and the Use of Explosives**

Each CM and contractor shall comply with the requirements of 29 CFR Part 1926 Subpart U: Blasting and the Use of Explosive, in addition to the requirements of the New York State Department of Labor and the NYC Fire Code. Additional requirements may be implemented by the FDNY, MTA, or other agencies.

## **7.21 Power Distribution**

Each contractor shall comply with the requirements of 29 CFR Part 1926 Subpart V: Power Transmission and Distribution and 1910.269, Power Generation Transmission and Distribution.

## **7.22 Rollover Protective Structures; Overhead Protection**

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart W: Rollover Protective Structures; Overhead Protection.

## **7.23 Stairways and Ladders**

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart X: Stairways and Ladders, in addition to the following mandatory specific worksite requirements:

- a) When there is a vertical walking/working surface-to-surface break equal to or greater than nineteen (19) inches, a ladder or stairway is required;
- b) Stairs that have at least four (4) risers, or that are at least thirty (30) inches in vertical height shall either have a hand or stair rail installed;
- c) Access and egress ways and landings to and from each ladder and stairways or stair tower shall remain unobstructed and in good repair;
- d) Self-supporting and non self-supporting stairways and ladders can only be used in their manufacturers' designed and specified positions;
- e) The use of extension ladders shall not exceed a maximum working height of 40 feet. The use of individual extension ladder sections shall be prohibited.

- f) Three-point contact must be maintained when ascending or descending ladders.
- g) All ladder rungs and steps, and stairway treads shall be constructed of a skid-resistant material, or surfaced to prevent slipping.

## **7.24 Diving**

Each contractor shall comply with the requirements of 29 CFR Part 1926, Subpart Y: Diving, in addition to the requirements of the U.S. Coast Guard for marine operations.

## **7.25 Hazard Communication**

Each CM and contractor shall establish a Hazard Communications Plan consistent with OSHA standard 29 CFR Part 1910.1200 for multi-employer sites, in addition to the following mandatory specific worksite requirements:

- a) All chemical containers shall be properly labeled to identify their contents;
- b) All chemical containers shall be properly stored and transported;
- c) Material Safety Data Sheets (MSDS) for each chemical product used at the WTC Site shall be maintained onsite by the CSM, and shall be available to all workers during all shifts, the EOC, REO, PAPD, WTC Site Manager, and the PSM;
- d) 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.

## **7.26 Restriction of Hazardous Material Placarded Consignments**

The following hazardous material placarded items shall be allowed onto the WTC Site providing the driver presents shipping papers and a delivery receipt indicating the name of the contractor requesting the products. Prior to delivery, the CSSM shall be in possession of the appropriate Material Safety Data Sheet.

- a) Class 2 – Oxygen, Flammable Gas, Non-Flammable Gas, Flammable
- b) Class 3 – Gasoline, Combustible, Fuel Oil
- c) Class 9 - Miscellaneous

The following hazardous material placarded items shall be restricted from entering the WTC Site. Vehicles with the following placards shall be detained, and the SSD or designee shall be contacted.

- a) Class 1 – Explosive
- b) Class 2 – Inhalation Hazard
- c) Class 4 – Flammable Solids, Spontaneously Combustible, Dangerous When Wet

- d) Class 5 – Oxidizer, Organic Peroxide
- e) Class 6 – Inhalation Hazard, Poison, Harmful
- f) Class 7 – Radioactive
- g) Class 8 – Corrosive
- h) Dangerous Cargo

## 7.27 Hazardous Chemical Storage Requirements

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:

- a) 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;
- b) Only chemicals with the same hazard class warning shall be stored together;
- c) Confine their storage of hazardous chemicals to the area assigned, or their work location. Hazardous chemicals cannot be stored in common areas, roadways, or established egress routes;
- d) Each storage location shall be completely constructed of metal, or when not exposed to the environment 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 WTC Site Manager, SSD, PSM, REO, and PAPD;
- e) 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;
- f) Material hazard identification signs consistent with the labeling requirements of U.S. DOT 49 CFR: Part 172 and the NFPA 704 Hazard Diamond 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;
- g) Maintain on-site an adequate supply of spill response equipment and materials compatible for the type and quantity of the chemical products in storage;
- h) Maintain on-site a material safety data sheet (MSDS) for each chemical product stored. Ensure that workers are trained in the hazards and use of the product;
- i) Select, issue, and train workers in the maintenance, use and storage of the personnel protective equipment required when using the chemical products;

- j) Provide worker training in the proper methods to respond to spills and releases from the storage area;
- k) Compressed gas cylinders, flammable and combustible liquids, and all chemical products shall be stored and signed/labeled in accordance with their hazard class. The comingling of different hazard classes in storage is prohibited;
- l) When required, storage areas shall be protected from vehicular impact by the use of concrete "jersey barriers" or a similar impact resistant material;
- m) Enclosed facilities (i.e. trailers) used for the storage of flammable gases or 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;
- n) Select and provide the appropriate type, size, and number of fire extinguishers suitable for the fire hazards presented by the stored chemicals;
- o) If stored in drums, all drums shall be raised off the ground and stored on covered containment trays, or in contained enclosures;
- p) Flammable and combustible liquids, such as gasoline, kerosene, diesel, and mixed fuels shall only be stored in either Type I or II approved metal safety storage cans with flashback protection;
- q) All fuel containers (drums, gas cans, etc) shall be appropriately color-coded and permanently labeled as "Gasoline", "Kerosene", "Diesel", or "Mixed-Fuel";
- r) Flammable and combustible liquid safety storage cans shall be stored in approved fire cabinets with a quantity limited to 60-gallons of flammable and 120-gallons of combustible liquid per cabinet. No more than three storage cabinets shall be stored in one area;
- s) All non-stationary fuel tanks with a storage capacity of greater than 5-gallons shall be equipped with secondary spill containment either integral to the unit, or by the installation of an approved impervious membrane and containment barrier (e.g.: berm/dike system);
- t) 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 25 feet of the storage location;
- u) Compressed gas cylinders (CGC) shall be stored with their valve protection caps secured on the cylinder;
- v) CGC shall be stored with 3-point contact;
- w) CGC shall not be stored directly on the ground, on their sides, or stacked on top of the other;
- x) 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.

- y) Smoking is prohibited anywhere on the WTC Site.

## 7.28 Spill Prevention, Response And Cleanup Plan Requirements

Each contractor shall comply with all applicable regulatory requirements including but not limited to 40 CFR 112; 6 NYCRR 595-599 and 6 NYCRR 610-614, and in addition shall prepare and maintain a Spill Prevention, Response and Cleanup Plan outlining the procedures and techniques for responding to spills, and releases of chemicals and /or petroleum products.

At a minimum, the plan should contain the following information:

- a) **Responsible Person:** The name, title, and contact information (phone number, and email) of the person responsible for compliance with the plan. Note: Responsible person in this section is defined as the preparer, maintainer, and implementer of this plan.
- b) **Operations Descriptions:** A brief description of the operations undertaken by the contractor, including identifying the project, work package, or work order under the World Trade Center Construction.
- c) **Chemical Inventory:** Include a listing of all hazardous substances (as defined in 6 NYCRR 595.1(c)) stored and used on site that shall include:
  - i. chemical name and chemical name of major components if a mixture (as defined in 6 NYCRR 595.1(c));
  - ii. Chemical Abstract Service (CAS) numbers;
  - iii. storage container type, size, and material of construction,
  - iv. storage location, and spill containment provided if any,
  - v. quantities stored or used,
  - vi. include the release reportable quantity for each hazardous substance found on site as listed in Tables 1 and 2 of 6 NYCRR 597.
- d) **Storage Areas:** A description of storage areas to include method of separation of incompatible materials, location, signage and identification. (i.e., contractor name, emergency contact information, and hazard identification)
- e) **Overfill Protection:** A description of overfill protection provided for tanks and equipment.
- f) **Risk Assessment:** An assessment of possible and reasonable causes of spills, leaks, and releases is to be documented.
- g) **Visual Inspections:** A documented visual inspection of all storage areas, secondary containment, equipment, and spill cleanup materials shall be performed weekly, corrective actions taken if deficiencies observed and be available for review,
  - i. Include procedures to address equipment leaks, rainwater removal from secondary containment, and replacement of spent spill cleanup materials.

- h) Cleanup Materials: A list of the types of cleanup and removal equipment and quantities along with materials maintained on site and their location is to be documented. The amounts of cleanup material kept on site is to be based upon the largest size discharge type such as oil, flammables, corrosives, etc., that would be handled without calling on outside resources.
- i) Notification procedures: Each contractor shall comply with spill notification requirements pursuant to 6 NYCRR 595 Releases of Hazardous Substances Reporting, Response and Corrective Action; 6 NYCRR 374-2 Standards for the Management of Used Oil; and the provisions of Article 12 of the Navigation Law found in 17 NYCRR 32.3, and 32.4.
  - i) All spills regardless of the size, source, or location shall be reported to the CM. And the WTC Site Safety Director. Notification shall be made within fifteen minutes of discovery via telephone. The following information is to be provided:
    - (1) Name and phone number of person making the notification
    - (2) Contractor/company name the notifier is affiliated with
    - (3) Incident location
    - (4) Name and quantities of material spilled
    - (5) If any persons injured
    - (6) Who will be handling the cleanup effort (i.e., Contractor and/or cleanup organization)
  - ii) The following information is to be provided under this section:
    - (1) The NY Department of Environmental Conservation (to report a chemical or oil spill):
      - (a) 24 Hour Spill Hotline 1-800-457-7362
- j) Report Preparation: Spills must be documented and a preliminary report submitted to the CM within 24 hours and include, at a minimum, the following:
  - i) Date and time the incident occurred
  - ii) Description of the area where the spilled occurred. Include work activities adjacent to the area and extent of spill (water and/or land saturation)
  - iii) Description of cause of spill and corrective actions.
  - iv) Name and company of person that discovered the spill
  - v) MSDS(s) for substances and quantity spilled
  - vi) Immediate actions taken to contain and stop the spill and/or leak
  - vii) If regulatory agencies were notified provide the following:

- (1) Name of the Agency, phone number called, name, title, and phone number of the person making the notification, time of notification, notification ID #, as required steps that will be taken to close the case
- viii) Means and methods to contain and cleanup spill
- ix) Personal protective equipment used and decontamination techniques.
- x) Listing of outside resources including name, address, phone number of the cleanup organization, and dates when the cleanup efforts were completed.
- xi) Description of the type (e.g. debris, absorbent pads, recovered oil, etc.), amounts, storage location, and classification (solid waste; Universal, non-hazardous, or hazardous waste; used oil, etc.) of the cleanup material generated.
- xii) Provide disposal means & method and, if applicable, provide disposal facility used. If disposal facility was used provide copies of the transportation documents (e.g. manifest).
- k) Cleanup Procedures: Description of techniques to be used for different types and size of spills identified in the risk assessment and notification section of this plan.
- l) Internal & External Resources: Include name, contact information (mailing address, phone number, and 24-hr emergency number) of the internal and external resources that will respond to spills and releases. Note: Cleanup external organization shall have the capability to respond within an hour from receiving notification. External resources shall include waste disposal organization. Include the disposal or recycling options for all materials such as contaminated soil, debris, hazardous substances, hazardous waste, etc., that will be generated during cleanup activities. Note: Include the name, EPA ID, and contact information of the waste broker, hauler, or other organization.
- m) Communication: Describe how employees are trained on the recognition and notification process of this plan.
- n) Approval: The plan shall be approved and signed by a Corporate Officer within the contractor's organization.

A copy of this plan shall be submitted to the CM for review and acceptance. This document must be kept current by reviewing and updating, at a minimum annually; or when necessary to address Regulatory changes, new Best Management Practices; or site observations. All updates to the plan must also be submitted to the CM for review and acceptance. A copy of this plan shall be maintained on site to be referenced when needed.

## **7.29 Contractor's Financial Obligations for Chemical Release Incidents**

In the event of a hazardous chemicals/materials (hazmat) incident:

- a) In the event of a hazardous chemicals/materials hazmat incident, the PAPD will respond and immediately address any life safety concerns. As it relates to incident mitigation, the PAPD will isolate, and attempt to confine, collect, and/or contain as an interim control. Long-term remediation will be performed by a remediation contractor;

- b) Each CM and contractor shall be financially responsible and required to address (i.e., respond, mitigate, property and equipment restoration and repair, waste transportation and manifesting, waste disposal, and notification of the NYS DEC to obtain a spill number) all hazmat releases and incidents created by their own action or their contractors within their work and storage area(s) and during deliveries;
- c) Each CM and contractor whose actions cause a hazmat incident in another prime contractor's or sub-contractor's work or storage area(s) shall be financially responsible and required to address (e.g., response; mitigation; property and equipment restoration; repair, or replacement; waste transportation and manifesting; waste disposal; and notification of the NYS DEC to obtain a spill number) all hazmat releases and incidents;
- d) The CM shall be responsible to mitigate those hazmat incidents affecting common use areas, and at a CM or contractors work or storage area if a life safety or environmental hazard exists, or if the contractor's hazmat contractor is unavailable. Where it deems necessary, the Port Authority may respond to a contractor's work or storage area. In those instances the CM or contractor shall be financially responsible to reimburse the Port Authority for contractor charges (e.g., response; consulting; project monitoring; laboratory sampling and testing; mitigation; property and equipment restoration, repair, or replacement; waste storage, transportation, and disposal) and Port Authority staff time;
- e) Each CM and contractor shall be required to provide to the REO, WTC Site Manager, SSD, and PSM the name and contact information of their call-in hazmat contractor.
- f) The Port Authority shall provide an environmental consultant firm to monitor and document remediation work. Each CM and/or contractor shall be required to reimburse the Port Authority for this environmental monitoring service (e.g., project monitors, supervision, sample collection and laboratory analysis, report preparation). The Port Authority will not sign any manifest, shipping document, or assume the title as "generator" for hazardous waste generated by the CM or the contractor. The Port Authority will sign manifests only for that waste for which it is deemed responsible in accordance with EPA's definition of generator.

## **8 Environmental Performance Commitments**

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### **8.1 Vibration Abatement**

The Contractor shall control and mitigate vibration during all hours of construction. The Contractor 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

- i) The Contractor shall comply with all appropriate Federal, State and Local regulations applicable to vibration control and mitigation. The Contractor shall develop and submit to the Engineer for review and approval a Vibration Control and Abatement Plan (the "VCA Plan") that describes his 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:

- i) Means and methods for the implementation of all control and mitigation measures including all calculations and supporting documentation;
- ii) Baseline background vibration measurements taken prior to the start of construction;
- iii) Construction vibration assessment. The method for predicting the construction vibration levels to be approved by the Engineer.

b) Construction Vibration Monitoring:

To ensure compliance with this Section, the Contractor shall identify and submit to the Engineer 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 Site. The qualifications of the firm shall be as follows:

- i) 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;
- ii) 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;
- iii) Upon the approval by the Engineer of a vibration control firm, the Contractor shall immediately procure the services of the firm to perform baseline vibration

measurements at the site and near the Historic properties identified above, and submit a report to the Engineer including a review and assessment of the existing vibration levels relative to the allowable threshold;

- iv) On a weekly basis, or at other intervals deemed appropriate by the Engineer, the Contractor shall submit a written report to verify compliance with the allowable vibration threshold based on vibration measurements taken continuously at WTC site and near the Historic properties for the duration of construction activities;
- v) The Authority may also monitor vibration levels at locations deemed appropriate by the Engineer to verify compliance. When vibration level measurements exceed the allowable threshold, the Contractor shall immediately cease all construction activities, notify the Engineer and implement the mitigation procedures described in the approved VCA Plan;
- vi) If applicable procedures are not included in the VCA Plan, revised procedures are to be developed and implemented only with the approval of the Engineer. Such revised work procedures are to be incorporated in the VCA Plan as a revision, and resubmitted to the Engineer for review and approval;
- vii) In the event of a conflict between the Contractor's vibration level measurements and those taken by the Authority, the Authority's measurements shall prevail.

c) Submittals:

A VCA Plan shall be submitted for the review and approval by the Resident (?) Engineer prior to the commencement of any construction work. The submittal shall include all revisions, and a copy of the approved VCA Plan and all revisions shall be provided to each contractor prior to the commencement of the contractor's work. The contractor shall be specifically obliged by the Contractor to comply with the requirements of the approved VCA Plan in the provisions of its subcontract.

## 8.2 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 of New York and New Jersey's (PANYNJ) Priority Capital Programs Department (PCP), now the World Trade Center Construction Department (WTCC) in consultation with its Project Historical Architect (PHA).

The purpose of the MOA is to protect historically significant elements of the WTC Site that are to remain in situ during construction from inadvertent damage. The elements designated to be protected are presently as follows:

a) East and west and Liberty Street slurry walls

The Contractor shall be responsible for compliance with all the requirements specified in the RPP for protection of the above historic WTC Site elements to remain undamaged and in situ during construction. The Contractor shall also require that each contractor be in compliance with the requirements of the RPP, and include appropriate provisions in each subcontract.

The Contractor shall cooperate fully in implementing any Contract specific procedures and guidelines regarding the protection the above historic WTC Site elements, and shall identify his/her respective staff responsible for the implementation and maintenance of all such protection.

The Engineer shall notify the Contractor when a non-compliance with WTC Site historic element protection requirements is discovered. Conversely, if the Contractor discovers any noncompliance with site element protection requirements, the Engineer is to be notified immediately. In all cases, the Contractor shall implement appropriate corrective actions immediately to restore the required protection.

b) Inspection of Existing Conditions of Historic Elements

The Contractor shall inspect and record the existing conditions of the above historic elements on the WTC Site, including but not limited to: 1) the historic tower perimeter column base remnants outlining the North and South Tower footprints and the footprint areas within the 12 outlines, 2) the E subway entrance, 3) the east and west slurry walls and 4) the steel beams in cross form.

c) Protection Considerations in All Contractor Submittals

The Contractor shall consider the protection of the historic WTC site elements in all submittals, especially those regarding means and methods, made to the Engineer 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.

The Contractor shall not locate any equipment, deliver any materials or commence any work whatsoever that may impact historic elements on the WTC Site unless approved by the Engineer.

Each Contractor Submittal shall include the following information:

- i) A general location map of the WTC Site showing where the work shall be performed, including a notation on the map of location of the historic element(s) relative to the work;
- ii) A listing of materials or construction equipment to be used in the performance of work that shall or may come in contact with any of the WTC Site historic elements, and the proposed methods to be employed to prevent any damage to said historic elements.

d) Protection Requirements

If during the review of a Contractor submittal, the Engineer determines that the potential exists for damage, the Engineer may direct the Contractor to preserve or implement or restore the following protective measures in accordance with the 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 by the Engineer. Under no conditions, however, shall the Contractor proceed with such an alternate method without the approval of the Engineer.

e) Requirements for the Protection East and West and Liberty Street Slurry Walls

If Work is required by Contract on or adjacent to the existing east and west slurry walls of the West Bathtub, and the Engineer determines that a potential exists for the existing slurry walls to be damaged, the Contractor shall furnish and install appropriate protective measures approved by the Engineer that provide a clear, unobstructed, recognizable and respectful view of the walls.

f) Protection of Historic Resources from Construction Vibration

The Contractor shall develop and implement specific mitigation measures ? to protect the following Historic 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):

- i) 90 West Street
- ii) Beard Building, 125 Cedar Street
- iii) 114-118 Liberty Street
- iv) St. Paul's Chapel and Graveyard
- v) Former East Street Savings Bank, 26 Cortlandt Street

g) Monitoring Program

i) Periodic Monitoring:

Prior to construction, the Contractor shall meet with the Engineer 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 Engineer. 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 elements on the WTC Site.

Once approved the Engineer, 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.

ii) Routine Monitoring

During the progress of construction, the Engineer will routinely review (inspect) all protection measures in place to verify compliance with the applicable provisions of

the RPP. Upon the completion of the Engineer's review, a meeting will be conducted with the Contractor to discuss and document the following:

- 1) The progress achieved since the previous inspection;
- 2) 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;
- 3) A review of the upcoming scheduled work activities, a determination of the required protection measures and 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.

h) Emergency Remediation

Should any condition arise or damage occur during construction that compromises the integrity of the in-place protection measures, or adversely affects any historic elements on the WTC Site, the Contractor shall stop all work in the affected area immediately, notify the Engineer and implement the relevant measures outlined in the approved ERP.

At a minimum, the notification to the Engineer shall include a description of the following:

- i) The situation that arose;
- ii) Its cause, if known;
- iii) Response measures implemented;
- iv) Recommendations for further intervention, if any.

At the time of notification, the Engineer, 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 Engineer. All repair work shall be done in such a manner as to minimize the adverse impact to the affected historic elements. The Contractor shall not remove any damaged, marred or otherwise unsalvageable historic elements from the WTC Site unless otherwise approved by the Engineer.

### **8.3 Archaeological Resources**

Consistent with the Stipulations of the executed Memorandum of Agreement (MOA) pursuant to Section 106 of the National Historic Preservation Act, the area within the WTC site bounded by West Street, Liberty Street, Washington Street and Cedar Street as well as the roadbeds of Liberty, Washington and Cedar Streets, have been determined to be sensitive historic archaeological resources.

Unless specifically required by Contract, under no conditions shall the Contractor perform any construction activities that may cause a subsurface disturbance at or in the vicinity of the above areas without the approval of the Engineer.

## **8.4 Discoveries of Archaeological 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, provide site security and immediately notify the Engineer. The Contractor shall not recommence Work until so directed by the Engineer.

## **8.5 Construction Protection Plan**

The Contractor shall develop and submit to the Engineer 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 following Sections of this Specification for Air Quality: Diesel Emission Mitigation and Dust Control, Noise and Vibration Abatement, Historic Resource Protection, Archaeological Resources and Discoveries. The CPP shall be submitted to the Engineer for review and approval within thirty (30) calendar days of acceptance by the Authority of the Contractor's proposal.

No Work shall commence until the CPP is approved by the Engineer. The CPP will be organized to address each EPC Section (where required), and shall include the following plans:

- a) Diesel Emission Mitigation (DEM) Plan;
- b) Dust Control (DC) Plan;
- c) Noise Control and Abatement (NCA) Plan;
- d) Vibration Control and Abatement (VCA) Plan;
- e) Emergency Remediation (ERP) Plan;
- f) Maintenance and Protection of Traffic (MPT) Plan - A plan for the management of traffic and truck/vehicle delivery routes to and from the site for each major construction phase. Included in the MPT plan are to be specific measures to minimize impacts to the intersection of Route 9A and Liberty Street for the maintenance of an acceptable Level of Service (LOS "B"). The plan shall also include the mapping of all existing businesses in the area;
- g) Soil Management Plan;
- h) Common Fuel Storage Plan.

### **8.5.1 Diesel Emission Mitigation**

The CM and each contractor shall minimize all air-borne pollutants generated by diesel-powered equipment and vehicles at all times during the performance of Work. All Non-Road (e.g., backhoes, bull dozers, cranes, excavation machines, loaders, etc.) diesel-powered equipment, including stationary (e.g., generators, compressors, etc.), with a rated horsepower greater than 50 HP shall incorporate diesel emission reduction strategies that include the use of ultra-low sulfur diesel fuel and best available technology for emission controls. In addition, all such equipment and engines shall comply with all federal, state, and local regulations applicable to

exhaust emission controls and safety. The mitigation measures to be employed are to consist of the following:

### **8.5.2 Ultra-Low Sulfur Diesel (ULSD) Fuel**

All diesel-powered Non-Road equipment to be used in the performance of work with a rated horsepower greater than or equal to 50 HP shall use Ultra-low Sulfur Diesel (ULSD) fuel that can be used without engine modification or fuel compartment flushing, and is certified to contain an average sulfur content of no more than 15 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 REO until such time that the fuel has become available, or an approved equivalent is determined by the REO to satisfy the intent of this Section.

The Port Authority shall collect monthly samples of the ULSD fuel used during the period directly from the fuel tanks of 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 shall be obtained from any distributor capable of meeting the requirements of this Section. 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 onsite storage, all such facilities shall comply with all applicable jurisdictional codes pertaining to the storage, containment and dispensing of fuel and all details must be submitted and approved by the REO prior to implementation.

A listing of ULSD fuel suppliers is included on the following Web page - [http://www.epa.gov/otaq/retrofit/cont\\_fuels.html](http://www.epa.gov/otaq/retrofit/cont_fuels.html)

All Non-Road diesel-powered equipment with a rated horsepower greater than 50 HP that Control Devices (devices) utilizing the best available technology (something missing in this sentence). The retrofit devices shall consist of Diesel Particulate Filters (DPFs) or other measures with equivalent particulate matter (PM) removal efficiency wherever the implementation of such a device is feasible. In cases where DPFs are not feasible for safety considerations, mechanical reasons, or where the technology would not function properly, the Contractor shall submit a request for a waiver to the REO review and approval prior to the use of such equipment. If the REO grants a waiver, Diesel Oxidation Catalysts (DOCs) shall be used.

Only in the following cases will the use of diesel engines greater than 50 HP without tailpipe reduction measures be permitted by the REO.

- a) Where for technical reasons neither DPFs or DOCs can be used effectively, and the operation cannot be performed by another engine or other means;
- b) To immediately remedy safety and health hazards;
- c) 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 REO to provide the maximal level of pollutant reductions intended under this Section. 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 Verified Technology List:

<http://www.akpf.org/pub/vertfilterliste.pdf>

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

### **8.5.3 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 REO for review and approval prior to the use of such equipment.

### **8.5.4 Diesel Emissions Mitigation Plan for Non-Road/On-Road Engines and Equipment**

A Diesel Emission Mitigation Plan (the "DEM Plan") shall be prepared by the contractor and submitted to the REO 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, whether owned by, operated by or on the behalf of the contractor, including that rented by the Port Authority as the rental agency of the contractor. No work shall proceed until a DEM Plan is submitted and approved by the REO. Once approved, no changes in or deviations from the DEM Plan will be permitted unless approved by the REO. The DEM Plan shall address the control of emissions from all engines and vehicles including on-road vehicles (i.e., diesel powered trucks) and non-road equipment not retrofitted with devices. The contents of this plan shall specifically address the requirements of the Subsections presented below:

- a) Work Zone Creation: The contractor shall establish 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 diesel powered engines and vehicles are located away from the fresh air intakes of sensitive receptors as determined by the REO;
- b) Diesel Engine Idling Policy: The Idling time of Non-Road and On-Road Vehicles shall be limited to three (3) consecutive minutes, as determined by the REO except as follows:
- i) When an on-road vehicle is forced to remain motionless because of traffic conditions or mechanical difficulties over which the operator has no control;
  - ii) When it is necessary to operate heating, cooling or auxiliary equipment to accomplish the intended use of the vehicle; installed on the vehicle when such equipment is necessary;
  - iii) To bring the vehicle to the manufacturer's recommended operating temperature. In this event, the temperature requirements must be indicated in the DEM plan as an exception;
  - iv) When the outdoor ambient temperature is below twenty (20) degrees Fahrenheit;
  - v) When the vehicle is being actively worked on for repairs or maintenance.

#### **8.5.5 Dust Mitigation**

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

- a) The spraying of a (non-hazardous, biodegradable) dust suppressing agent;
- b) The physical containment of fugitive dust;
- c) The adjustment for meteorological conditions, as appropriate;
- d) Wheel washing of all construction Non-Road and Motor Vehicles leaving the WTC Site.

The contractor shall comply with all federal, state, and local regulations applicable to the control and mitigation of fugitive dust dispersion. The contractor shall submit a Dust Control Plan ("DC Plan") to the REO for review and approval to address the specific measures contained in this Section. A copy of this DC Plan shall also be provided to each contractor who shall be obliged to comply in the provisions of his subcontract with the contractor. 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 REO, 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.).

### 8.5.6 Noise Abatement

Where practicable, the CM and contractor shall schedule all construction activities to avoid and/or minimize any adverse acoustic noise or vibrations that could impact sensitive receptors as determined by the REO. Acoustical sensitive receptors presently include the Millennium Hotel on Church Street, Embassy Suites on Vesey Street, and Multi Family Residential Structure on the corner of Park Place and West Broadway and residential buildings along the south side of Liberty Street. The conditions and requirements are as follows:

- a) In the event that the REO determines that the contractor may or has exceeded the noise thresholds specified in Table 1 below, the REO may direct the contractor to implement, at his own cost, abatement measures deemed appropriate by the REO and/or as specified and approved in the contractor's Noise Control And Abatement Plan (the "NCA Plan"):

**Table 1: Noise Limitation Thresholds for Sensitive Receptor Sites – Resultant noise at sensitive receptor sites shall be restricted to the following levels:**

Time	dBA Limit
Weekdays, 7AM to 4 PM	80
All Other Times	70

**Note: Measurements to ensure Noise Limitation Threshold compliance will be based on instantaneous maximum readings using "slow" integration speed setting on the sound level meter.**

- b) The contractor shall comply with all appropriate federal, state and local regulations applicable to noise control and mitigation. The contractor shall submit a NCA Plan to describe his intended mitigation procedures and methods to control and mitigate noise generated during the performance of Work. One (1) original and four (4) copies of the NCA Plan and revisions are to be submitted to the REO. A copy of the NCA Plan and all revisions shall be provided to each contractor prior to the commencement of his work. The contractor shall be specifically obliged to comply with the requirements of the approved NCA Plan in the provisions of his subcontract with the contractor. The NCA Plan shall specifically address the following:
  - i) Means and methods for the implementation of all controls and mitigation measures;
  - ii) Design drawings of noise abatement enclosures and barriers, signed and sealed by a Licensed Professional Engineer in the State of New York;
  - iii) Description of physical noise mitigation materials, including the name of manufacturer and its specifications. All such materials shall be fire resistant;
  - iv) Catalogue cuts and technical data sheets of construction equipment to be used during Work;
  - v) The qualified acoustical firm procured by the contractor to provide professional services for the creation and implementation of the NCA Plan.
- c) To ensure compliance with this Section, the contractor shall procure the services of a qualified acoustical firm to provide assistance in the creation and implementation of the NCA Plan, and to provide noise monitoring on site. Each employee of the firm who will actually perform measurements or monitoring in the field shall be appropriately trained,

and have demonstrated experience in the measurement and implementation of mitigation techniques for similar types of construction projects. Such employees shall have within the preceding five years performed acoustical consulting 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, and submit to the REO for review and approval the name and qualifications of the firm and employees as stipulated above.

- d) The contractor shall continuously monitor the actual noise levels generated during construction activities to ensure compliance with the noise requirements stipulated herein. The Port Authority will monitor noise levels at known sensitive receptors or other locations deemed appropriate by the REO to verify compliance. When noise level measurements exceed the allowable thresholds, the contractor shall cease all construction activities, and immediately implement the mitigation procedures indicated in the approved NCA Plan. If applicable procedures are not included in the NCA Plan, revised procedures are to be developed and implemented only with the approval of the REO. Such revised work procedures are to be incorporated in the current NCA Plan, and resubmitted for formal review by the REO. In the event that a conflict between the contractor's sound level measurements and those of the Port Authority, the Port Authority noise level measurements shall prevail.

## **9 Cranes, Derricks, Hoists, Elevators and Conveyors**

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All Contractors and Subcontractors, regardless of tier shall comply with the requirements of Title 27/Subchapter 19 (currently in effect), Chapter 33/Section BC 3319, and Reference Standard RS 19-2, of the Building Code of the City of New York ("BCCNY"). All submittals are to be sent to the Resident Engineer's Office at the WTC Site ("REO"). Acceptance will be granted by the REO's office with concurrence by the Engineering Department's duly Authorized Representative. The current procedure for the approval to erect, use, and operate cranes or derricks at the World Trade Center Site ("WTC Site"), including the erection, jumping, climbing, and dismantling of tower and climber cranes, shall be as follows:

### **9.1 Prior to Delivery**

Prior to the delivery to the WTC Site of any crane or derrick, the contractor shall provide the following to the Resident Engineer's Office at the WTC Site ("REO"):

- a) A copy of a current and valid Form CD-2, entitled "Crane/Derrick/Mobile Work Platform- Approval and Operation Application/Certificate, "Revised 08/15/05, as issued by the New York City Department of Buildings-Cranes & Derricks Division ("NYDOB-C&D"). The Form CD-2 shall bear the approval stamp of NYDOB-C&D as a "Temporary Certificate of Approval/Temporary Certificate of Operation," and must include an expiration date, a legible CD Number, and an authorized signature from a representative of NYDOB-C&D. In the event that such a "Certificate of Approval/Operation," is not available, the owner of the crane or derrick must file a Form CD-2, directly with NYDOB-C&D. Proof of the filing and a copy of the completed Form CD-2 shall be provided to the REO.
- b) If the crane or derrick is diesel powered, and the diesel engine has a horsepower rating equal or greater than 50HP, a copy of the applicable catalogue cut and other relevant information describing the Diesel Emissions Control Device retrofitted to the engine. The retrofit device shall be a Diesel Particulate Filter ("DPF"), or other Best Available Technology ("BAT") as determined by the Materials Engineering Unit ("MEU") of the Port Authority Engineering Department.
- c) If delivery and/or placement of the crane or derrick will require a movement on the West Haul Road either over the existing Acrow Bridge, or the slip road directly west of the South Projection, the contractor must comply with the following:
  - i) For movements over the Acrow Bridge: The contractor must comply with the "Acrow Panel Bridge Overload Protocol, "dated April 30, 2002, copy attached. This protocol requires the submission to the REO of an "Acrow Panel Bridge - Vehicle Information Sheet" describing in detail the loading to be imposed on the bridge, and is to be accompanied by appropriate catalogue cuts detailing the specific configuration of the crane or derrick during the movement.
  - ii) For movements on the slip road: Please note that the slip road is a bridge structure limited to loads not exceeding AASHTO (HS??). In cases where the loading will exceed this threshold, an "Acrow Panel Bridge - Vehicle Information Sheet" is to be submitted to the REO describing in detail the loading to be imposed on the road, and

accompanied by appropriate catalogue cuts detailing the specific configuration of the crane or derrick during the movement.

- d) A fully executed Form CD-11, entitled "Equipment Owner Identification Form," Revised 12/03, as issued by NYCDOB-C&D.
- e) A fully executed Form CD-16, entitled "Cranes and Derricks Division - Applicants Statement of Notification to Community Boards," Revised 12/03, as issued by NYCDOB-C&D. Please note that it is the responsibility of the EOR to ensure that the Community Board has been appropriately notified. Proof of such notification is to be attached to the form. The web address for Community Board No. 1 is [cbl@cbl.org](mailto:cbl@cbl.org). Please copy the Director Program Logistics at [qbrathwal@panynj.gov](mailto:qbrathwal@panynj.gov) on all such e-mails.
- f) For Cranes or Derricks to be Operated Solely On the Property of the Port Authority, or on the Property of the State of New York: The contractor shall procure the services of a New York State Licensed Professional Engineer to be designated as the Engineer of Record for the crane or derrick ("EOR"). The EOR is to prepare and submit the following to the REO for review and acceptance:
  - i) A fully executed Form CD-4, entitled "Crane/Derrick/Mobile Work Platform-On-Site Inspection Application/Certificate," Revised 12/03, as issued by NYCDOB-C&D. The Form CD-4 shall be accompanied by plans, drawings, and calculations, all signed & sealed by the EOR. The plans, drawings, and calculations must clearly show and demonstrate the soundness of the following:
    - 1) The proposed location of the crane or derrick;
    - 2) All pertinent features of the site including, but not limited to, the assumed soil bearing values;
    - 3) Ground elevations and slopes;
    - 4) Vaults and other subsurface structures;
    - 5) Supporting platforms and structures;
    - 6) The swing and reach of the crane or derrick;
    - 7) Loads in accordance with Drawings CS1, dated 10.9.09, entitled " Allowable Crane Loading"
    - 8) Plans for emergency high winds.
- g) For Tower or Climber Cranes: In addition to the above documentation of this Section, the EOR must prepare and submit the following:
  - i) 1. A fully executed Form CD-7, entitled "Notification of Erecting or Dismantling of Climber or Tower Crane," Revised 07/07. The Form CD-7 shall be accompanied by plans for the erection, jumping, climbing, and dismantling of the crane. The form is to be accompanied by a copy of the license of the master or tower rigger designated to supervise the erection of the crane, signed & sealed plans, and all associated documentation required to ensure compliance with the manufacturer's recommendations. The plans shall include the following:

- 1) The identification of the equipment proposed to be used for all such operations including all machines to be used for the erection or dismantling.
- 2) A detailed identification of the assemblies and components required for the erection and dismantling of the equipment.
- 3) The location of the equipment, sidewalk sheds, surrounding buildings, protection for their roofs and pick-up points, loads, and radius of swing of all loads. In addition, the safe load from the approved load radius chart shall be submitted for lift radius.
- 4) A weight list certified by the crane manufacturer listing all assemblies and components proposed to be lifted. All components are to be clearly marked with their weight painted on the assembly, or stamped on metal tags attached to the assembly. In lieu of a manufacturer's certification, the EOR may certify the weight list indicating how such weights were determined.
- 5) The center of gravity of all asymmetrical components shall be located and shown.
- 6) A sequence of operation detailing the erection, jumping, climbing, and dismantling, along with the rigging materials to be used in such operations.
- 7) All cranes or derricks located within the property lot lines or on the street, and being used to erect, jump, climb, or dismantle the crane.
- 8) The names, license numbers (as applicable), and contact information for the licensed rigger, rigger foremen, site safety manager, crane safety coordinator, and the contractor performing the erection, jumping, climbing, and/or dismantling work.
- 9) A signed & sealed load test procedure identifying the weights to be used, and the load moment and line pull testing to be conducted.

Only upon the review and acceptance by the REO with concurrence from the Engineering Department's Representative of all of the above listed submissions will the crane or derrick be permitted to enter the WTC Site. Please note that all such deliveries must be coordinated with WTC Facility Operations.

## **9.2 Upon Delivery**

Upon the delivery of the crane or derrick to the WTC Site, the contractor shall proceed as follows:

- a) In the event that a "Certificate of Approval/Operation" is not available, but a Form CD-2, has been filed with NYCDOB-C&D for the inspection of the crane or derrick at the WTC Site. The NYCDOB-C&D Inspector will be permitted access to the WTC Site for the purpose of conducting such an inspection.

Please note that a Contractor will not be permitted to use or operate a crane or derrick at the WTC Site unless a current and valid "Certificate of Approval/Operation," as issued by NYCDOB-C&D, is presented to the REO.

For Tower or Climber Cranes: The NYCDOB-C&D inspection shall be conducted in both the unassembled and assembled states.

- b) The names, classifications, and license numbers of the crane or derrick operator and the master, tower, or climber crane rigger (as applicable).
- c) For Cranes or Derricks to be Operated Solely On the Property of the Port Authority, or On the Property of the State of New York: The contractor shall procure the services of a New York State Licensed Professional Engineer to be designated as the Engineer of Record for the crane or derrick ("EOR"). The EOR is to conduct a field inspection of the crane in the "unassembled state," and prepare and submit the following to the REO for review and acceptance:
  - i) A Form CD-8, entitled "Technical Report - Statement of Responsibility," Revised 12/03, as issued by the NYCDOB-C&D. The Form CD-8 shall be completed in its entirety with the exception of Box #5B, and signed and sealed by the EOR in Box #5A.

Only upon review and acceptance by the REO with the concurrence of the PA Engineering Department's representative of the Forms CD-4 and CD-8, and all plans and associated documentation will the contractor be permitted to proceed with the placement and assembly of the crane or derrick. Please note that REO acceptance of the above documentation under this Section does not constitute a release to commence with the erection of a tower or climber crane, additional submittals and inspections are required as stipulated in the next subsection of this procedure (Subsection 3).

- d) For Tower or Climber Cranes: In addition to the above documentation of this Section, the EOR must prepare and submit the following:
  - i) A fully executed Form CD-12, entitled "Designation of Safety Coordinator", Revised 12/03, as issued by NYCDOB-C&D.
  - ii) A signed & sealed report documenting the results of his field inspection of the crane in the "unassembled state", and certifying that all crane parts are in satisfactory condition, and acceptable for assembly and erection.
  - iii) A copy of the Safety Coordination Meeting Log as stipulated in Section BC 3319 entitled "Cranes and Derricks", of the BCCNY (3319.8.2 through 3319.8.8, and 3319.10.2), which require that the contractor conduct such a safety meeting prior to the erection, jumping, climbing, or dismantling of a tower or climber crane. These provisions stipulate the required meeting participants, topics of discussion, and record documents. Also, the inspections and certifications required by the EOR, crane operator, and rigger prior to the commencement of any such operation.

For Tower or Climber Cranes: Only upon review and acceptance by the REO of the all the documentation stipulated above will the contractor be permitted to proceed with the erection of the tower or climber crane.

- e) For Cranes or Derricks to be Operated Within the Fence Line of the WTC Site on or Encroaching Upon the Property of the City of New York: The Contractor shall file all forms, plans and associated documentation directly with NYCDOB-C&D. Only upon the presentation to the REO of a current and valid "Certificate of On-Site Inspection," as

issued by NYCDOB-C&D, will the Contractor be permitted to assemble or erect the crane or derrick at the WTC Site.

### 9.3 Prior to Use and/or Operation

Prior to the use and/or operation of a crane or derrick on the WTC Site, the contractor shall proceed as follows:

- a) For Cranes or Derricks to be Operated Solely On the Property of the Port Authority or on the Property of the State of New York: Upon the completion of the placement, assembly, and/or erection of the crane or derrick, including the erection of a tower or climber crane, the contractor shall proceed as follows:
  - i) The EOR shall perform a field inspection of the crane or derrick in the "assembled state", as required under BCCNY Reference Standard RS 19-2. The EOR will be responsible for the verification, inspection and certification of the following:
    - 1) That the crane or derrick has a current and valid "Certificate of Operation" as issued by NYCDOB-C&D for the configuration to be used at the WTC Site;
    - 2) That the crane or derrick support, dunnage, configuration, and location have been constructed and positioned in accordance with the plans and drawings submitted to the REO with the Form CD-4.
    - 3) That there are no vaults, or other below grade structures, affected by the crane or derrick other than those specifically shown on the plans and drawings submitted to the REO with the Form CD-4;
    - 4) A visual inspection of the crane or derrick to ensure that there is no damage including, but not limited to , the following:
      - (1) Bent or missing lacings;
      - (2) That the pins are properly installed, and have no visible fatigue;
      - (3) All items listed in Section 5-2.1.2 of ASME B30.5-2004.
  - ii) For Tower or Climber Cranes: In addition to the above, the contractor is to provide the following:
    - 1) The EOR shall conduct a load test in accordance with the load test procedure submitted under Item 9.1.g.i.9 above. Upon completion, and his/her

Upon the completion of the field inspection by the EOR, and his/her determination that the crane or derrick is sound, and has been assembled and positioned in accordance with the plans and drawings submitted to the REO with the Forms CD-4 and CD-7, the EOR shall submit to the REO both a signed & sealed inspection report certifying conformance, and a fully executed Form CD-8, signed & sealed in Box #5B.

determination that the results are satisfactory, the EOR shall submit to the REO a signed & sealed report certifying acceptance of the results.

- 2) Procure the services of a NYS Licensed Surveyor to perform a plumbness survey, a Licensed Testing Laboratory to perform anchor bolt pull-out testing, and a Licensed Rigger to certify compliance with the manufacturers bolt torque values connecting sections. Prepare and submit a fully executed Form CD-6, entitled "Crane/Derrick and Work Platform - Plumbness And Torque Notification/Anchor Bolt Pull Out Test," Revised 12/03, as issued by NYCDOB-C&D.
- 3) Written certification by the EOR that all safety devices on the crane involved in the erection, jumping, climbing, and dismantling procedure have been calibrated in accordance with the manufacturer's recommendations.

Only upon the review and acceptance by the REO of a signed & sealed inspection report and Final Form CD-8, (and the Form CD-6 for Tower and Climber Cranes), will the contractor be released by the REO to proceed with the use and operation of the crane or derrick. The Form CD-4 and Final Form CD-8, both as accepted by the REO, will constitute the "Certificate of On-Site Inspection."

- b) For Cranes or Derricks to be Operated Within the Fence Line of the WTC Site On or Encroaching Upon the Property of the City of New York: The Contractor shall file the form CD-6 and final Form CD-8 directly with NYCDOB-C&D. Proof of the filing, and copies of the completed form, shall be provided to the REO. Upon receipt by the Contractor of the "Certificate of On-Site Inspection," issued by NYCDOB-C&D, a copy shall be provided to the REO.

Notes:

1. Should the "Certificate of Approval/Operation" issued by the NYCDOB-C&D expire while the crane or derrick is in use at the WTC Site, the owner of the crane or derrick shall file all renewals and/or extensions directly with NYCDOB-C&D. Proof of the filing along with a copy of the completed Form CD-2 shall be provided to the REO. Upon receipt of any such renewals or extensions issued by NYCDOB-C&D, a copy shall be provided to the REO.
2. Please note that the estimated review time for all crane and derrick submissions to the REO is five (5) business days.
3. The above procedure is subject to change by the Authority based on subsequent Local Laws promulgated by the City of New York, and Regulatory Notices issued by the NYCDOB-C&D.
4. Although not specifically referenced in the above procedure, all cranes and derricks at the WTC Site shall also comply with the regulations promulgated by the New York State Department of Labor ("NYSDOL") - Part 23 entitled "Protection in Construction, Demolition, and Excavation," - Subpart 23-8 entitled "Mobile Cranes, Tower Cranes, and Derricks."
5. For questions regarding Diesel Emissions Control Devices and retrofits, refer to the Specification entitled "Environmental Performance Commitments," contained in each WTC Contract.
6. If the proposed crane or derrick position is within two hundred feet (200') of an NYC subway line or facility, approval from New York City Transit ("NYCTA") is required prior to the placement, assembly, or erection of the crane or derrick. In such cases, please note that a

Certificate of On-Site Inspection cannot be issued without NYCT written approval. The current NYCT contact is Mr. Stan Singh at (212) 510-2653.

7. Sometime following the delivery of any crane or derrick to the WTC Site, MEU will physically verify that the Diesel Emissions Retrofit has been completed in accordance with the BAT determination of paragraph 1.C, above.
8. Please note that in accordance with BCCNY under Title 27/Subchapter 19/Article 10/Section 1057 (27-1057), Reference Standard 19-2/Section 8 (8.1.3), and Chapter 33/Section BC 3319 (3319.3), the following equipment and/or cranes are, or are in part, exempt from the above approval procedures. However, in cases where the crane or derrick will be on the property of the City of New York, written notice must be provided to NYCDOB-C&D as per applicable regulations.
  - a. excavating or earth-moving equipment, except cranes used with clamshells (Full Exemption);
  - b. Augurs, churn-drills, and other drilling equipment not used for the hoisting of any objects (Full Exemption);
  - c. Cranes or derricks performing an emergency use pursuant to an order or direction issued by the REO (Full Exemption);
  - d. Cranes with less than 160 feet combined boom/jib length to be used for a period not exceeding 24 hours, operated entirely within the property lines, and at a location at least one boom/jib length away from all property lot lines (Exempt From Sections # 9.1f, 9.2c, and 9.3 above);
  - e. Service cranes and clamshells with a boom length of 110 feet or less to be operated entirely within the property lines and at a location that does not require the moving of any load over a roadway or sidewalk \*(Exempt From Sections # 9.1f, 9.2c, and 9.3 above);
  - f. Pile drivers or clamshells used entirely within the property lines with a soil bearing pressure not exceeding allowable crane loading noted on Drawing CS1, dated 10.9.09 (Exempt From Sections #9.1f, 9.2c and 9.3 above);
  - g. Mobile cranes, including jibs and any other extensions to the boom ,not exceeding 50 feet in length and with a manufacturer's rated capacity of 3 tons or less (Full Exemption);
  - h. Mobile cranes, including jibs and any other extensions to the boom, exceeding 50 feet but not exceeding 135 feet in length, and with a manufacturer's rated capacity of 3 tons or less (Exempt from Sections # 9.1f, 9.2c and 9.3, above);
  - i. Mobile cranes, including jibs and any other extensions to the boom, exceeding 50 feet but not exceeding 135 feet in length, and with a manufacturer's rated capacity of 3 tons or less used exclusively as a man-basket (Full Exemption);
  - j. Hoisting Machines permanently mounted on the bed of material delivery trucks that are used exclusively for the loading and unloading of such trucks, provided that the length of boom does not exceed the length of the truck bed by more

- than 5 feet, and any material transported thereon shall not be raised more than 2 feet in the unloading process (Full Exemption);
- k. Derricks having a manufacturer's rated capacity not exceeding 1 ton (Full Exemption);
  - l. Mechanics trucks with a hoisting device used in activities related to the maintenance and repair of construction related equipment (Full Exemption);
  - m. Articulating boom cranes that do not have an integral hoisting mechanism, and that are used exclusively for the loading and unloading of trucks or trailers, provided that the length of boom does not exceed 135 feet, and that any material transported thereon shall not be raised more than 100 feet in the unloading process (Full Exemption).
9. For jurisdictional reference, refer to the drawing entitled "Record Property Map of World Trade Center," undated, which shows the current property lines of the Port Authority, the State of New York, and the City of New York within the WTC Site. Please note that the individual jurisdictions generally encompass the following:
- City of New York: All Vesey and Liberty Streets east of the West Street Haul Road, and the full length of Church Street.
  - Port Authority of NY & NJ: All areas bounded by the newly installed and existing slurry walls of the East and West Bathtubs.
  - State of New York: The full length of the West Street Haul Road.
10. The IRT Subway enclosure is limited to a maximum uniform vertical load of 200 psf. Loading and Coordination is to be approved by the REO at the present time, the duly authorized representative of the Engineering Department, Construction Division, Maureen Lynch-Jacobs, located at 115 Broadway, 8th Floor, phone 212-435-5115, Cell 973-332-2185.
11. The Contractor is to maintain a copy of all documents in the crane cab.
12. At the present time, the duly authorized representative of the Engineering Department, Construction Division is Maureen Lynch-Jacobs, located at 115 Broadway, 8th Floor, phone 212-435-5115, Cell 973-332-2185.

Contacts:

For issues related to the above procedure, please contact the following Port Authority personnel:

- Enforcement:
  - NS11M&M, Thomas J. O'Connor, P.E.
    - Office: (212) 435-5612 / Cell # (917) 697-7046
  - One World Trade (Tower 1), Lynda Tollner, P.E.

- Office: (212) 435-5632
- Towers 2, 3, 4, 5, 7, and Retail, Carla Bonacci, A.I.A.
  - Office: (212) 435-5532
- Transportation Hub, Richard Behnke, P.E.
  - Office: (212) 435-5676, Cell# 646-772-5076
- Vehicle Security Center, Debra Simonelli
  - Office: (212) 435-5148, Cell# (646) 592-0892
- For all other WTC Site Projects, Contact the Resident Engineer's office
- Incident Response - In the event of an accident or emergency involving a crane, immediate notification must be made to:
  - WTC Site Safety Director, Joseph Schwed, CSP, FMA
    - Cell# 973-722-2600, jschwed@panynj.gov and/or
    - Port Authority General Manager Operations Safety, Jim Keane
    - Cell# 973-417-4236, jkeane@panynj.gov
- Engineering Department Representative: Maureen Lynch-Jacobs
  - Cell # (917) 332-2185, mjacobs@panynj.gov
- Best Available Technology ("BAT") Retrofits: Dorian Bailey
  - Office: (201) 216-2963
- WTC Site Deliveries: Robert Schutz
  - Cell # (347)203-1443

### Revision History

Date	Revision	Comments
7/31/08	-	Original Issuance
8/20/08	1	Revised to reflect current Letter of Agreement with NYCDOB-C&D
9/4/08	2	Revised to reflect findings of OIG Integrity Monitor following NYCDOB-C&D Gap Audit.
9/16/08	3	Amended to reflect Revised Protocols for Erecting and Dismantling (Including Jumping) Tower Cranes as issued by NYCDOB-C&D.
10/17/08	4	Revised to reflect OIG Integrity Monitor review of the 9/16/08 version.
12/30/08	5	Revised to include NYCDOB-C&D emergency Contact number.
4/1/09	6	Revised to reflect Memorandum of Understanding between Port Authority and NYC Department of Building, executed on March 5, 2009.
5/27/09	7	Revised to reflect man baskets and the transfer of crane approval responsibilities to the PA Engineering Department. CD 11 & CD 16 to be included for all cranes and Load test for Tower Cranes only
7/17/09	8	Revised to include concurrence by the Engineering Department
10/19/09	9	Added II.D.1.g. and corrected Notes 8.f. to include Drawing CS1, dated 10.9.09, entitled "Allowable Crane Loading". Updated Contact List
10/27/09	10	WTC other projects contact
3/3/10	11	II B,C, and D1 became I D,E, and F, -information required prior to delivery, I. F. 1. h. note added for emergency high winds plan, Note 10 is added for loading on the IRT subway enclosure, Note 11 is added for the maintenance of documents I. B. was moved to II.B. --names of operators after delivery, I. G.1.g. moved to III. A. 2. c. --cert. of safety devices at time of load test

## **10 Personnel Platforms**

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All contractors regardless of tier shall comply with the requirements of the Occupational Safety and Health Administration's (OSHA) regulatory Subpart N, Cranes, Derricks, Hoists, Elevators, and Conveyors, standard 29 CFR 1926.550, Cranes and Derricks and 1926.552, Material Hoists, Personnel Hoists, and Elevators, and the New York City Building Code's (NYCBC) Reference Standard (RS) 19: Power Operated Cranes and Derricks, section 23.6: Hoisting Personnel.

The use of a crane or derrick to hoist employees on a platform is prohibited except when the erection, use, and dismantling of conventional means of reaching the work location such as a personnel hoist, ladder, stairway, aerial lift, elevating work platform or scaffold, would be more hazardous, or is not feasible because of structural design or worksite conditions.

In the event of an emergency, should the injured person need to be raised or lowered to the ground level and there is no access to a personnel hoist and transport via stairway (if available) is not feasible, then a platform dedicated to rescue purposes shall be used to extricate the injured person. The platform will be used to supplement the primary means if needed. The primary means will be the use of a Stokes basket carried up the stairway most accessible. It will be the decision of the first responder, medical professional, or other medical authority to determine if a platform will be used for rescue.

### **10.1 Prior to Use**

Three days prior to the use of a personnel platform at the WTC Site the contractor shall provide the following to the WTC Site Safety Director, and Resident Engineer's Office at the WTC Site ("REO"):

- a) Written notification by a Professional Engineer licensed in the State of New York, or master rigger licensed in the City of New York documenting the following:
  - i) The type of work to be performed;
  - ii) Location of the work;
  - iii) The prime/general contractor;
  - iv) The name of the principle from the prime/general contractor;
  - v) The contractor performing the work;
  - vi) The name of the principle from the contractor performing the work;
  - vii) The date and time of the work;
  - viii) The duration of the work;
  - ix) Identification of crane to be used (crane owner, crane user, crane type, crane manufacturer and model, and NYCBC CN and/or CD number);
  - x) A copy of the crane's CN indicating its use with platforms;

xi) The reason(s) why conventional means of access cannot be used to achieve this work and the hazards associated with the use of conventional access means.

b) Certifications

- i) The name and New York State/New York City license number and expiration date of the Professional Engineer or licensed master rigger;
- ii) The name and NYCBC license number and expiration date of the site safety manager or coordinator that will be on-site during platform use;
- iii) The name and qualifications of the person who will be witnessing the required OSHA Subpart N platform trial lift and proof lift tests;
- iv) The name and New York City license number of the rigger who will be supervising the rigging of the platform;
- v) The name and qualifications of the person who will be inspecting the rigging;
- vi) The name(s) of personnel authorized and trained in emergency personnel platform operations.

c) Drawings

- i) If the personnel platform to be used is supplied by a manufacturer of personnel hoisting equipment, submit the catalog cut sheet for the equipment. At a minimum the information shall include, but not be limited to:
  - 1) Platform Suspension;
  - 2) Anchorage points for personal fall arrest;
  - 3) Unit weight, maximum rated load capacity, maximum occupancy, test weight, and serial number.
- ii) Loading and landing locations for the platform;
- iii) If the applicant is a licensed rigger, a sketch or description of the foundation for the crane (hoisting machine) is required.

NOTE: If the personnel platform is fabricated by the contractor, a stamped design drawing by a NYS licensed professional engineer shall be submitted.

d) Plans

- i) Method of platform rigging;
- ii) Storage location for rigging;
- iii) Selection of rigging components with rated loading plus verification that rigging can support a load five (5) times its maximum intended loading without failure;

- iv) Verification that the loaded platform will not exceed 50% of the rated capacity for the radius and configuration of the crane;
- v) Verification that the load line of the crane can support without failure at least seven (7) times the maximum intended load;
- vi) Verification that all rigging has the manufacturer's tag identifying load capacity.

## 10.2 Prior to Operation

Prior to operation of a personnel platform on the WTC Site, the contractor shall proceed as follows:

- a) Conduct a Trial Lift Test as required by OSHA 1926.550(g)(5)(i-v):
  - i) A licensed engineer or master rigger shall complete the Permit to Use a Suspended Platform prior to the suspension of personnel within the platform.
  - ii) A lift supervisor shall conduct a pre-lift safety meeting to review the scope and performance of work.
- b) Immediately prior to use, conduct a proof lift test as required by OSHA, 1926.550(g)(5)(vi):
  - i) Each time the platform is used, or there are repairs or modifications on the platform or rigging, a Proof Test shall be performed. The Proof Test shall be conducted by loading (weighting) the platform to 125% of the rated capacity. Once securely loaded, the platform shall be lifted over the anticipated travel path. Once completed, the weighted load shall be removed, and the platform put into use.

## 10.3 Emergency Use

Immediately prior to the use of a personnel platform being used in the event of an emergency medical response at the WTC Site, the contractor shall provide the following to the WTC Site Safety Director and Resident Engineer's Office:

- a) Submittal requirements as identified under Section 1;
- b) Documentation for each platform to be used in the event of an emergency medical response is required;
- c) A completed Permit to Use a Suspended Platform as required in Section 2a must be completed for each individual platform that may be used in the event of an emergency medical response;
- d) Conduct a pre-lift meeting attended by the crane or derrick operator, signal person(s) (if necessary for the lift), employee(s) to be lifted, and the person responsible for the task to be performed including a review of the appropriate requirements. This meeting shall be held prior to the proof lift and shall be repeated for all employees assigned to the operation. Steps d and e may be done concurrently;

- e) Conduct a proof lift test as required by OSHA, 1926.550(g) immediately prior to hoisting personnel. The proof test shall be conducted by loading (weighting) the platform to 125% of the rated capacity. Once securely loaded, the platform shall be lifted over the anticipated travel path. Once completed, the weighted load shall be removed, and the platform put immediately into use;
- f) Storage location of rigging;
- g) Unique marking of rigging storage for immediate identification;
- h) List of personnel authorized and trained personnel for emergency personnel platform operations.

**10.4 Inspections**

- a) Inspections: The contractor shall make available provide, at a minimum, the following to the World Trade Center Site Safety Director and REO: on a monthly basis:
  - i) Daily inspection log of all emergency use platforms;
  - ii) Daily inspection log of all rigging equipment associated with platform;
  - iii) Records of trial lifts;
  - iv) Records of proof tests;
  - v) Permits to use a suspended platform.

**10.5 Personnel Platform Sample Permit**

I. GENERAL INFORMATION

Project:	Name:	Contractor:	Name:
Contractor performing work	Name:	Contractor performing lift	Name:
Location:			

Crane User:	Address:
Company Principle:	

Crane Owner:	Address:

Purpose of Lift (Circle)	Inspection	Maintenance/Repair	Installation	Emergency Response
	Demolition	Initial Test	Drill	

Description of Work	

Lift Date:	Lift Time:	Duration of Lift:
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II. SUPERVISORY ASSIGNMENTS

Lift Supervisor	Name/Contractor:
Safety Manager	Name/Contractor:
Safety Coordinator	Name/Contractor:
Person Conducting Pre-Lift Meeting	Name/Contractor:
Person Inspecting Platform Prior Lift	Name/Contractor:
Person Inspecting Sling and Attachments Prior to Lift	Name/Contractor:
Person Verifying Rigging Configuration	Name/Contractor:
Person Monitoring Trial Lift Load Test	Name/Contractor:
Person Monitoring Proof Lift Test	Name/Contractor:
Person verifying rigging is consistent with Engineer's/Licensed Master Rigger's Design	Name/Contractor:

III. CRANE INFORMATION

Crane Mfr, Make & Model		
Crane CN Number		Exp. Date:
Crane Boom Length (Feet)		
Maximum Allowable Pick Radius	Allowable Pick Load at Maximum Radius	
*Actual Pick Load at Maximum Radius	*Must not exceed 50% of Allowable Maximum Radius	
Crane Location		
Crane Operator	Name:	License Type:

	License Number	Expiration Date
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- \* If applicant is an engineer, the hoisting machine's Certificate of On-Site Inspection (CN) is required.
- \* If applicant is a master rigger, the hoisting machine's Certificate of Operation (CD) and a sketch or description of the hoisting machine's foundation is required.

**IV. RIGGING CREW**

Crew Foreman	Name/Contractor:	
Rigging Crew	Name:	Name:
	Name:	Name:
Signal Person(s)	Name/Contractor:	Name:

**V. PERSONNEL PLATFORM RIGGING PLAN PREPARATION**

Rigging Plan Prepared By	NYC Licensed Master Rigger (Boom <250 feet)
(place check in box)	Professional Engineer (Boom >250 feet)

NYC Licensed Master Rigger	Name:	License Type:
	License Number:	Expiration Date:

Professional Engineer	Name:	State Issued:
	License Number:	Expiration Date:

**V. RIGGING CONFIGURATION**

Prepare and attach a sketch of the rigging configuration for the personnel platform. The following information shall be provided on the sketch.

Wire Rope <sup>1,2</sup>	Type	Size:	Load Capacity	Attachment Configuration
Attachments <sup>1,2</sup>	Type	Size:	Load Capacity	Rigging Configuration
Load Capacity of Wire Rope and Attachments Configuration				
Method to Attach Additional Safety Line from Lift to Load Line above the ball				
Capacity of Additional Safety Line and Attachments:				

1 All rigging must be labeled or tagged to identify the manufacturer, and load capacity rating. All rigging used for a personnel platform shall be dedicated for that application, and shall not be removed and be protected from the elements.

2 Wire rope, shackles, rings, master links, and other rigging hardware must be capable of supporting

without failure at least five (5) times the maximum intended load applied or transmitted to that component. Where rotation resistant rope is used, the slings shall be capable of supporting without failure at least ten (10) times the maximum intended load.

USE OF Personnel Lift Platform

Name of occupants to be lifted	Name:	Name:
	Name:	Name:

Personal Fall Arrest System	Type:	Model:
Attachment Method:	Location:	Method:
Method of Communications		

\*When the personnel platform is used in response to a medical emergency, the number of occupants will be limited to injured worker, a signal person, and first and medical responders from PAPD ESU and FDNY EMS. Overall occupancy will not exceed that platform's rated capacity.

Platform Manufacturer:	Name:			
Rated Load Capacity	Maximum Intended Load	Trial Lift Load Weight	Proof Test Load Weight:	# of Occupants:

Prepared By:	Name:	Title:
	Date:	Contractor:

## 11 Hot Work Checklist

<b>NYC FIRE CODE PRE-HOT WORK CHECK</b>		
<b>NYC FIRE CODE Section 2604.3.1 Pre-hot work check.</b> A pre-hot work check shall be conducted by the responsible person prior to work to ensure that all equipment is safe and hazards are recognized and protected. A report of the check shall be kept at the work site during the work and made available for inspection by any representative of the Fire Department of New York. The pre-hot work check shall be conducted at least once per day and shall verify the following:		Compliant "C", Non-compliant "NC" or Not Applicable "N/A"
1.	The hot work equipment is in good working order.	
2.	The hot work area is clear of combustibles and flammable solids or that such materials present in the area are protected in accordance with NYC Fire Code Section 2604.1.1.	
3.	Exposed construction is of noncombustible materials or, if combustible, is protected.	
4.	Openings are protected.	
5.	Hot work area floors are clear of combustible waste accumulation.	
6.	Reserved.	
7.	Fire watch personnel, where required, are assigned.	
8.	Approved actions have been taken to prevent accidental activation of extinguishing and detection equipment in accordance with NYC Fire Code Sections 2604.1.8 and 2604.1.9.	
9.	Portable fire extinguishers and fire hoses (where provided) are operable and available.	
10.	All persons performing hot work possess certificates of fitness, where such certificates are required.	
11.	All persons performing hot work requiring a permit possess a site-specific permit or citywide permit, authorizing such work.	
Responsible person for hot work operation - Name		
Date:		
Area of work:		
Description of work:		

If any of the above items are non-compliant, hot work shall not begin, or shall cease until all conditions are safe and compliant with this code and all safety standards.

## **12 PATH Operational Safety Conditions And Precautions**

PATH is an electrified rail rapid transit facility and care must be exercised around various unguarded Alternating Current (AC) and Direct Current (DC) electric installations. All personnel entering a PATH Right Of Way (ROW) and facilities shall comply with PATH safety rules and procedures.

Where a contractor's work, either CM or contractor, is on or adjacent to the PATH ROW, the contractor is required to annually pass the PATH "On-Track Safety Program" in compliance with the rules and regulations set forth in FRA regulation 49 CFR Part 124, Subpart C: Railroad Worker Protection, and provide documentation and certify that the firm's employees have taken and passed the class. The course encompasses the On Track Safety Program, personnel protective equipment, communications, safety rules and procedures, emergency signals, etc. The full text of the PATH On-Track Safety Program is contained within Appendix III of the PATH Book of Rules.

Any personnel not certified under this Program will not be permitted to enter the PATH track area. Access onto the PATH System tracks must be coordinated in advance through the REO. PATH will provide a four-hour certification class, which includes a certification test for supervisory staff representing the contractor. The contractor's supervisory staff will then be required to train and certify all additional contractor personnel that may be performing Work of the Contract. A letter certifying that the listed contractor personnel have been trained on the "PATH On-Track Safety Program" and, that they fully understand and will comply with all requirements of FRA rules, shall be filed with PATH's Manager, System Safety and Security Division at One PATH Plaza, Jersey City, NJ 07306, Tenth Floor, within 48 hours of such training. Only the persons specified in such a letter will be permitted to enter the PATH ROW.

Entrance to any Power, Signals & Communications (PS&C) facility requires proper authorization and accompaniment by PS&C personnel and an employee in charge provided by the REO. Any person entering such a facility (relay room, bungalow, high tension feeder room, wayside signal case, etc.) must exercise particular care to avoid inadvertent contact with energized conductors, terminals, and apparatus that may cause electric shocks and burns resulting in personal injury and possible death: Contractors shall implement their own lock out tag program in conjunction with PATH power removal prior to the start of any work on or adjacent to electrified components.

## 13 WTC Site Lifting Plan

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The goal of the WTC Site crane safety management system is to have no incidents during lifting operations that cause injury to personnel, the general public or pose a threat to operational integrity. Following contractor risk assessments or upon the request of the REO or PSM, each CM and contractor shall submit to the REO and PMS prior to the start of work a comprehensive lift plan. Lift planning process describes the systematic assessment of important load factors and site factors. It is applicable to the "cherry-picker" as to the "superlift".

### I. GENERAL INFORMATION

PROJECT: \_\_\_\_\_

LOCATION: \_\_\_\_\_

DATE / TIME OF LIFT: \_\_\_\_\_

OBJECT TO BE LIFTED: \_\_\_\_\_

DESCRIPTION OF LIFT: \_\_\_\_\_

**Purpose of Lift:**     Inspection         Maintenance     Installation  
 Dismantling     Demolition        Repair             Relocation

OTHER: \_\_\_\_\_

### Lift Category:

<input type="checkbox"/> 95 % of Crane Manufacturers Lift Capacity	<input type="checkbox"/> Tandem Lift
<input type="checkbox"/> Limited Clearance, Drift, or Interference	<input type="checkbox"/> Asymmetrical Object
<input type="checkbox"/> Unique Rigging Requirement	<input type="checkbox"/> Fragile / Thin Shell
<input type="checkbox"/> Blind Lift	<input type="checkbox"/> Wall / Slab
<input type="checkbox"/> Re-bar Cage	<input type="checkbox"/> Lifts Over Public
<input type="checkbox"/> Fuel Tank	<input type="checkbox"/> Gas Cylinder Cage
<input type="checkbox"/> Requested by REO/Safety	<input type="checkbox"/> Pre-Cast

OTHER: \_\_\_\_\_

**Lift Plan Prepared By:**

- NYS Licensed PE
- NYC Licensed or Special Rigger
- Competent Person

NYS License PE:

Name: \_\_\_\_\_ License #: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ Licensing State: \_\_\_\_\_

NYC Licensed or Special Rigger:

Name \_\_\_\_\_ License #: \_\_\_\_\_

License Type: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Competent Person:

Name: \_\_\_\_\_ Contractor: \_\_\_\_\_ Title: \_\_\_\_\_

**Rigging Plan Prepared By:**

- NYS Licensed PE
- NYC Licensed or Special Rigger
- Competent Person

NYS License PE:

Name: \_\_\_\_\_ License #: \_\_\_\_\_

Expiration Date: \_\_\_\_\_ Licensing State: \_\_\_\_\_

NYC Licensed or Special Rigger:

Name \_\_\_\_\_ License #: \_\_\_\_\_

License Type: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

Competent Person:

Name: \_\_\_\_\_ Contractor: \_\_\_\_\_ Title: \_\_\_\_\_

Location to Unload:

Method to Unload:

Lift Pathway: \_\_\_\_\_

Fall Protection For Personnel: \_\_\_\_\_

Coordination With PATH Operations: \_\_\_\_\_

**II. PERSONNEL INVOLVED WITH LIFT**

Prime Contractor: \_\_\_\_\_

Contractor To Perform Lift: \_\_\_\_\_

Lift Supervisor: \_\_\_\_\_ Contractor: \_\_\_\_\_

Safety Manager Present: \_\_\_\_\_ Contractor: \_\_\_\_\_

**Identification of Rigging Crew:**

Rigging Crew Foreman: \_\_\_\_\_ Contractor: \_\_\_\_\_

b) Signal Person: \_\_\_\_\_ Contractor: \_\_\_\_\_

c) Rigging Crew: \_\_\_\_\_ Contractor: \_\_\_\_\_

d) Name/Title Inspecting Slings/Hardware: \_\_\_\_\_ Contractor: \_\_\_\_\_

e) Name/Title of Person Conducting Pre-Lift Meeting: \_\_\_\_\_ Contractor: \_\_\_\_\_

f) Method of Communication between Signal Person & Crane Operator: \_\_\_\_\_

**Crane Operator:**

Name: \_\_\_\_\_ License #: \_\_\_\_\_

License Type: \_\_\_\_\_ Expiration Date: \_\_\_\_\_

**III. RIGGING**

Rigging Method: \_\_\_\_\_

**Slings**

Type: \_\_\_\_\_

Size: \_\_\_\_\_ Capacity: \_\_\_\_\_

Configuration: \_\_\_\_\_

**Hardware -**

Type(s): \_\_\_\_\_

Size(s) \_\_\_\_\_ Capacity: \_\_\_\_\_

Rigging Method \_\_\_\_\_

Type of Softener: \_\_\_\_\_

**IV. CRANE DESCRIPTION**

1	CRANE NAME AND MODEL NUMBER	
2	NYC DOB C&D NUMBER	EXPIRATION DATE
3	BOOM CONFIGURATION	BOOM LENGTH
4	BLOCK CAPACITY IN TONS	TOTAL WEIGHT OF CRANE INCLUDING COUNTERWEIGHT IN TONS
5	LIFTING CABLE DIAMETER IN INCHES	CABLE REEVING / NO. OF PARTS
6	WEIGHT OF MATERIAL TO BE PICKED	WEIGHT OF BLOCK AND RIGGING
7	DE-RATING OR SAFETY FACTOR	GROSS DESIGN PICK WEIGHT (FROM LINES 6 AND 7)
8	ABOVE GROUND UTILITIES/SURFACE ENCUMBRANCES	
9	UNDERGROUND UTILITIES OR OBSTRUCTIONS	
10	GROUND CAPACITY TONS/SF	MATTING TYPE
11	OUTRIGGERS	DUNNAGE
12	BOOM RADIUS IN FEET	BOOM ANGLE
13	PICKING CAPACITY PER CRANE CHART	
14	ENGINEERED SUBMITTAL NUMBER	

**COMMENTS / NOTES**

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Prepared By: \_\_\_\_\_ Contractor: \_\_\_\_\_

Reviewed By: \_\_\_\_\_ Contractor: \_\_\_\_\_

Date Prepared: \_\_\_\_\_ Date Reviewed: \_\_\_\_\_

## 14 WTC Sling Use Guidelines

The following WTC Site guidelines for use of wire rope and synthetic slings were established to standardize the way in which slings are used during lifting operations, and to ensure that adequate measures are taken prior to and during a lift. These guidelines are consistent with 29 CFR 1926.251: Rigging Equipment for Material Handling, and OSHA's guidance document on safe sling use. This document addresses wire and synthetic sling training, condition evaluations, use and maintenance, and storage.

These Guidelines shall be revised and amended as necessary based on regulatory changes, best available technologies, and Site observations.

### 14.1 Training

All workers whose job responsibilities include the rigging of loads shall be trained in the visual evaluation and recognition of sling deficiencies, and shall have the authority to remove such slings from service. Only those workers who are trained, consistent with their job function, in accordance with applicable regulation, labor union training programs, or by each contractor shall be permitted to select the type of sling to be used, and method of attachment best suited to safely handle the load to be lifted.

On a daily basis, or as required by regulation, the foreman of each rigging crew, who is also trained in the visual evaluation and recognition of sling deficiencies, and has the authority to remove such slings from service, shall ensure that all sling users are visually evaluating each sling prior to use. The foreman shall maintain a daily record of such evaluations, and maintain the record at the worksite.

### 14.2 Condition Evaluations

For both wire and synthetic slings, each sling user shall be required to perform a pre-use daily visual evaluation, which shall include, but not be limited to the following:

Wire Rope	Synthetic
Missing, Illegible Sling Identifications	Missing, Illegible Sling Identifications
Broke Wires	Worn/Damaged Stitching
Abrasions	Knots Along Length of Sling
Corrosion	Holes, Tears, Cuts, Snags
Kinking, Crushing, Bird-caging	Acid, Thermal, Caustic Burns
Heat Damage	Excessive Wear
Crushed, Deformed or Worn Attachments	Discoloration

Additional daily evaluations may be required based on sling use, operating conditions, and loading. Based upon the evaluation, any damaged or defective rigging, rigging that has been over-exposed to environmental elements (rain, snow, ice, prolonged sunlight), or rigging that was sitting in water, snow, or ice shall be immediately removed from service. Synthetic slings

shall be removed from service if the manufacturer's load capacity identification label is missing or illegible. Wire rope slings shall be removed service if the manufacturers load capacity identification tag is missing or illegible.

Before returning a removed sling back to service, it must be repaired, reconditioned, and proof-tested by either a qualified person or the sling manufacturer. Documentation of the proof test shall be maintained on-site and available for review.

### **14.3 Use and Maintenance**

Slings shall be selected, used and maintained in accordance with the manufacturers' specifications. Slings shall not be used if damaged or defective (see above), or in excess of its rated load at a given rigging configuration.

If a synthetic or wire rope sling is to be left on a load, the load cannot be placed directly on the ground or be stacked in such a manner causing the sling to be abraded, crushed, or deformed. Loads with slings attached must be supported with sills to prevent sling damage.

In order to protect the sling from deformation or abrasion during a lift, wire and synthetic sling softeners shall be required when at a minimum:

- a) The point of sling-to-load contact is at a sharp (90) degree right angle against an edge or surface;
- b) The load can deform or abrade the sling;
- c) The load needs to be protected from damage during the lift;
- d) Softening is recommended by the sling manufacturer.

### **14.4 Sling Storage**

All slings shall be stored in accordance with the manufacturers specifications. At a minimum, all slings shall:

- a) When not in use be stored in a secure, weather tight enclosure or storage bin;
- b) Be stored in such a manner to prevent crushing, deformation, or abrasion;
- c) Be stored in locations where they cannot be damaged or create a trip hazard for workers.

## **15 High Wind/Hazardous Weather Guidelines**

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When the National Weather Service forecasts high winds, actions must be taken to secure the WTC Site. High winds are dangerous and all contractors must consider the safety of buildings and construction sites, cranes, suspended and supported scaffolding, and any other building appurtenances that may become loose from exposure to high winds. Proper planning shall be done to ensure a secure WTC Site.

### **15.1 General Site Conditions**

WTC Site contractors should take all precautionary measures including but not limited to the following by securing:

- a) Objects subject to up-draft;
- b) Fencing and screening;
- c) Plastic and canvas wrapped items;
- d) Empty cans, drums and containers;
- e) Suspended hoses and lines;
- f) Mounted signs;
- g) Construction storage piles;
- h) Waste containers and contents;
- i) Swing gates and doors;
- j) Scaffolds, stair towers, and ladders;
- k) Electric panels and temporary installations;
- l) Light weight tools;
- m) Safety cans in fuel storage cabinets;
- n) Aerial lifts (booms, scissor lifts, etc.) in their lowest ground setting;
- o) De-watering equipment and ensure continued operation.

### **15.2 Crane Operations**

The use of cranes and protection during hazardous weather events or high wind speeds are dependent on several factors.

- a) Sources For Hazardous Weather Notifications / High Wind Speeds:

- i. PAPD Desk – Notifications from Newark Liberty International Airport;
  - ii. Advisories from the NYC DOB;
  - iii. National Weather Service;
  - iv. Anemometer on crane;
  - v. Direct communication with LGA Air Traffic Control Tower.
- b) Suspend Lifting Operations When:
- i. Wind speeds exceeding 30 mph (NYC DOB), or as otherwise established by the crane manufacturer or the engineer of record;
  - ii. The object being lifted can act as a sail;
  - iii. The crane operator advises suspension of lift activities;
  - iv. Lighting strikes are occurring;
  - v. Crane operator or signal person visibility is lessened due to snow, fog, rain.
- c) WTC Crane Inventory:
- i. For each crane on site, the contractor will submit to the PA Engineering Crane Representative, REO and Safety Director a plan as to how each crane needs to be secured at its location and configuration consistent with the crane manufacturer's design specifications or engineer of record requirements.
- d) Securing the Crane For High Winds:
- i. Determine type of crane and evaluate location
  - ii. Secure crane in accordance with crane manufacturer's specifications or the engineer of record requirements. If the crane cannot be secured as specified, the contractor must provide to the PA Engineering Crane Representative, and REO a plan identifying how the crane is to be secured in its current location and configuration;
  - iii. The contractor and crane operator shall evaluate each crane to verify it has been adequately secured, and advise the master mechanic and safety manager accordingly.
- e) Returning the Crane To Service
- i. Prior to lifting operations, the crane will undergo a routine daily visual inspection to ensure operational fitness.



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## MEMORANDUM

*WTC Construction Department*

**To:** WTC Construction Staff and Contract Staff  
**From:** Steven Plate  
**Date:** March 11, 2008  
**Subject:** **WORLD TRADE CENTER SITE-WIDE EYE PROTECTION POLICY**

**Copy To:** A Shorris, W. Goldstein, J. Keane

It is critical to the overall success of the World Trade Center Downtown Restoration Projects that the safety of our workers and those around them are kept in the forefront.

As construction activity at the World Trade Center (WTC) Site continues to increase, I would like to take this opportunity to reaffirm our mutual commitment to maintain safety at the WTC Site.

In 2007, there were 12 eye injuries to employees working at the WTC Site. These injuries ranged from minor dust and debris in the eye to corneal abrasions. In the first two months of 2008, there have been 11 eye injuries treated on-site of which 3 were referred to a doctor for follow up and further evaluation. A review of these eye injuries indicate that most could have been prevented if the worker was wearing some level of eye protection.

Effective April 1, 2008, the Port Authority of NY & NJ will require the mandatory use of eye protection for all personnel while on-site. Depending on the task being conducted, additional levels of protection will be necessary such as, goggles or face shields. Under Occupational Safety and Health Administration Regulations, it is the responsibility of each Contractor to provide personal protective equipment to their employees.

It is of the utmost importance that we work collectively to ensure that the health and safety needs of the men and women that work at the WTC Site are met at all times during this time of rebuilding.

Attachment



# WTC Safety Bulletin

March 11, 2008



WTC Construction

## Personal Protective Equipment – Eye Protection

Did you know that an estimated 1,000 eye injuries occur every day in workplaces. When you add up all the lost production time, medical expenses and worker compensation claims, the estimated cost of these injuries is as high as \$300 million per year.

In 1980 the Bureau of Labor Statistics (BLS) conducted a study that looked closely at 1,000 minor eye injuries. It was determined that 70 percent of the accidents were caused by flying or falling objects or sparks and 20 percent were caused by contact with chemicals. But most importantly, the study concluded that nearly 3 out of 5 of injured workers were not wearing any eye protection at all.

After twenty-five years, many workplaces are still struggling to learn that first lesson of the BLS study. Eye injury prevention starts with wearing effective eye protection and anyone working in or passing through an area where there are potential hazards to eyes should be wearing safety eyewear.

Training is also a key component of any effort to prevent eye injuries. Most of those workers who participated in the BLS study who were not wearing eye protection said they thought eye protection wasn't required, and even though the majority of employers had furnished protective eyewear, 40 percent of the workers said they had received no information on what kind of eyewear they should use and where they were required to use it.

In 2007, there were 12 eye injuries to employees working at the World Trade Center site. These injuries ranged from minor dust and debris in the eye to corneal abrasions. In the first two months of 2008, there have been 11 eye injuries treated on-site of which 3 were referred to a doctor for follow up and further evaluation. A review of these eye injuries indicate that most of these could have been prevented if the worker was wearing some level eye protection.

At the World Trade Center site your safety and those working around you is critical. As the site continues to become more active with construction our collective efforts to ensure the safety of the men and women working here is vital. The first step being taken is the mandatory site wide use of eye protection. **Effective April 1, 2008, all personnel on-site will be required to wear safety glasses with side shields.** Depending on the task being conducted, additional levels of eye protection will be necessary such as, goggles or face shields.

If you have any questions about eye protection, the type of protection to be worn, or do not have eye protection please contact your supervisor.



THE PORT AUTHORITY OF NY & NJ

# WTC Safety Bulletin

April 3, 2008



WTC Construction

## Fire Safety – Smoking Policy

Smoking is a common cause for accidental fires at construction and demolition sites. Careless smoking at a recent fire at a NYC construction site is a cause that attributed to the death of two firefighters. At the WTC site, smoking is prohibited in certain open areas and in all indoor or enclosed areas where flammable liquids and compressed gases are used or stored.

Enclosed areas are defined as:

- Areas with a deck and roof
- Areas with openings to other work areas above or below - through roof or deck openings, stairs or any type of opening
- Areas surrounded by decking below or with one or more wall or other enclosure material such as temporary barriers or tarps
- Temporary construction shanties, even though built of fire-retardant materials
- Areas with a walking surface and one other surface (wall or roof/deck) or a walking surface with potential for the travel of fumes up or down

Smoking is prohibited at ALL times:

- Within 50 feet of compressed gas cylinders or flammable and combustible liquids
- In locations where combustible materials are stored

Failure to follow this safety directive will be treated as any other fire and safety violation consistent with the Port Authority of NY and NJ health and safety program and the contractors' site-specific health and safety program.

The use of lighted smoking materials is a hazard that can easily be controlled. Contractors shall ensure that a safe area is provided for smoking where combustibles are limited and a proper receptacle is placed.

If you have any questions please contact Bill Dougherty, Fire Prevention and Safety at 973-332-8665.



# WTC Safety Bulletin

April 10, 2008



WTC Construction

## Environmental Performance Commitments (EPC's)

### What are Environmental Performance Commitments?

Environmental Performance Commitments, commonly referred to as EPC's, are a set of environmental mitigation measures being implemented by the Port Authority to lower the potential for adverse impacts on people living in the community, pedestrians walking around the World Trade Center, and cultural and historic sites and buildings.

The Port Authority is committed to control and mitigate noise, diesel emissions, dust generation and vibration that could be caused by our contractors. Measures have been put in place to control each of these areas. This bulletin will be the first in a series to review our EPC's.

### NOISE

The Port Authority continues to take proactive measures in alleviating some of the noise impacts to our adjacent neighbors as construction continues to increase. To be in compliance with the EPC's the work shall not exceed an 8-hour equivalent sound pressure level (Leq) limit of 80 decibels (dB) for work hours, Monday-Friday from 7 am to 6 pm and 70 dB for all other times.

Noise that exceeds an equivalent continuous sound pressure level over an eight hour period above these levels will be investigated by the Port Authority and changes in construction methods shall be implemented where appropriate and necessary.

Contractors are required to develop a noise mitigation plan for activities that may exceed our commitment. Control methods include:

- All trucks entering and leaving the site are installed with a smart backup alarm
- Using noise-attenuated equipment as appropriate
- Installing double stacked soundproofing panels along the perimeter of site
- Using acoustic barriers and wall enclosures around certain construction activities
- Installing silencers on jackhammers, air compressors, generators, light plants and cranes
- Using electrically operated equipment rather than combustion equipment, when possible
- Using soil lining inside aluminum carrying cases to reduce rock impact noise during truck loading/unloading operations

**Remember - We are all in this together!**

**"Comply and be Proactive towards the WTCC commitment to minimize adverse impacts on the community"**

**If you have any questions please contact Kelly Mitchell, WTCC, at 212-435-5629**



# WTC Safety Bulletin

May 16, 2008



WTC Construction

## Compressed Gas Cylinder Safety

Compressed gas cylinders present two significant hazards, the chemical contents of the cylinders which are corrosive, toxic and highly flammable and the physical hazard from a heavy metal cylinder under high pressure.

Proper use, storage or handling of compressed gas cylinders includes:

### Use

- Be sure all connections are tight. Use soapy water to locate leaks.
- Keep cylinder valve and regulator fully closed when not in use.
- Remove regulators and put caps in place when not in use.
- Keep cylinders valves, regulators, couplings, hose and apparatus free of oil and grease.
- Keep cylinders away from sparks, open flames, other sources of heat and hot works.
- Safety devices and valves shall not be tampered with, nor repairs attempted.
- Regulators shall be removed and caps put in place when work is completed, when cylinders are empty and when moving cylinders.
- Flashback arrestors and reverse-flow check valves should be used to prevent flashback when using oxy-fuel systems.
- Fire extinguishing equipment shall be readily available when using compressed cylinder gases.

### Storage

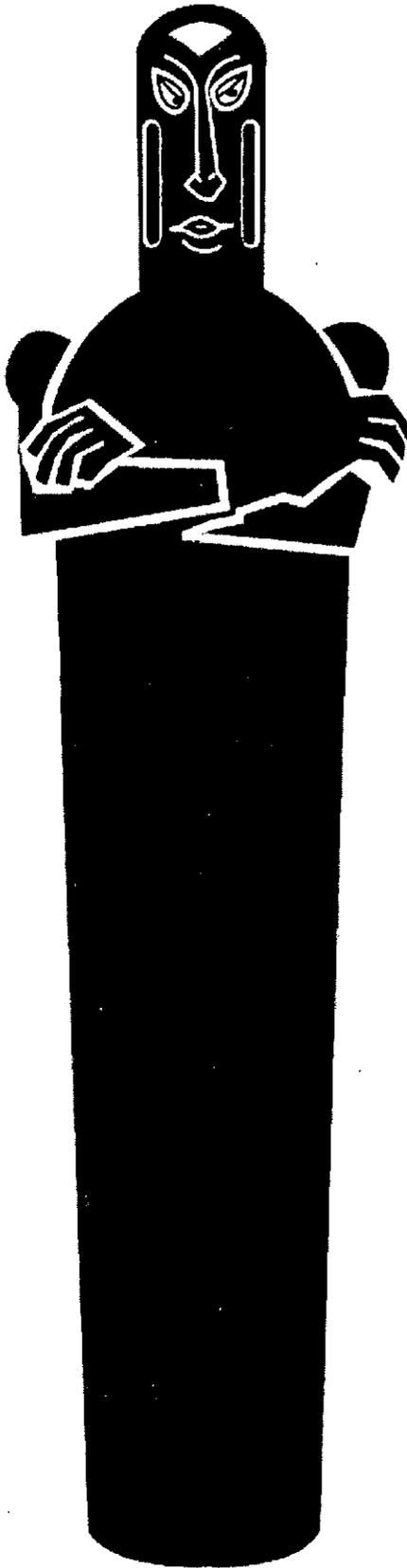
- Cylinders must be stored in compatible groups and in an upright position.
- Oxygen cylinders are to be kept a minimum of twenty feet from flammable gas cylinders or combustible materials, or provide a non-combustible barrier at least 5 feet high having a fire rating of at least one-half hour.
- Compressed gas cylinders must be secured firmly at all times, using a clamp, chain or ratcheted tie-down to secure the cylinder at a point that is approximately 2/3 of its height.
- Keep valve protective caps in place when the cylinder is stored.
- Mark empty cylinders EMPTY and keep valves closed.
- Cylinders must be kept away from electrical wiring where the cylinder could become part of the circuit.

### Handling

- Use a cylinder cart and secure cylinders with a clamp, chain or ratcheted tie-down.
- For short distances cylinders shall be moved by tilting and rolling them on their bottom edges.
- Don't drop a cylinder, permit them to strike each other violently or be handled roughly.
- Unless cylinders are secured on a special cart, regulators shall be removed, valves closed and protective valve caps in place before cylinders are moved.

**Remember - the greatest physical hazard represented by the compressed gas cylinder is the tremendous force that may be released if it is knocked over.**

# A Sleeping GIANT.



- I am a compressed gas cylinder.
- I weigh in at 175 pounds when filled.
- I am pressurized at 2,200 pounds psi.
- I have wall thickness of about one-fourth inch.
- I stand 57 inches off the deck.
- I am 9 inches in diameter.
- I wear a cap when not in use.
- I wear valves, gauges, and hoses when at work.
- I wear many colors and bands to tell what tasks I perform.
- I transform miscellaneous stacks of material into many shapes and forms when properly used.
- I am ruthless and deadly in the hands of the careless or uninformed.
- I am too frequently left standing alone on my small base, my cap removed and lost by an unthinking workman.
- I am ready to be toppled over, where my naked valve can be snapped off, and all of my power released through an opening only slightly larger than a lead pencil.
- I am proud of my capabilities. Here are a few:
  - I have been known to jet away faster than a dragster.
  - I smash my way through brick walls with the greatest of ease.
  - I fly through the air and reach distances of a half mile or more.
  - I spin, ricochet, crash and slash through anything in my path.
  - I scoff at the puny efforts of human flesh, bone and muscle to alter my erratic course.
  - I can, under certain conditions, rupture or explode.
  - You read of these exploits in the newspaper.
- You can be master only under my terms.
- Full or empty, see to it that my cap is on straight and snug.
- Never-repeat-never leave me standing alone.
- Keep me in a secure rack or tie me so I cannot fall.
- Treat me with respect.

**I am a sleeping giant.**



# WTC Safety Bulletin

August 6, 2008



WTC Construction

## Working Safely at the World Trade Center During the Summer

Working safely at the World Trade Center is the only way to operate to ensure success for everyone. During the summer months people doing strenuous activities in the sun and heat can lead to a variety of serious, and potentially life threatening disorders. These disorders range from heat fatigue, heat cramps, heat exhaustion, and heat stroke. Though different in the effects on the body, these disorders are collectively known as Heat-Related Illnesses – commonly called “heat stress.” It is important to know the signs of heat stress, and equally important to know what you can do to prevent it.

### The basics to heat stress prevention include:

- Knowing the signs/symptoms of heat-related illnesses
- Monitoring yourself and co-workers
- If possible, block out direct sun or other heat sources
- If available, use cooling fans/air-conditioning
- Take breaks in shaded locations
- Drink plenty of water
- Always remember - If you feel thirsty, you ARE dehydrated
- Wear lightweight, light colored clothing
- Wear UV protective glasses
- Use UV protective sun block
- Utilize administrative controls by rotating employees who are performing strenuous tasks
- Avoid consuming alcohol/caffeinated beverages during breaks/lunch
- Eat a lighter lunch

### At the WTC Site, if you or a co-worker begins to experience heat stress, take the following actions:

- Find a shaded location to rest
- Loosen or remove excessive clothing
- Cool body down with tepid water
- If alert, conscious, and able to swallow, provide drinking water
  - When you or your co-worker can move, immediately proceed to the Concentra Nurse's Station by Gate 4A (PATH Station Entrance) for an evaluation
- If conditions don't improve or worsen, contact your safety manager
  - The safety manager will immediately contact the WTC PAPD Command at (212) 608-5111 (212) 608-5115
  - Keep the employee still, shaded, and as comfortable as possible
  - Do not move the employee (unless at risk of additional harm) or force the employee to drink

**For additional information on heat-related illnesses, you can contact Ms. Regina Shane, R.N., Concentra Nurses Station, or Joe Schwed, WTC Site Safety Director at (212) 435-5515**



# WTC Safety Bulletin

October 28, 2008

WTC Construction

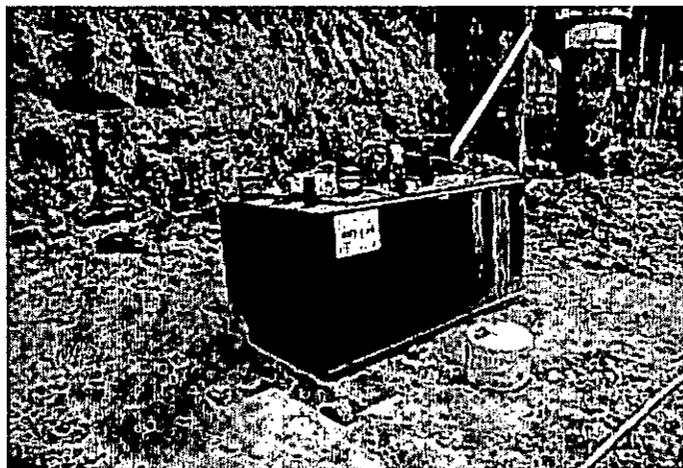
## Stationary Fuel Storage Tanks

All contractors shall develop and document appropriate means and methods for refueling operations. Fuel tanks, regardless of capacity, can only be lifted with fuel inside if the manufacturer's specification states that it may be lifted with product present. Additionally, proper rigging practices must be used at all times and be compliant with applicable rules, regulations, codes and manufacturer's specifications.

Recently, a Containment Solutions Industry (CSI) tank containing diesel fuel was lifted with synthetic slings in an "X" configuration. During the lift, the load shifted causing the tank to slide out of the sling resulting in the release of approximately 100-gallons of diesel fuel. While this incident may be partially attributable to improper rigging, the tank is manufactured as a stationary tank, and should not have been lifted while containing product.

CSI manufactures a 280-gallon stationary fuel storage tank (see photo below). CSI clearly states this style of tank may only be lifted when empty – it cannot be lifted if it contains fuel.

**POLICY: THE LIFTING OF CSI 280-GALLON STATIONARY TANKS CONTAINING ANY VOLUME OF FUEL IS STRICTLY PROHIBITED AT THE WORLD TRADE CENTER SITE.**

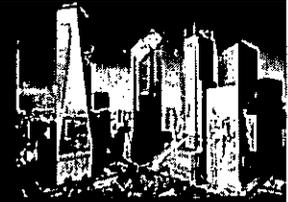


**If you have any questions, please contact  
Joe Schwed, WTC Site Safety Director, at (212) 435-5515.**



# WTC Safety Bulletin

July 1, 2008



WTC Construction

## West Nile Virus

The West Nile virus (WNV) is transmitted by the bite of a virus infected mosquito. Many bird species have tested positive for WNV, however crows and blue jays are most susceptible to this disease. When a mosquito bites an infected bird, the mosquito then becomes WNV carrier, which then transmits the virus to humans and animals while biting to feed and draw blood. Studies reveal that only a small percentage of humans infected with the WNV will show disease symptoms. Most infections are mild accompanied by fever, headache and body aches, often with skin rash and swollen lymph glands. For the majority of people infected, the WNV is not life threatening and within two weeks they recover from the infection. However, people over 50 years of age have a higher incidence of severe illness caused by WNV.

### How to Avoid West Nile Virus During Mosquito Season:

- 1. Eliminate mosquito-breeding areas.** All outside areas where standing water can remain must be eliminated where possible. These areas include: tires, cans, drums, catch basins, roofs, sump pump pits, pump stations, roadside ditches, trenches, scrap piles, piles of construction debris and other equipment stored outside.
- 2. Treat waterborne areas with biological larvicides.** Where necessary, have a Licensed Pest Control Contractor certified in mosquito control apply biological larvicides to treat areas where water collects after a rainfall.
- 3. Protect Yourself.** Wear long sleeve shirts and long pants when working outdoors during dawn and dusk periods and apply insect repellent containing 20 – 30% DEET or Picaridin to uncovered skin as directed by the manufacturer's label.

***Report Dead Birds and Standing Water to Your Supervisor***

## I chose to look the other way

I could have saved a life that day,  
But I chose to look the other way.  
It wasn't that I didn't care,  
I had the time, and I was there.

But I didn't want to seem a fool,  
Or argue over a safety rule.  
I knew he'd done the job before,  
If I called it wrong, he might get sore.  
The chances didn't seem that bad,  
I've done the same, he knew I had.

So I shook my head and walked on by,  
He knew the risks as well as I.  
He took the chance, I closed an eye,  
And with that act, I let him die.

I could have saved a life that day,  
But I chose to look the other way.  
Now every time I see his wife,  
I'll know I should have saved his life.

That guilt is something I must bear,  
But it isn't something you need to share,  
If you see a risk that others take,  
That puts their health or life at stake.  
The question asked, or thing you say,  
Could help them live another day.

If you see a risk and walk away,  
Then I hope you never have to say,  
I could have saved a life that day,  
But I chose to look the other way



# WTC Safety Bulletin

May 20, 2009



WTC Construction

## World Trade Center Site Access Restriction

### Vehicle Security Center

As construction at the Vehicle Security Center (VSC) progresses inside Gate 2, unobstructed access to the West Haul Road is becoming more difficult to establish. To ensure the safety of the men and women working at the site and minimize the potential for worker injury when entering through Gate 2, effective Wednesday, May 20, 2009, the following Site access restrictions have been implemented:

- 1) All employees entering Gate 2 after 7:00 am must be wearing the required personal protective equipment (PPE).
- 2) VSC contractors who store their PPE in lockers must use Gate 7.
- 3) Employees working north of the VSC should use Gate 7 and then proceed to the pathway along the fence for access to their work areas.

Thank you for your assistance and cooperation.

**If you have any questions, please contact  
Joe Schwed, WTC Site Safety Director, at (212) 435-5515**



# WTC Safety Bulletin

July 6, 2009



WTC Construction

## West Nile Virus

The West Nile virus (WNV) is transmitted by the bite of a virus infected mosquito. Many bird species have tested positive for WNV, however crows and blue jays are most susceptible to this disease. When a mosquito bites an infected bird, the mosquito then becomes WNV carrier, which then transmits the virus to humans and animals while biting to feed and draw blood. Studies reveal that only a small percentage of humans infected with the WNV will show disease symptoms. Most infections are mild accompanied by fever, headache and body aches, often with skin rash and swollen lymph glands. For the majority of people infected, the WNV is not life threatening and within two weeks they recover from the infection. However, people over 50 years of age have a higher incidence of severe illness caused by WNV.

### How to Avoid West Nile Virus During Mosquito Season:

- 1. Eliminate mosquito-breeding areas.** All outside areas where standing water can remain must be eliminated where possible. These areas include: tires, cans, drums, catch basins, roofs, sump pump pits, pump stations, roadside ditches, trenches, scrap piles, piles of construction debris and other equipment stored outside.
- 2. Treat waterborne areas with biological larvicides.** Where necessary, have a Licensed Pest Control Contractor certified in mosquito control apply biological larvicides to treat areas where water collects after a rainfall.
- 3. Protect Yourself.** Wear long sleeve shirts and long pants when working outdoors during dawn and dusk periods and apply insect repellent containing 20 – 30% DEET or Picaridin to uncovered skin as directed by the manufacturer's label.

***Report Dead Birds and Standing Water to Your Supervisor***



**THE PORT AUTHORITY OF NY & NJ**

## **MEMORANDUM**

*World Trade Center Construction*

**To:** WTC Construction Staff and Contract Staff  
**From:** Joseph M. Schwed, WTC Site Safety Director  
**Date:** July 6, 2009  
**Subject:** **WEST NILE VIRUS BULLETIN**  
**Copy To:** S. Plate, A. Reiss, J. Keane

### **BACKGROUND**

The West Nile virus (WNV) is transmitted by the bite of a virus infected mosquito. Many bird species have tested positive for West Nile virus, however crows and blue jays are most susceptible to this disease. When a mosquito bites an infected bird, the mosquito then becomes a virus carrier, which then transmits the virus to humans and animals while biting to take blood. Studies reveal that only a small percentage of humans infected with the virus will show disease symptoms. Most infections are mild accompanied by fever, headache and body aches, often with skin rash and swollen lymph glands. For the majority of people infected, the virus is not life threatening and within two weeks they recover from the infection. However, people over 50 years of age have a higher incidence of severe illness caused by WNV.

### **WEST NILE VIRUS UPDATE**

The United States was first exposed to WNV during the summer of 1999, when the New York – New Jersey Metropolitan region experienced outbreaks of the virus. According to the Centers for Disease Control and Prevention (CDC) the virus is well established across the Nation and will re-emerge in our region once again when warmer weather arrives. New York City and New Jersey Health Departments continue to recommend various strategies to control mosquitoes, which will protect the general public from possible WNV exposure. These strategies include eliminating potential mosquito breeding sites by removing standing water, treating specific areas with pesticides, and advising people to use insect repellents and wear long sleeves and pants when working outdoors. The Port Authority of New York and New Jersey (Port Authority) will similarly implement some common sense strategies at the World Trade Center site to protect against the WNV. To accomplish this, The Port Authority and contractors will:

- 1. Survey outdoor areas to identify and eliminate mosquito-breeding areas.** All outside areas where standing water can remain will be eliminated where possible. These areas include: tires, cans, drums, catch basins, roofs, sump pump pits, pump stations, roadside ditches, trenches, scrap piles, piles of construction debris and other equipment stored outside.
- 2. Treat waterborne areas with biological larvicides.** Where necessary, a Licensed Pest Control Contractor certified in mosquito control will apply biological larvicides to treat areas where water collects after a rainfall.
- 3. Notify employees of methods of protection.** Employees will be advised to wear long sleeve shirts and long pants when working outdoors during dawn and dusk and to apply

insect repellent containing 20 – 30% DEET or Picaridin to uncovered skin as directed by the manufacturer's label.

**We request that you survey your outdoor areas and develop an action plan for mosquito control.** Your plan should guide you in eliminating mosquito-breeding locations and in treating certain areas for larval mosquitoes using a Licensed Pest Control Contractor, certified in mosquito control. You should also advise your personnel who work outdoors to take proper precautions.

By taking these prudent steps in accordance with the advice of the New York City and New Jersey Departments of Health, we can feel confident that the health and safety concerns of personnel working at the World Trade Center site and the general public are being addressed appropriately.

Additional information on the West Nile Virus is available on the following Web sites:

- 1) Centers for Disease Control and Prevention (CDC)  
[www.cdc.gov/ncidod/dvbid/westnile/q&a.htm](http://www.cdc.gov/ncidod/dvbid/westnile/q&a.htm)
- 2) NY City Department of Health  
[www.ci.nyc.ny.us/html/doh/html/wnv/wnvhome.html](http://www.ci.nyc.ny.us/html/doh/html/wnv/wnvhome.html)
- 3) NJ Department of Health  
[www.state.nj.us/health/cd/westnile/enceph.htm](http://www.state.nj.us/health/cd/westnile/enceph.htm)
- 4) NJ Department of Environmental Protection  
[www.nj.gov/dep/mosquito/](http://www.nj.gov/dep/mosquito/)



# WTC Safety Bulletin

July 7, 2009



WTC Construction

## Aerial Lift - Landing Safety

**Date of Incident:** 06-08-2009

**Type of Incident:** Near Miss - Electrical

**Bulletin/Incident Description:**

A welder operating an aerial lift lowered the platform onto a welding lead. At the time, the welding lead was lying on a steel beam and was cut creating an electrical current through the lift. The welding lead began to arc causing hydraulic lines on the lift to smolder. The Lead Carpenter saw smoke and used a fire extinguisher. After realizing what was causing the problem he used a 2x4 to pick up cage off of the wire and then placed another piece of lumber between wire and the lift.

**Major Hazard(s) Identified:**

The electrical current transferred to the aerial lift could have caused electrocution/burns to employees.

**Cause(s) / Contributing Factor(s):**

There were welding leads lying around the work area. The employee did not notice leads were in landing path of the aerial lift.

**Immediate Corrective Actions:**

The aerial lift was immediately removed from operation and was being returned to the rental company for inspection. A toolbox talk with all workers in the area was conducted.

**Systemic Corrective Actions:**

As much as possible, wires should be hung off the ground. Plan lift, inspect landing zone, and utilize spotters when moving aerial lifts/scissor lift/platforms/etc

**Recommended Items for Other Projects to Review:**

Review welding operations that use aerial lifts/platforms. Review those operations to ensure welding leads/electric cords or similar should have a plan to keep wires off the ground and out of the way of equipment. Shut down power on welding machine when not in use.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



THE PORT AUTHORITY OF NY & NJ

# WTC Safety Bulletin

July 7, 2009

WTC Construction

## WTC ZERO TOLERANCE POLICY

**To:** All WTC Contractors and Trade Unions  
**From:** Steven Plate  
**Date:** July 2, 2009  
**Subject:** WTC ZERO TOLERANCE POLICY -- DRUG AND ALCOHOL USE  
**Copy To:** D. Tweedy, J. Keane, A. Reiss

Recently some workers were found in violation of the WTC Zero Tolerance Policy – Drugs and Alcohol, and have been terminated by their employers. The safety of the men and women that work at and travel through and around the World Trade Center Site is the Port Authority's highest priority, as it is for the Trade Unions and the WTC Contractors. However, employees that work under the influence pose a threat to their own safety, the safety of their coworkers and to the safety of the general public.

At this point I must remind everyone involved in the reconstruction of the World Trade Center that The Port Authority of NY & NJ (Port Authority) has had and will always have a zero tolerance policy for drug and alcohol. It is absolutely imperative that all parties take this policy seriously and fully enforce it. The front-line drug and alcohol policy enforcement is you and your foremen, superintendents, stewards and coworkers who are on the site every day. It is critical that impaired workers are not allowed to work on the site for the safety of all. Those individuals that do violate this Zero Tolerance policy will be permanently barred from working at the WTC Site.

The Port Authority is committed to the overall safety of the site and will continue to use our resources to perform random inspections, including bag checks of those entering the site. Safety and security are the responsibility of all the people that work at the World Trade Center and the Port Authority and I need everyone's cooperation to help make this site both safe and secure.

Sincerely,

Steven Plate  
Director  
WTC Construction

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**

07/07/2009  
#4-SAF-2009



# WTC Safety Bulletin

July 24, 2009



WTC Construction

## In Case of Emergency (ICE) Card

In an effort to increase safety awareness and emergency response, The Port Authority of NY & NJ has created cards for all WTC employees which should be used in the event of an emergency at the WTC site.

What does ICE stand for? ICE stands for In Case of Emergency. This card enables first responders to ascertain the extent of an injury and/or condition in order to classify the injury and provide for the appropriate emergency response.

The two numbers on the card are a direct line to PAPD and they will gather the relevant information from you and coordinate with FDNY-EMS.

You are encouraged to enter these numbers into your cell phone contact list under the heading "ICE-WTC."

  
THE PORT AUTHORITY OF NY & NJ

**WORLD TRADE CENTER SITE  
IN CASE OF EMERGENCY**

---

Call the Port Authority Police Department (PAPD)  
(212) 608-5111  
(212) 608-5115

- I am reporting an incident/accident at \_\_\_\_\_.
- My name is \_\_\_\_\_.
- I work for \_\_\_\_\_. My cell # is \_\_\_\_\_.
- The injured party's location is \_\_\_\_\_.
- The number of injured is \_\_\_\_\_.
- The body part affected is the \_\_\_\_\_.
- The injury is as a result of \_\_\_\_\_.  
(ie. A fall, struck by, electrocution, etc)
- We request an Ambulance.

**WORLD TRADE CENTER SITE**

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**We are committed to safe and secure working conditions and employees working safely.**

- At a minimum, all employees shall wear a hard hat, construction sturdy/steel tip safety shoes, safety glasses with side shields, and reflective vest or clothing.
- All employees shall be properly trained, certified and/or licensed for the work task being performed or shall notify supervisor of requirement.
- Absolutely no smoking once employees enter through any secure gate.
- Alcohol, illegal substances, or weapons on-site will result in immediate revocation of WTC identification badge.
- Stay alert. Be aware. Speak up. Don't hesitate to report suspicious activity.

**We Are All In This Together!  
Watch Out For Each Other!  
Wear the Required Gear!  
Work As Safely As Possible!**

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



# WTC Safety Bulletin

July 31, 2009

WTC Construction



## Rigging and Lifting of Portable Toilets

### Description:

Certain WTC Projects have been observed lifting portable toilets in tandem using only one of the two loops per unit to lift. Units are designed to be lifted only one at a time through both loops as per manufacturer's specifications.

### Major Hazard(s) Identified:

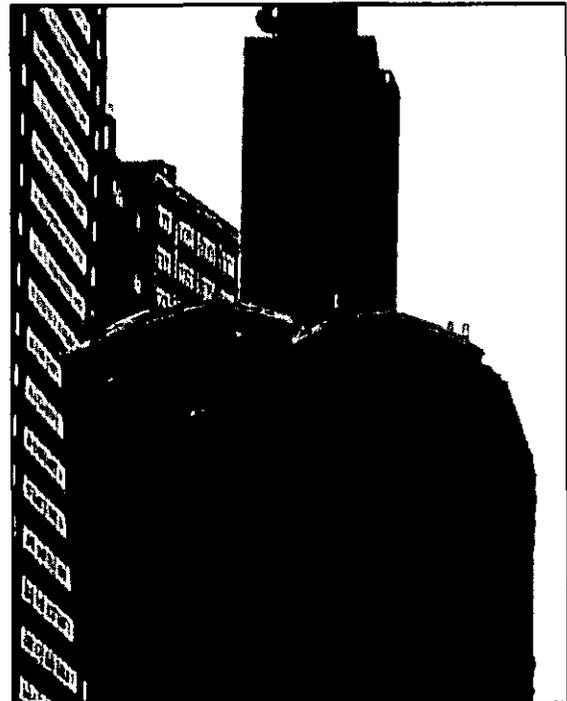
Unit can break due to improper loading injuring workers below and also cause an environmental incident.

### Cause(s) / Contributing Factor(s):

The complete load when lifted incorrectly is distributed to only one side of the unit. It is constructed and designed to be lifted from both loops.

### Immediate Corrective Actions:

Utilize hoisting and rigging methods as designed by the manufacturer. Proper slinging and load techniques apply to these units as well as any load.



The Tufway/Maxim 2000 High Rise hanger was designed to lift a single unit, one at a time, using a lift cable or sling connected to both lift eyes and lifting in the center of the lift cable or sling. The maximum weight capacity including the unit and contents is 1000 pounds.

### DO

1. Inspect the unit and lift device for damage before lifting.
2. Lift only one unit at a time.
3. Lift only the toilet and its fresh water and its waste contents.
4. Use an adequate rated sling to lift by both lift eyes on the lift hanger.
5. Make sure each side of the lift sling has a minimum of a 30 degree angle to the

### DO NOT

1. Do not lift more than the maximum rated lift capacity.
2. Do not lift with a person inside.
3. Do not rapidly drop the unit and stop quickly.
4. Do not use to lift tools or equipment.
5. Do not lift by only one lift eye or by the hanger cross bar.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



# WTC Safety Bulletin

August 19, 2009

WTC Construction

## Heat Stress Prevention

Working safely at the World Trade Center is the only way to operate to ensure success for everyone. During the summer months people doing strenuous activities in the sun and heat can lead to a variety of serious, and potentially life threatening disorders. These disorders range from heat fatigue, heat cramps, heat exhaustion, and heat stroke. Though different in the effects on the body, these disorders are collectively known as Heat-Related Illnesses – commonly called “*heat stress*.” It is important to know the signs of heat stress, and equally important to know what you can do to prevent it.

### The basics to heat stress prevention include:

- Knowing the signs/symptoms of heat-related illnesses
- Monitoring yourself and co-workers
- If possible, block out direct sun or other heat sources
- If available, use cooling fans/air-conditioning
- Take breaks in shaded locations
- Drink plenty of water
- Always remember - If you feel thirsty, you ARE dehydrated
- Wear lightweight, light colored clothing
- Wear UV protective glasses
- Use UV protective sun block
- Utilize administrative controls by rotating employees who are performing strenuous tasks
- Avoid consuming alcohol/cafeinated beverages during breaks/lunch
- Eat a lighter lunch

### At the WTC Site, if you or a co-worker begins to experience heat stress, take the following actions:

- Find a shaded location to rest
- Loosen or remove excessive clothing
- Cool body down with tepid water
- If alert, conscious, and able to swallow, provide drinking water
  - When you or your co-worker can move, notify your supervisor and immediately proceed to the nearest medical station for an evaluation
- If conditions don't improve, follow the In Case of Emergency (ICE-WTC) reporting protocols
  - Call the Port Authority Police WTC Command at (212) 608-5111 or (212) 608-5115
  - Keep the employee still, shaded, and as comfortable as possible
  - Do not move the employee (unless at risk of additional harm) or force the employee to drink

For additional information on heat-related illnesses, you can contact Regina Shane, R.N., Concentra Nurses Station, or Joe Schwed, WTC Site Safety Director at (212) 435-5515

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



# WTC Safety Bulletin

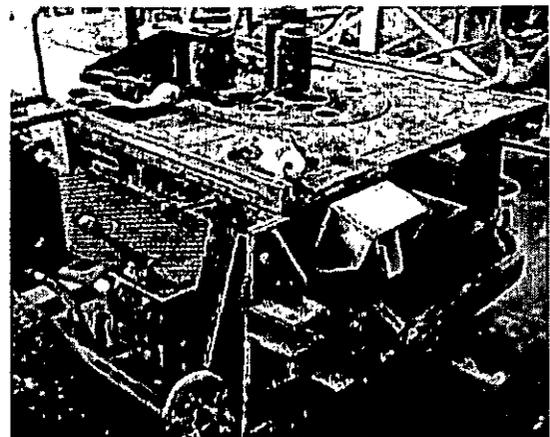
October 2, 2009

WTC Construction

## Machine Safety – Rebar Bending/Cutting

### Rebar Bending and Handling:

When operations require the use of a rebar bending/cutting machine, each contractor shall have procedures in place to ensure workers are properly trained, a job hazard analysis identifying the risks and controls are established, appropriate personal protective equipment is used and machine guards are in place.



### Major Hazard(s) Identified:

- Moving machinery parts (shears and rollers) are potential dangerous pinch points for hands and fingers
- Failure to focus on task or inadvertent operations can cause major injury

### Cause(s) or Factor(s) that can lead to injury include:

- Placement of hands/fingers in pinch point area
- Lack of a job hazard analysis (JHA) or work plan not completed for the equipment
- Owner's manual and safety manual not available for review
- Poor layout or working conditions for equipment and employees

### Corrective Actions and Recommendations:

If causes or factors identified above are present, work should be suspended pending the completion of a job hazard analysis identifying the hazards and controls and reviewed with employees who will be using the equipment.

### Recommendations for Projects to Review:

Develop a plan for rebar cutting and bending operations and ask the following questions:

- Is the machine setup on a level surface?
- Are debris and scrap rebar continually being removed from around the machine/work area?
- Are emergency cut-off switches provided and operational?
- Has the manufacturer's recommendation on safe operations been reviewed?
- Have the safe operating procedures been communicated to employees using the equipment?
- Are warning signs/placards in place?

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



THE PORT AUTHORITY OF NY & NJ

## MEMORANDUM

WTC Construction Department

To: WTC Construction Staff and Contract Staff  
From: Alan Reiss  
Date: October 6, 2009  
Subject: **WTC Safety Requirements – OSHA Certification**  
Copy To L. Foster , J. Keane, S. Plate, J. Schwed

The Port Authority of NY & NJ requires employees working at the World Trade Center to have either the OSHA 10-Hour or 30-Hour Construction Safety and Health Certification. Effective **November 2, 2009**, all employees will be held to the following requirements.

The WTC Identification Holder:

1. Who enters the WTC Site more than two (2) days per week will require the OSHA Certification
2. Shall have had the OSHA Certification within five (5) years to receive WTC ID
3. Shall show visual proof of the OSHA Certification at time of WTC ID issuance
4. Will need to renew their WTC ID one year from the date of issuance or five years from date of issuance of OSHA Certification
5. Will be required to show proof of OSHA Certification upon renewal
6. Who enters the WTC Site two (2) days per week or less will require a statement from their Company Issuing Officer. If activity increases WTC ID holder shall notify WTC Security Operations.

The responsibility for managing these requirements is the Company Issuing Officer.

Alan Reiss  
Deputy Director  
WTC Construction



# WTC Safety Bulletin

December 3, 2009



WTC Construction

## WTC Safety Requirements – OSHA Certification

The Port Authority of NY & NJ requires employees working at the World Trade Center to have either the OSHA 10-Hour or 30-Hour Construction Safety and Health Certification. Effective **November 2, 2009**, all employees will be held to the following requirements.

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5. Will be required to show proof of OSHA Certification upon renewal
6. Who enters the WTC Site two (2) days per week or less will require a statement from Company Issuing Officer. If activity increases WTC ID holder shall notify WTC Security Operations.

The responsibility for managing these requirements is the Company Issuing Officer.

***Working Safely at the World Trade Center Site is the Only Way to Operate***

All WTC ID Questions – Davella May, WTC Security Operations at 212-435-5552

All Training Requirement Related Questions – Robynn Conklin, WTC Construction Safety at 212-435-5543

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



THE PORT AUTHORITY OF NY & NJ

# WTC Safety Bulletin

November 12, 2009

WTC Construction

Safety Shoe Truck – December 4, 2009

## THE SAFETY SHOE TRUCK IS COMING!!



Red Wing Shoe Truck  
is coming to:

Port Authority World Trade Center

DATE: Fri. December 4<sup>th</sup>

TIME: 6am – 4pm

LOCATION:

Inside Gate 4 along Vesey Street



We are committed to safe and secure working conditions and employees working safely.

*At a minimum, all employees shall wear a hard hat, construction sturdy/steel tip safety shoes, safety glasses with side shields, and reflective vest or clothing.*

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**

11/12/2009  
#10-SAF-2009



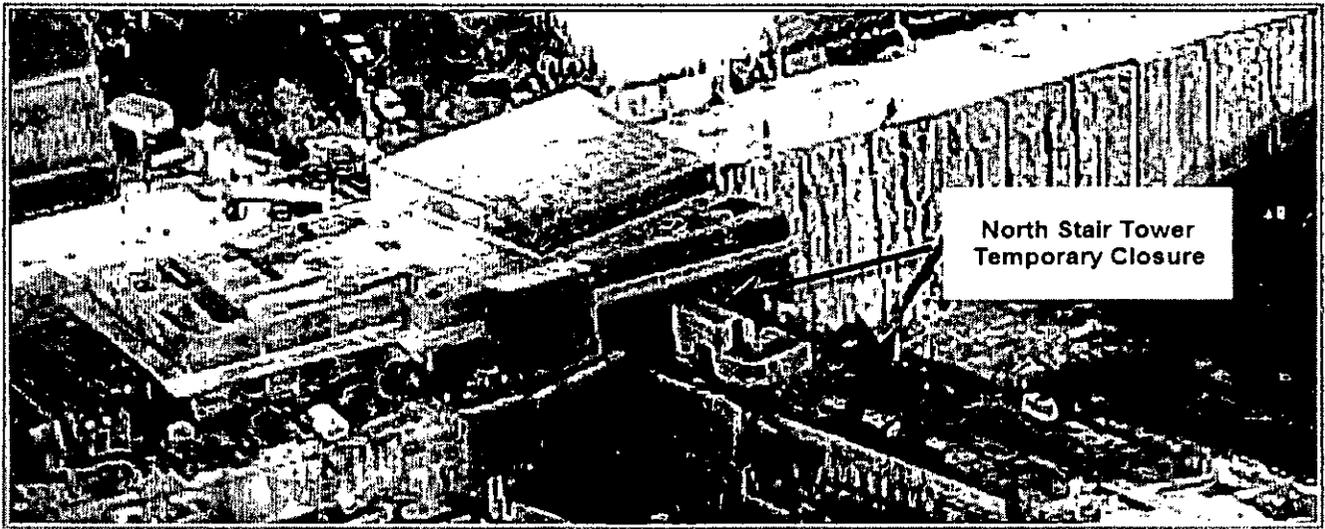
THE PORT AUTHORITY OF NY & NJ

# WTC Safety Bulletin

November 17, 2009

WTC Construction

## 1 Box North Access – Temporary Closure



The walkway behind the Path Station/North End of the 1 Box

Will Be Temporarily Closed from

7:00 Am Thursday, November 19<sup>th</sup>  
through  
7:00 Am Tuesday, November 24<sup>th</sup>

PAPD Command and ESU, WTC Facilities Management, and FJC Security are aware of this closure.

Please ensure this information is discussed at all project meetings.

Solid access barriers will be established on Thursday morning.

The PATH Emergency Egress Stairs or Gate 3C may be used for access/egress.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**

11/17/2009  
#11-SAF-2009



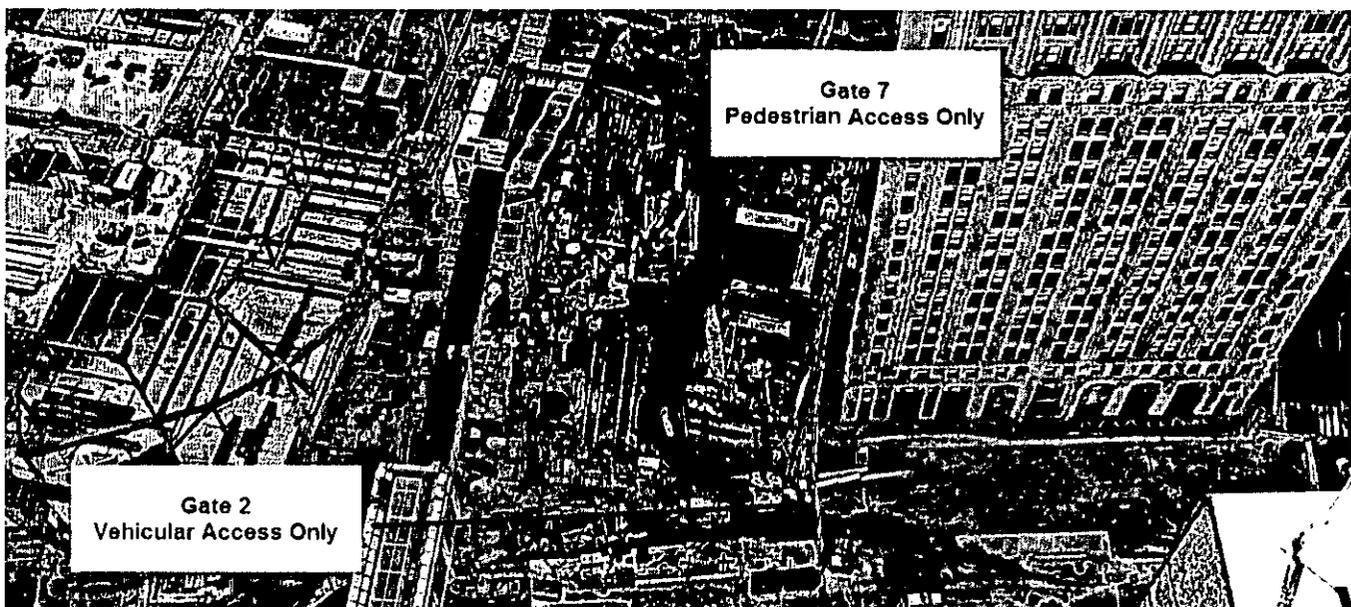
THE PORT AUTHORITY OF NY & NJ

# WTC Safety Bulletin

November 25, 2009

WTC Construction

## World Trade Center Pedestrian Site Access Restriction GATE 2 - Vehicle Security Center



As construction progresses outside the Vehicle Security Center (VSC) at Gate 2, safe pedestrian access to the site has become difficult to establish. To ensure the safety of the men and women working at the site, effective Friday, November 27, 2009, at 0700 hours, the following Site access changes will be in effect:

- 1) Gate 2 will be restricted to Vehicles Only
- 2) All Employees who work at the VSC, the Memorial and other projects must use Gate 7 as no pedestrian access will be allowed through Gate 2
- 3) Gate 7 will be open 24 hours a day effective Friday, November 27, 2009

Thank you for your assistance and cooperation.

Any questions please contact World Trade Center Site Safety, Joe Schwed at 212-435-5515 or 973-722-2600.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**

11/24/2009  
#12-SAF-2009

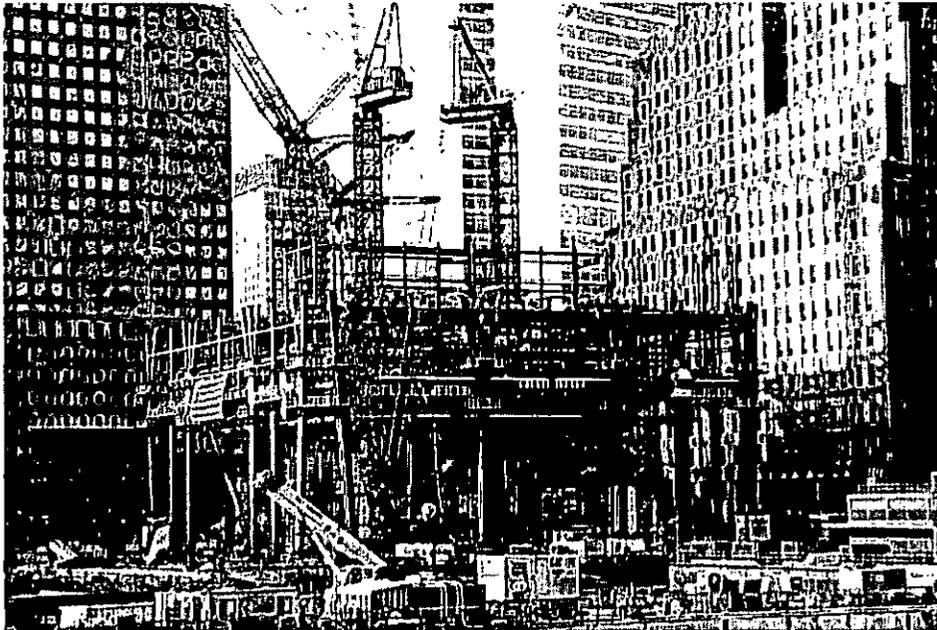


# WTC Safety Bulletin

November 25, 2009

WTC Construction

## Safe Access to WTC Work Areas



All employees are reminded that access to certain work areas may require prior authorization, training and coordination. Follow posted signs and always be aware of your surroundings:

- Controlled Access Zones – Access to this area is restricted to authorized personnel
- Overhead Operations – Scaffolds, Cranes, Work Platforms and Other Equipment
- Heavy Machinery – Front End Loaders, Backhoes
- Welding Operations – At, Below or Above Grade
- Confined Spaces

If you are unsure of what areas you can safely access contact the Port Authority Project Management Team. Please note certain areas may require authorization from the WTCC Director's Office.

Any questions regarding this policy, which is in place to ensure the safety of all working at the World Trade Center site, please contact World Trade Center Site Safety, Joe Schwed at 212-435-5515 or 973-722-2600.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

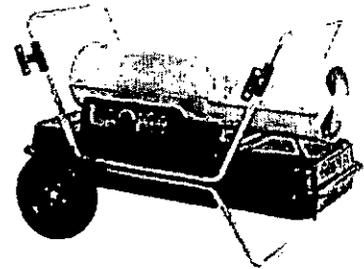
December 4, 2009



WTC Construction

## Portable Fueled Space Heaters

As winter approaches the use of portable fueled space heaters for the proper application and curing of materials is the most common solution. Under NYC Fire Code regulations, Section 1403.2, Portable Oil-Fueled Heaters and Section 1403.3, Portable gas-fueled Heaters, specific restrictions on the use of portable fueled space heaters are applicable at the World Trade Center site.

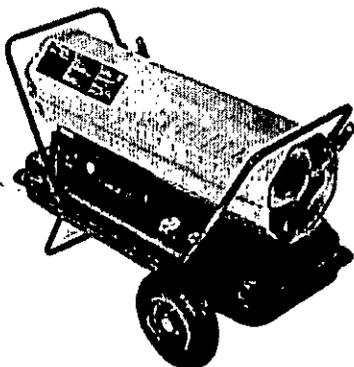


A heater is defined as any device with a tank (oil-fueled) or gas fueled utilizing liquefied petroleum gas (LPG), compressed natural gas (CNG) or piped natural gas.

Portable fueled space heaters **are permitted** for construction curing and drying. This limits use to the curing or drying of materials such as, but not necessarily limited to, plaster, concrete, grout, and fireproofing.

Portable fueled space heaters **are not permitted** to be used for human comfort. Heaters for human comfort may be portable electric of an approved/listed/accepted brand and model, or may be part of a system such as piped hot water, steam or forced draft furnace.

Under NYC Fire Code, Section 1403.6, the handling and use of portable fueled space heaters shall be under the personal supervision of a person holding a FDNY certificate of fitness. The storage of portable fueled space heaters and the fuel shall be under the general supervision of a certificate of fitness holder.



The noted Certificate of Fitness for "handling and use of portable fueled space heaters" is specifically: ***Certificate of Fitness for Supervision of Portable Fueled Space Heaters at Construction Sites, S-92*** and shall be available at all times when portable fueled space heaters are in use.

Any questions please contact World Trade Center Site Safety, Bill Dougherty at 973-332-8665.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



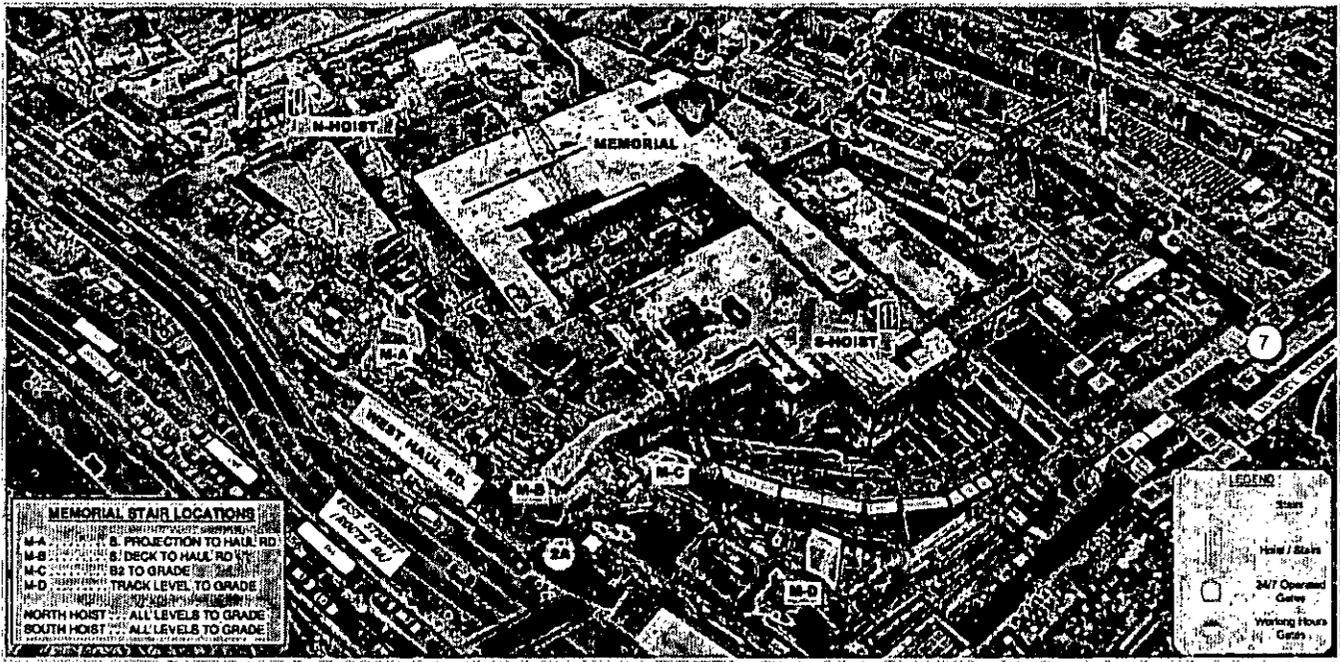
# WTC Safety Bulletin

December 7, 2009

WTC Construction



## NS11MM (Memorial) Site Evacuation Drill - 12/9/2009



Please be advised an evacuation drill for the National September 11<sup>th</sup> Memorial and Museum (Memorial) Project is scheduled for Wednesday, December 9, 2009 at 1145 hours.

This drill ONLY involves the Memorial Project Site.

All other World Trade Center site employees will not be required to evacuate their work areas during this time.

The WTC Emergency Mass Notification System (EMNS) will be used during this drill. Announcements will include tones and voice announcements.

Please review Emergency Evacuation Drill Procedures and for specific questions contact your supervisor or Project Site Safety Manager.

For Site Emergency Evacuation Drill questions, please contact World Trade Center Site Safety, Phil Taylor at 646-529-1923.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



## MEMORANDUM

WTC Construction Department

WTCC 01-09

**To:** All WTC Contractors and Trade Unions  
**From:** Steven Plate  
**Date:** July 2, 2009  
**Subject:** **WTC ZERO TOLERANCE POLICY -- DRUG AND ALCOHOL USE**  
**Copy To:** D. Tweedy, J. Keane, A. Reiss

Recently some workers were found in violation of the WTC Zero Tolerance Policy – Drugs and Alcohol, and have been terminated by their employers. The safety of the men and women that work at and travel through and around the World Trade Center Site is the Port Authority's highest priority, as it is for the Trade Unions and the WTC Contractors. However, employees that work under the influence pose a threat to their own safety, the safety of their coworkers and to the safety of the general public.

At this point I must remind everyone involved in the reconstruction of the World Trade Center that The Port Authority of NY & NJ (Port Authority) has had and will always have a zero tolerance policy for drug and alcohol. It is absolutely imperative that all parties take this policy seriously and fully enforce it. The front-line drug and alcohol policy enforcement is you and your foremen, superintendents, stewards and coworkers who are on the site every day. It is critical that impaired workers are not allowed to work on the site for the safety of all. Those individuals that do violate this Zero Tolerance policy will be permanently barred from working at the WTC Site.

The Port Authority is committed to the overall safety of the site and will continue to use our resources to perform random inspections, including bag checks of those entering the site. Safety and security are the responsibility of all the people that work at the World Trade Center and the Port Authority and I need everyone's cooperation to help make this site both safe and secure.

Sincerely,

Steven Plate  
Director  
WTC Construction



THE PORT AUTHORITY OF NY & NJ

# WTC Safety Training



November 18, 2009

WTC Construction

## OSHA 10-Hour – Construction Safety & Health Course

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### December 1<sup>st</sup> and 2<sup>nd</sup>

Time:  
7:30 am – 1:00 pm

Location:  
199 Water Street, 11th floor - Conf. Room 11A

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### December 7<sup>th</sup> and 9<sup>th</sup>

Time:  
7:30 am – 1:00 pm

Location:  
199 Water Street, 11th floor - Conf. Room 11A

---

### December 14<sup>th</sup> & 15<sup>th</sup>

Time:  
7:30 am – 1:00 pm

Location:  
80 Pine Street, 3rd floor

---

### December 16<sup>th</sup> and 17<sup>th</sup>

Time:  
7:30 am – 1:00 pm

Location:  
80 Pine Street, 3rd floor

---

### January 21<sup>st</sup> and 22<sup>nd</sup> 2010

Time:  
7:30 am – 1:00 pm

Location:  
199 Water Street, 11th floor - Conf. Room 11A

---

A photo ID is required for entry into buildings.

Registration is required to attend.

Please contact Robynn Conklin ([rconklin@panynj.gov](mailto:rconklin@panynj.gov)) or at 212-435-5543 to register.  
Classes are limited to 35 participants.

**A U.S. Department of Labor, OSHA Construction Safety & Health Card will be issued to all attendees – but you must attend both days in the sequence**

Attendance at these courses should be coordinated with your employer



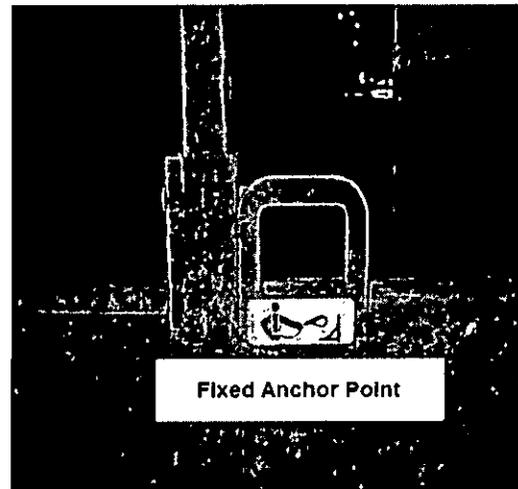
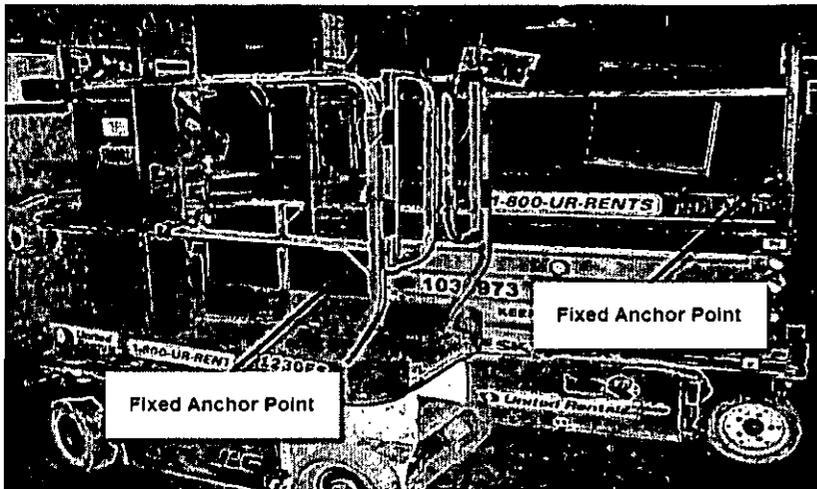
# WTC Safety Bulletin

January 8, 2010

WTC Construction



## Fall Protection Requirements – Scissor Lifts



As per the WTC Safety, Health and Environmental Program, June 4, 2008, revision 1, Section 6.14, Subparagraph h, the following is in effect for all personnel using scissor lifts.

“Personal fall arrest shall be required for all workers and employees working in vehicle mounted aerial platforms, extendible boom platforms, articulating boom platforms, vertical towers (scissor lifts), and aerial ladders.”

The manufactured installed tie off provision will be used; there shall be no improvised tie-off points utilized. It is expected that equipment with the manufactured tie off-points shall be used. Additional guidance on specific tie-off points can be found in the operator's manual for each piece of equipment.

### Best Practices for Accident Prevention

- Provide proper training/equipment to employees using mobile elevated work platforms (MEWP)
- Visually inspect unit prior to use
- Ensure use of equipment per manufacturer's specifications
- Ensure instruction and use manual is available
- Ensure working surface/ground level is stable and can support weight of the MEWP
- Ensure overhead hazards are identified

Any questions please contact World Trade Center Site Safety, Mike Grieco at 917-417-8987

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**



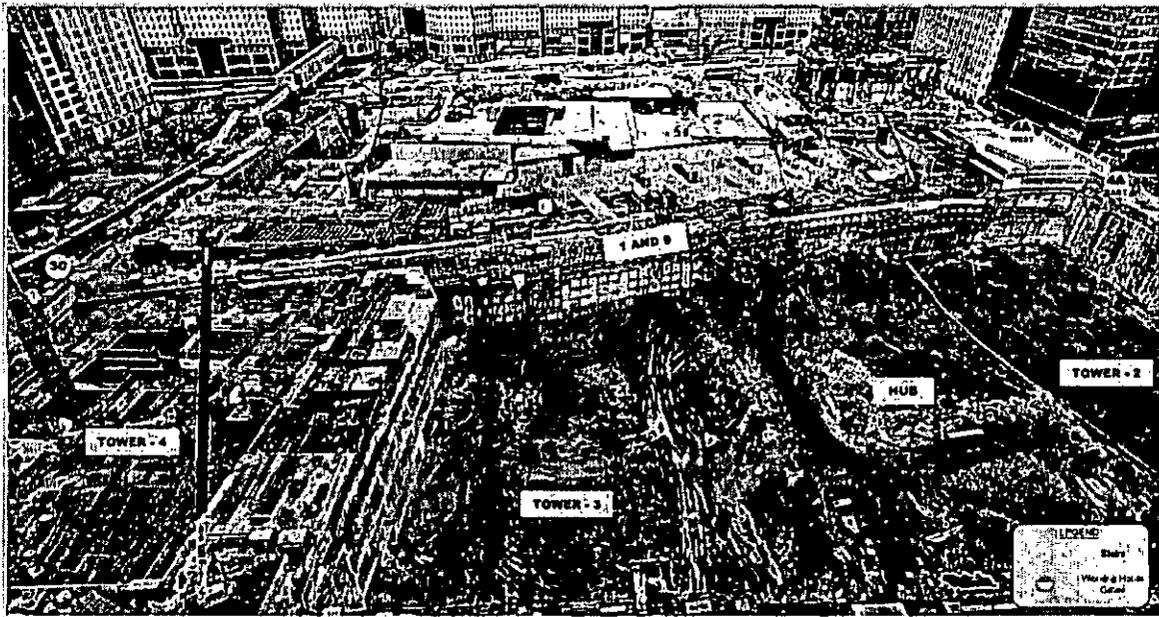
THE PORT AUTHORITY OF NY & NJ

# WTC Safety Bulletin

February 18, 2010

WTC Construction

## Transportation Hub Evacuation Exercise



Please be advised an evacuation exercise for the Transportation Hub Project is scheduled for Thursday, February 25<sup>th</sup> at 1120 hours.

This exercise ONLY involves the Transportation Hub Project.

All other World Trade Center site employees will not be required to evacuate their work areas during this time.

The WTC Emergency Mass Notification System (EMNS) will be used during this exercise. Annunciation will include tones and voice announcements.

Please review Emergency Evacuation Procedures and for specific questions contact your supervisor or Project Site Safety Manager.

For Site Evacuation Exercise questions, please contact World Trade Center Site Safety, Phil Taylor at 646-529-1923.

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**

2/18/2010  
#2-SAF-2010



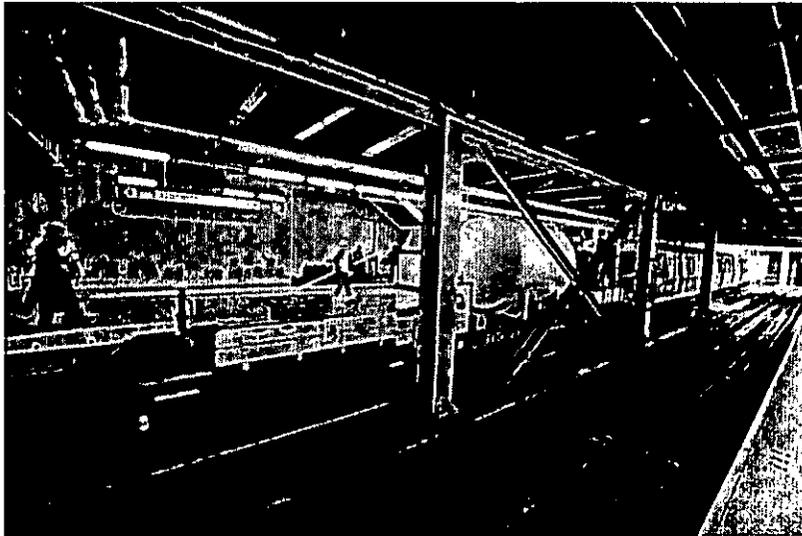
THE PORT AUTHORITY OF NY & NJ

# WTC Safety Bulletin

March 12, 2010

WTC Construction

## Port Authority Trans-Hudson (PATH) Safety Requirements



**Access into the PATH track area must be controlled and coordinated in advance through the Port Authority.**

**All employees must be certified under the PATH On-Track Safety Training Program prior to entering the PATH track area.**

PATH is an electrified rail rapid transit system and workers must exercise extreme caution around unguarded AC and DC power. All personnel entering any PATH track or PATH Right of Way (PATH ROW) shall comply with PATH's safety rules and procedures, including but not limited to:

1. All companies are responsible for the on-track safety of their employees and all required training of their employees.
2. All employees that work on or adjacent to the PATH ROW are required to annually pass the PATH's "On-Track Safety Program" in compliance with the rules and regulations set forth in FRA regulation 49 CFR Part 214, Subpart C: Roadway Worker Protection.
3. All employees shall carry PATH **Roadway Worker Protection** qualification cards and shall treat the 3<sup>rd</sup> rail (traction power for trains) as being energized at all times.
4. Employees may not enter or work adjacent to the PATH ROW unless authorized to do so by the designated **Employee in Charge**.

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**



# WTC Safety Bulletin

April 15, 2010

WTC Construction



## World Trade Center - In Case of Emergency (ICE) Card

In an effort to increase safety awareness and emergency response, The Port Authority of NY & NJ has created cards for all WTC employees which should be used in the event of an emergency at the WTC site.

What does ICE stand for? ICE stands for In Case of Emergency. This card enables first responders to ascertain the extent of an injury and/or condition in order to classify the injury and provide for the appropriate emergency response.

The two numbers on the card are a direct line to PAPD and they will gather the relevant information from you and coordinate with FDNY-EMS.

You are encouraged to enter these numbers into your cell phone contact list under the heading "ICE-WTC."

  
THE PORT AUTHORITY OF NY & NJ

**WORLD TRADE CENTER SITE  
IN CASE OF EMERGENCY**

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Call the Port Authority Police Department (PAPD)  
(212) 608-5111  
(212) 608-5115

- I am reporting an incident/accident at \_\_\_\_\_.
- My name is \_\_\_\_\_.
- I work for \_\_\_\_\_. My cell # is \_\_\_\_\_.
- The injured party's location is \_\_\_\_\_.
- The number of injured is \_\_\_\_\_.
- The body part affected is the \_\_\_\_\_.
- The injury is as a result of \_\_\_\_\_  
(ie. A fall, struck by, electrocution, etc)
- We request an Ambulance.

**WORLD TRADE CENTER SITE**

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**We are committed to safe and secure working conditions and employees working safely.**

- At a minimum, all employees shall wear a hard hat, construction sturdy/steel tip safety shoes, safety glasses with side shields, and reflective vest or clothing.
- All employees shall be properly trained, certified and/or licensed for the work task being performed or shall notify supervisor of requirement.
- Absolutely no smoking once employees enter through any secure gate.
- Alcohol, illegal substances, or weapons on-site will result in immediate revocation of WTC Identification badge.
- Stay alert. Be aware. Speak up. Don't hesitate to report suspicious activity.

**We Are All In This Together!  
Watch Out For Each Other!  
Wear the Required Gear!  
Work As Safely As Possible!**

**ALL PROJECTS MUST REVIEW AT THEIR WEEKLY SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

May 13, 2010

WTC Construction

## WTC Site Support Scaffold and Stair Tower Use

Consistent with OSHA regulations and NYC Department of Building (DOB) codes for the erection, modification, disassembly and use of support scaffolds and stair towers, the following is intended to help simplify and clarify those requirements for safe operations at the World Trade Center.

### Requirement for Erection/Modification/Disassembly:

- 1) **Support scaffolds and stair towers erected to a height of forty (40) feet**, or that are modified, repaired, maintained, or disassembled at that height shall be designed by a qualified person ["qualified" as defined in 29 CFR 1926, Subpart L; 1926.450(b)] or a licensed scaffolding company.
- 2) **Support scaffolds and stair towers erected to a height of forty (40) feet to seventy-five (75) feet**, or that are maintained, repaired, modified, or disassembled at that height shall be designed by a licensed scaffolding company, or a NYS licensed professional engineer. **Support scaffolds and stair towers erected to a height of seventy-five (75) feet or greater**, or that are maintained, repaired, modified, or disassembled at that height or greater shall be designed by a NYS licensed professional engineer.

### Certification and Training Requirements for Erection/Modification/Disassembly/Use:

- 1) All workers erecting, repairing, maintaining, modifying, or disassembling support scaffolds or stair towers at heights **equal to or less than forty (40) feet** shall be trained consistent with 29 CFR 1926, Subpart; 1926.454, and shall work under the full time supervision of a competent person.
- 2) All workers erecting, repairing, maintaining, modifying, or disassembling support scaffolds or stair towers at heights **greater than forty (40) feet** shall possess at a minimum a current and valid 32-hour scaffold training card consistent with NYC DOB Chapter 33: Section BC 3314, Scaffolds; 3314.4.5 – *Requirements for workers who erect, repair, maintain, modify, or remove support scaffolds*, and shall work under the full time supervision of a competent person.
- 3) All workers using a support scaffolds or stair towers at **any height** shall possess at a minimum a current and valid 4-hour scaffold training card consistent with NYC DOB Chapter 33: Section BC 3314, Scaffolds; 3314.4.6 – *Requirements for workers who use a support scaffold*, and shall work under the full time supervision of a Competent Person.

For all temporary construction, including but not limited to support scaffolds and stair towers, the contractor shall be required to submit to the Port Authority Resident Engineer Office (REO), drawings from the qualified person, scaffolding company, or NYS licensed design professional for record retention prior to construction. After erection and prior to use, the contractor shall issue to the REO a signed and sealed letter stating that the scaffold or stair tower was inspected and that it complies with the design drawings.

**Any questions please contact World Trade Center Site Safety, Phil Taylor at 646-529-1923**

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

June 4, 2010

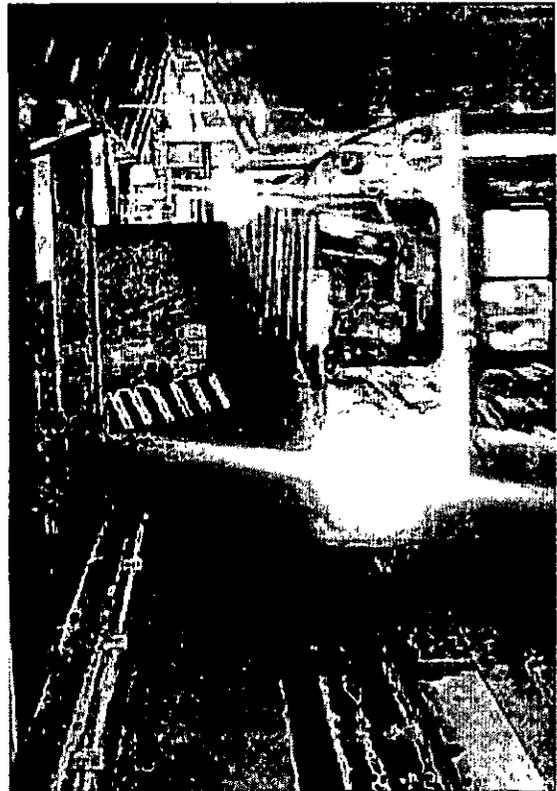
WTC Construction

## WTC PATH Station “No Clearance Zones”

As construction in the PATH Station progresses there will be an increase in “No Clearance Zones” being created at Track Level. No Clearance Zones are areas where the space adjacent to a track has been reduced, creating an area on the track where an individual can not safely clear to allow a train to pass. No clearance zones can range in length. Obstructions to clearance zones may be due to equipment, material, or temporary and/or permanent construction.

To ensure the safety of all working on or near Station tracks, please communicate these hazards and the importance of “No Clearance Zone” awareness.

1. “No Clearance Zones” are identified by black and yellow diagonal stripes
2. Always be alert and aware of your surroundings
3. Personnel are not permitted on track without a pre-work briefing and accompanied by an Employee in Charge (EIC) and Flagmen
4. ONLY workers who possess a current and original PATH Roadway Worker Protection Cards may enter track level
5. Proper personal protection equipment (PPE) is required at all times (hard hat, construction sturdy/steel tip safety shoes, safety glasses with side shields and reflective vest or clothing).



Any questions please contact World Trade Center Site Safety, Ron Stemple at 646-347-7465

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin



June 16, 2010

WTC Construction

## WTC Fall Protection Policy

**To:** WTC Construction Staff and Contract Staff  
**From:** Steven Plate  
**Date:** June 8, 2010  
**Subject:** Fall Protection Policy  
**Copy To:** A. Reiss, J. Keane, J. Schwed

The Port Authority of NY & NJ (PANYNJ) in collaboration with our Contractors, the United Brotherhood of Carpenters and Joiners of America, Metallic Lathers and Reinforcing Ironworkers and the Ornamental and Architectural Iron Workers Unions have established an enhanced fall protection policy at the World Trade Center Site. This policy which better protects the men and women working on PANYNJ projects is based upon OSHA 1926 and NYC DOB Regulations. Effective Immediately:

- Any worker found violating fall protection safety requirements will be removed from the site for 30 days following his or her first offense and permanently following their second.
- The foreman of any worker found violating fall protection safety requirements will likewise be removed from the site for 30 days.
- All monetary fines arising from fall protection violations will be increased to \$10,000 per occurrence.
- All workers will be required to complete 4-Hour Scaffold User Training by July 1, 2010.
- Any worker found working on a scaffold without 4-Hour Scaffold User Certification, working on a suspended scaffold without 16-Hour Suspended Scaffold User Certification, or erecting a scaffold of any type without 32-Hour Scaffold Erector Certification, and his or her foreman will be removed from the site for 30 days. Offending contractors will be fined \$10,000 per occurrence.

The PANYNJ thanks you for your efforts in making the World Trade Center Redevelopment Project safer for all those that work here. If you have any questions, please contact the PANYNJ WTC Site Safety Director, Joe Schwed, at 212-435-5515 or [jschwed@panynj.gov](mailto:jschwed@panynj.gov).

Sincerely,

  
Steven Plate

NOTE: Erection/Repairs/Maintenance/Modification/Removal (> 40') shall follow NYC DOB Regulations.

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

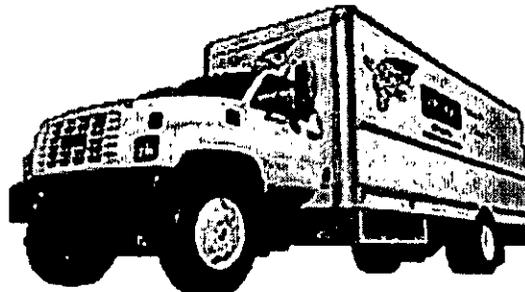
# WTC Safety Bulletin

June 25, 2010

WTC Construction

Safety Shoe Truck – Friday, June 25

## THE SAFETY SHOE TRUCK IS COMING!!



DATE: TODAY  
TIME: 6am to 4pm  
LOCATION: Inside Gate 3 on Liberty Street



ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING

# WTC Safety Bulletin

June 29, 2010

WTC Construction



## East Bathtub Evacuation Exercise



Please be advised an evacuation exercise for the East Bathtub is scheduled for Wednesday, June 30<sup>th</sup> at 9:15 PM

This exercise ONLY involves the East Bathtub.

All other World Trade Center site employees will not be required to evacuate their work areas during this time.

The WTC Emergency Mass Notification System (EMNS) will be used during this exercise. Annunciation will include tones and voice announcements.

All Projects should take the time to review Emergency Evacuation Procedures and for specific questions contact your supervisor or Site Safety Manager.

For Site Evacuation Exercise questions, please contact World Trade Center Site Safety, Phil Taylor at 646-529-1923.

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

July 8, 2010

WTC Construction

## Heat Stress Prevention

Working safely at the World Trade Center is the only way to operate to ensure success for everyone. During the summer months people doing strenuous activities in the sun and heat can lead to a variety of serious, and potentially life threatening disorders. These disorders range from heat fatigue, heat cramps, heat exhaustion, and heat stroke. Though different in the effects on the body, these disorders are collectively known as Heat-Related Illnesses – commonly called “*heat stress*.” It is important to know the signs of heat stress, and equally important to know what you can do to prevent it.

### The basics to heat stress prevention include:

- ✓ Knowing the signs/symptoms of heat-related illnesses – Contractors shall conduct a tool box talk explaining various heat stress disorders and have a plan to monitor employees to prevent occurrence
- ✓ If possible, block out direct sun or other heat sources
- ✓ If available, use cooling fans/air-conditioning
- ✓ Take breaks in shaded locations
- ✓ Drink plenty of water – Contractors shall make sure water and cups are available to workers
- ✓ Always remember - If you feel thirsty, you ARE dehydrated
- ✓ Wear lightweight, light colored clothing
- ✓ Wear UV protective safety glasses
- ✓ Use UV protective sun block
- ✓ Contractors shall use administrative controls by rotating employees who are performing strenuous tasks – i.e., employees welding, using respirators, etc.
- ✓ Avoid consuming caffeinated beverages during breaks/lunch
- ✓ Eat breakfast and have a lighter lunch

### At the WTC Site, if you or a co-worker begins to experience heat stress, take the following actions:

- ✓ Find a shaded location to rest
- ✓ Loosen or remove excessive clothing
- ✓ Cool body down with tepid water
- ✓ If alert, conscious, and able to swallow, provide drinking water
- ✓ When you or your co-worker can move, notify your supervisor and immediately proceed to the nearest medical station for an evaluation
- ✓ If conditions don't improve, follow the In Case of Emergency (ICE-WTC) reporting protocols
- ✓ Call the Port Authority Police WTC Command at (212) 608-5111 or (212) 608-5115
- ✓ Keep the employee still, shaded, and as comfortable as possible
- ✓ Do not move the employee (unless at risk of additional harm) or force the employee to drink

For additional information on heat-related illnesses,  
please contact Regina Shane, R.N., Concentra Medical at (212) 346-0077

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

July 26, 2010

WTC Construction

## Protection from Falling Objects

Ensuring the safety of the men and women working at the WTC Site is critical to our success. As required by the Occupational Safety and Health Administration (OSHA) Standards for the Construction Industry and the Port Authority WTC Safety, Health and Environmental Program (WTC-SHEP) the proper installation of overhead protection must be planned and installed according to established standards and requirements.

In accordance with the WTC-SHEP, Section 7.13, subparagraph (h), the following is a site wide requirement:

"All persons exposed to falling objects shall be required to wear a hardhat, and be protected from falling objects through the use of screens, toe boards, safety nets, canopies, or restricted access."

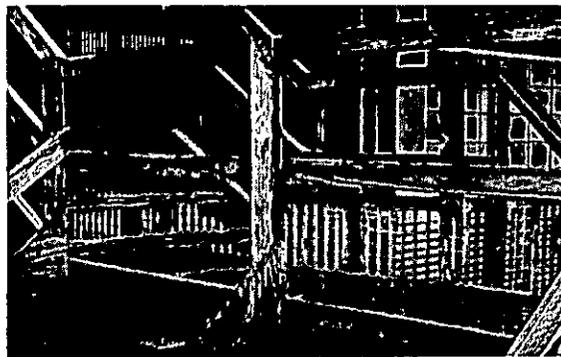
In accordance with OSHA, 29 CFR 1926, Subpart M, Fall Protection, 1926.501 Duty to have Fall Protection, subparagraph (c) the following is required:

1926.501(c) Protection from falling objects. When an employee is exposed to falling objects, the employer shall have each employee wear a hard hat and shall implement one of the following measures:

- 1926.501(c)(1) erect toe boards, screens or guardrail systems to prevent objects from falling from higher levels; or,
- 1926.501(c)(2) erect a canopy structure and keep potential fall objects far enough from the edge of the higher level so that those objects would not go over the edge if they were accidentally displaced; or,
- 1926.501(c)(3) Barricade the area to which objects could fall, prohibit employees from entering the barricaded area, and keep objects that may fall far enough away from the edge of a higher level so that those objects would not go over the edge if they were accidentally displaced.



Not Acceptable – Toe Board Missing



Acceptable - Toe Board Installed

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

August 2, 2010

WTC Construction

## Protection from West Nile Virus

The West Nile virus (WNV) is transmitted by the bite of an infected mosquito. Many bird species have tested positive for WNV, however crows and blue jays are most susceptible to this disease. When a mosquito bites an infected bird, the mosquito then becomes a WNV carrier. The mosquito transmits the virus to humans and animals while feeding. Studies reveal that only a small percentage of humans infected with the WNV will show disease symptoms. Most infections are mild and are accompanied by fever, headache and body aches, often with a skin rash and swollen lymph glands. For the majority of infected people, WNV is not life threatening and they will recover from the infection within two weeks. However, people over 50 years of age have a higher incidence of severe illness caused by WNV.

### How to Avoid West Nile Virus During Mosquito Season:

1. **Eliminate mosquito-breeding areas.** All areas where standing water can accumulate must be eliminated where possible. These areas include lower elevations or those areas with poor drainage, cans, drums, catch basins, roofs, sump pump pits, pump stations, ditches, trenches, scrap piles, piles of construction debris and other equipment stored outside.
2. **Treat waterborne areas with biological larvicides.** Where water accumulation cannot be consistently controlled, have a Licensed Pest Control Contractor certified in mosquito management apply biological larvicides to treat areas where water collects after a rainfall.
3. **Protect Yourself.** Wear long sleeve shirts and long pants during dawn and dusk periods and apply insect repellent containing 20–30% DEET or Picaridin to uncovered skin as directed by the manufacturer..
4. **Report standing water and mosquito issues to your foreman/supervisor promptly.**
5. **For more information:**
  - **Centers for Disease Control and Prevention (CDC):**
    - <http://www.cdc.gov/ncidod/dvbid/westnile/index.htm>
  - **NY City Department of Health:**
    - <http://www.ci.nyc.ny.us/html/doh/html/wnv/wnvhome.shtml>

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

October 21, 2010

WTC Construction

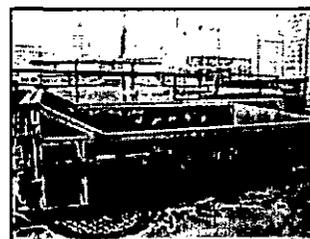


## CONCRETE WASHOUT BOXES

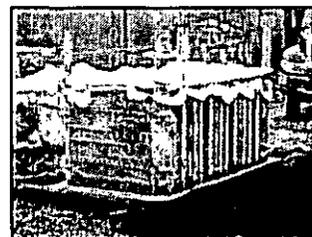
Concrete washout boxes must be used at the World Trade Center to prevent concrete runoff from disposal chutes, concrete mixers and hoppers. Using concrete washout facilities prevents pollution, reduces slip and fall hazards to workers, the public and promotes good housekeeping. All contractors engaged in concrete operations shall provide for the collection, and when necessary, the filtration of concrete washout wastewater. The following "Best Management Practices" for use of such systems are to be used at the WTC site:

### REQUIREMENTS:

- Use prefabricated washout containers when possible as they resist damage and protect against spills and leaks.
- Self-installed concrete washouts are an alternate but less reliable, if used:
  - Size box to contain all liquid and solid waste
  - Line box with plastic sheeting of at least 10-mil thickness
- Place in a location that allows convenient access for concrete trucks, preferably near the area where the concrete is being poured.
- Cover paths to concrete washouts with gravel or rock if located on unpaved ground.
- Remove waste from containers when 75% capacity is reached.
- Use an approved disposal company for all waste removal.
- Cover containers before heavy winds, snow and rainstorms to prevent overflows.
- Use new plastic lining after cleaning and if damaged.
- Ensure concrete truck drivers use washout facilities.
- Post signage indicating the location and designated use of these areas.
- **DO NOT** place washout containers near storm drains.



Prefabricated washout container



Self-installed washout container

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

November 1, 2010

WTC Construction



## World Trade Center Site Access Changes

In an effort to expedite personnel and vehicular access into the site and enhance safety and site security, worker and vehicular access will be separated.

### Vehicle use only –

**Gates 1, 1A, 2, 2A, 2B, 2C, 2D, 3, 3B, 3C, 3D, 3E, 3F, 3G, 3H, and 4**

### Worker use only –

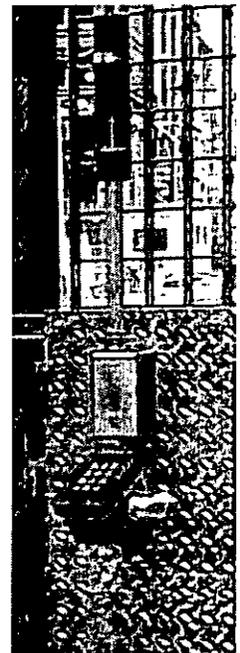
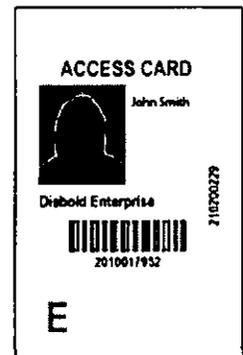
Towers 2, 3 & 4, Transportation Hub West, 1 Box projects – **Gates 3A and 4A East**

Tower 1, Memorial, Central Chiller Plant, Transportation Hub East, 1 Box, VSC projects – **Gates 4A West and 7**

If you have a site pass issued after July 12, 2010, there is an additional MAC unit at Gate 1A that may also be utilized.

### Site Pass Card Reader Instructions (applicable to site passes issued after July 12, 2010):

1. Touch card reader with site pass. (New site pass should be kept and used separately from any other passes).
2. Enter your 4-digit personal identification number (PIN) on keypad.
3. If the green light above the reader lights up, the site pass is valid. Show the site pass ID picture to the security guard to access the site.
4. If PIN is entered incorrectly or is invalid, the red light will light up and a buzzer will sound. To try again, touch the site pass ID to the card reader and reenter the PIN.
5. If the PIN is rejected, step aside, and a security officer will assist you. No site access will be allowed if the site pass is rejected at the gate.



**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

November 9, 2010

WTC Construction

## Take 5 for Fire Prevention

### Flammable and Combustible liquids:

A Qualified person must oversee the storage, use and handling of flammable and combustible liquids and ensure that:

- Safety cans have properly sealed covers, spouts and flash back arrestor screens and will be returned to the storage cabinet after use or at the end of shift, and not stored in hazardous areas.
- Flammable and combustible spills be appropriately and promptly cleaned using a readily available spill kit.
- When filling, flammable liquid containers should be bonded and grounded.

### Compressed Gases:

Only persons holding a valid FDNY Certificate of Fitness can move, store or put cylinders into use.

- Compressed gas cylinders shall be secured when moving by using hand trucks, safely rolled on edge or other means and stored in cages, located away from combustible materials.
- Fire extinguishers shall be provided/maintained at storage and use areas

### Combustible Trash:

- The WTC Safety Program and the NYC Fire Code requires that combustible waste, including rubbish/construction material, be removed at the end of each shift and be stored in noncombustible containers.

### Hot Work:

Hot work requires a Fire Guard holding a valid FDNY Certificate of Fitness. Fire Guard duties include:

- Assuring that combustible materials are removed from the hot works area or be covered with a non-combustible (not fire-retardant treated) blanket or cover.
- Observing all areas subject to sparks, slag, other hot materials or other sources of ignition.
- Not leaving the Hot Work area at any time unless relieved by another person holding a valid FDNY Certificate of Fitness as a Fire Guard. If a relief is not available then hot work shall cease
- Perform inspections of the hot work area 30 minutes after hot work ceases.

### Fire Extinguishers:

- Fire extinguishers are used to quickly put out small fires. Extinguishers shall be distributed and mounted throughout construction work areas and spaced no more than 75 feet travel distance.
- In special hazard areas such as near compressed gas storage and fuel tanks, extinguishers shall be spaced not more than 30 feet travel distance from each special hazard.
- Building mounted extinguishers and special hazard/hot work extinguishers shall be used according to their specific function.

**Smoking is Prohibited at the WTC Site and on all NYC Construction Sites at all Times**

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

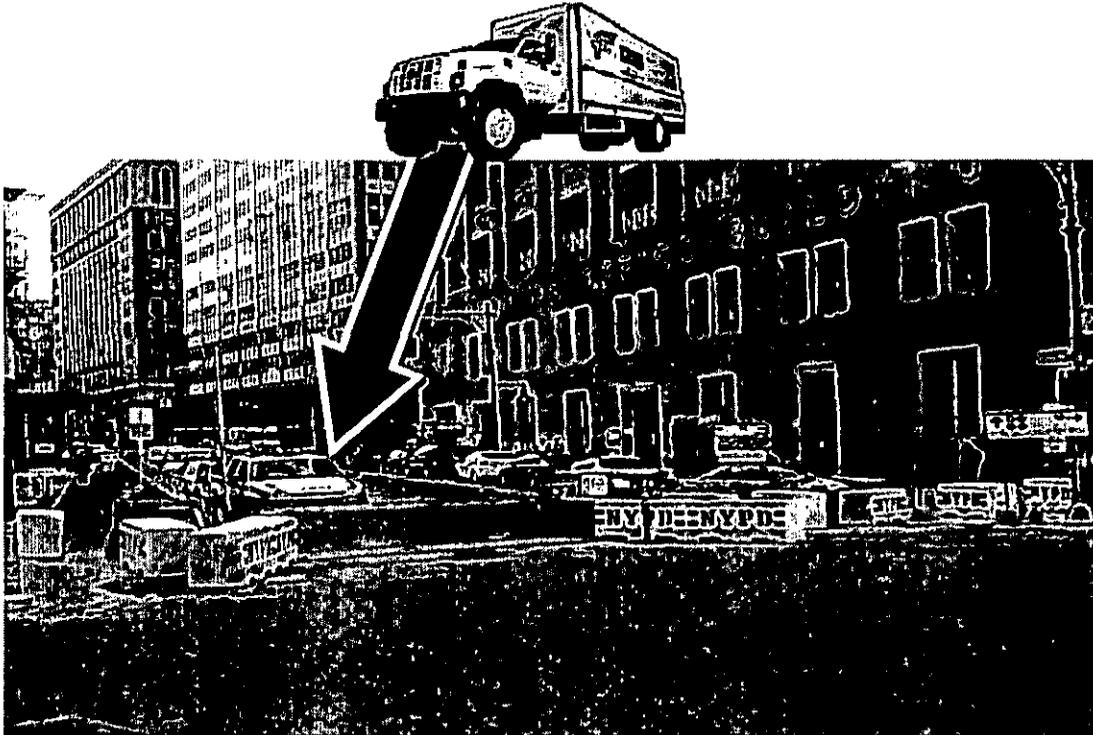
# WTC Safety Bulletin



November 24, 2010

WTC Construction

## Safety Shoe Truck – Friday, December 10



**Date:** Friday, December 10<sup>th</sup>  
**Time:** 6am – 4pm  
**Location:** WTC PATH Entrance  
Intersection of W. Broadway & Vesey



ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING

## WTC Fire Safety Information – Highlights

- FDNY conducts construction fire safety inspections of the WTC – Every 15 Days
- Notice of Violation (NOV) can be issued to any contractor in whose area of responsibility cigarette butts are found.
- Summons is to be issued to any worker caught smoking.
- Penalties can be a maximum of:
  - \$5,000 for first offense for an NOV
  - \$1,000 for first offense for Summons (ECB)
- **1408.1 Fire safety manager.** Where a site safety manager or site safety coordinator is required by the Building Code, the owner shall designate a person to be the fire safety manager for the construction site. The fire safety manager may be the site safety manager or site safety coordinator required by the Building Code.
  - The fire safety manager shall be responsible for ensuring compliance with the requirements of this code, including this chapter, and the rules.
  - The fire safety manager shall conduct an inspection of the construction site and all fire safety measures on at least a daily basis, and maintain a record of same in a bound logbook or other approved system of recordkeeping.
  - The logbook or other approved recordkeeping shall be made available for inspection by any representative of the department.
  - Where fire watch service is provided, the fire safety manager shall be responsible for the general supervision of the fireguards.
- **1408.2 Pre-fire plans.** The fire safety manager shall develop and maintain at the construction site an approved pre-fire plan, and make it available for examination by any representative of the department. The department shall be notified of any changes in site conditions materially affecting the procedures set forth in such plan.
- **1408.3 Training.** The fire safety manager shall ensure that construction site personnel are acquainted with the operation of portable fire extinguishers and other fire protection equipment on the construction site.
- **1408.4 Fire protection devices.** The fire safety manager shall ensure that all fire protection equipment and systems are readily available and periodically inspected and tested, and maintained in accordance with this code, the rules and the Building Code.
- **1408.5 Hot work operations.** The fire safety manager shall be responsible for supervising the issuance of authorizations for hot work operations in accordance with Chapter 26.
- **1408.6 Impairment of fire protection systems.**
- **1408.7 Temporary covering of fire protection devices.**

## NYC FIRE CODE PRE-HOT WORK CHECK

**NYC FIRE CODE Section 2604.3.1 Pre-hot work check.** A pre-hot work check shall be conducted by the responsible person prior to work to ensure that all equipment is safe and hazards are recognized and protected. A report of the check shall be kept at the work site during the work and made available for inspection by any representative of the department. The pre-hot work check shall be conducted at least once per day and shall verify the following:

		Compliant, Non-compliant or N/A
1.	The hot work equipment is in good working order.	
2.	The hot work area is clear of combustibles and flammable solids or that such materials present in the area are protected in accordance with NYC Fire Code Section 2604.1.1.	
3.	Exposed construction is of noncombustible materials or, if combustible, is protected.	
4.	Openings are protected.	
5.	Hot work area floors are clear of combustible waste accumulation.	
6.	Reserved.	
7.	Fire watch personnel, where required, are assigned.	
8.	Approved actions have been taken to prevent accidental activation of extinguishing and detection equipment in accordance with NYC Fire Code Sections 2604.1.8 and 2604.1.9.	
9.	Portable fire extinguishers and fire hoses (where provided) are operable and available.	
10.	All persons performing hot work possess certificates of fitness, where such certificates are required.	
11.	All persons performing hot work requiring a permit possess a site-specific permit or citywide permit, authorizing such work.	

Responsible person for hot work operation – Name:

Date:

Area of work:

Description of work:

*If any of the above items are non-compliant, hot work must not begin, or shall cease until all conditions are safe and compliant with this code and all safety standards.*



## MEMORANDUM

WTC Construction Department

**To:** WTC Construction Staff and Contract Staff  
**From:** Alan Reiss  
**Date:** May 16, 2012  
**Subject:** Eye Protection Policy

**Copy To:** S. Plate, T. O'Connor, J. Keane, J. Schwed

In 2011, over 180 employees at the World Trade Center visited the medical trailer because of eye irritation, 21 of these employees required medical treatment beyond first aid, and 4 could not return to work the following day. In 2012, the data are 50, 9 and 3, respectively. As a result, the Port Authority of NY & NJ in partnership with our Contractors and Unions will be implementing the following eye protection policy at the World Trade Center Site. The goal of this policy is to ensure that appropriate attention is given by all to the protection of the eyes.

Effective immediately, any employee discovered to be without appropriate eye protection will be subject to the following progressive disciplinary action:

- The first occurrence will result in the employee being suspended from the WTC Site. On the day following the occurrence, access privileges to the site will be suspended for one (1) full working day and the employer will be charged \$1,000.00 for each suspended worker per occurrence. Retraining must be completed.
- The second occurrence will result in the employee being suspended from the WTC Site. On the day following the occurrence, access privileges to the site will be suspended for two (2) full working days and the employer will be charged \$2,000.00 for each suspended worker per occurrence. In addition, the employee and their supervisor shall re-take the WTC Safety and Security Orientation at 116 Nassau Street prior to returning to the site.
- The third occurrence will result in the permanent revocation of the employee's WTC access privileges.

The Port Authority, in cooperation with the construction managers, contractors and unions may meet periodically to discuss the above policy, and elect to revise the above stated penalties without prior written notice.

The WTC Site appreciates the efforts of all to make this Project safe. If you have any questions or further suggestions, please contact the PANYNJ WTC Safety, Security and Operations Director, Joe Schwed, at 212-435-5515 or [jschwed@panynj.gov](mailto:jschwed@panynj.gov).

Sincerely,

Alan Reiss, Deputy Director  
WTC Construction



## MEMORANDUM

WTC Construction Department

To: WTC Construction Staff and Contract Staff  
From: Alan Reiss  
Date: May 16, 2012  
Subject: **Fall Protection Policy - REVISED**

Copy To: S, Plate, T. O'Connor, J. Keane, J. Schwed

The Port Authority of NY & NJ in partnership with our Contractors and Unions has revised the fall protection policy at the World Trade Center Site. The goal of this policy is to ensure that supervisors and employees are held accountable when working where fall hazards exist and personal protective equipment is required.

Effective immediately, any employee discovered to be without appropriate fall protection will be subject to the following progressive disciplinary action:

- The first occurrence will result in the employee and the supervisor/competent person being suspended from the WTC Site. On the day following the occurrence, access privileges to the site will be suspended for one (1) full working day and the employer will be charged \$2,000.00 for each suspended worker per occurrence. Retraining must be completed.
- The second occurrence will result in the employee and the supervisor/competent person being suspended from the WTC Site. On the day following the occurrence access privileges will be suspended from the Site for up to 30 working days and the employer will be charged up to \$10,000.00 for each suspended worker per occurrence. Upon returning to work, the employee(s) shall provide proof that they have retaken the OSHA 10-Hour in Construction Safety and Health course. In addition, the employee and their supervisor/competent person shall re-take the WTC Safety and Security Orientation at 116 Nassau Street prior to returning to the site.
- The third occurrence will result in the permanent revocation of the employee's WTC site access privileges.

The Port Authority, in cooperation with the construction managers, contractors and unions may meet periodically to discuss the above policy, and elect to revise the above stated penalties without prior written notice.

The WTC Site appreciates the efforts of all to make this Project safe. If you have any questions or further suggestions, please contact the PANYNJ WTC Safety, Security and Operations Director, Joe Schwed, at 212-435-5515 or [jschwed@panynj.gov](mailto:jschwed@panynj.gov).

Sincerely,

Alan Reiss  
Deputy Director, WTC Construction

# WTC Safety Bulletin

April 4, 2012

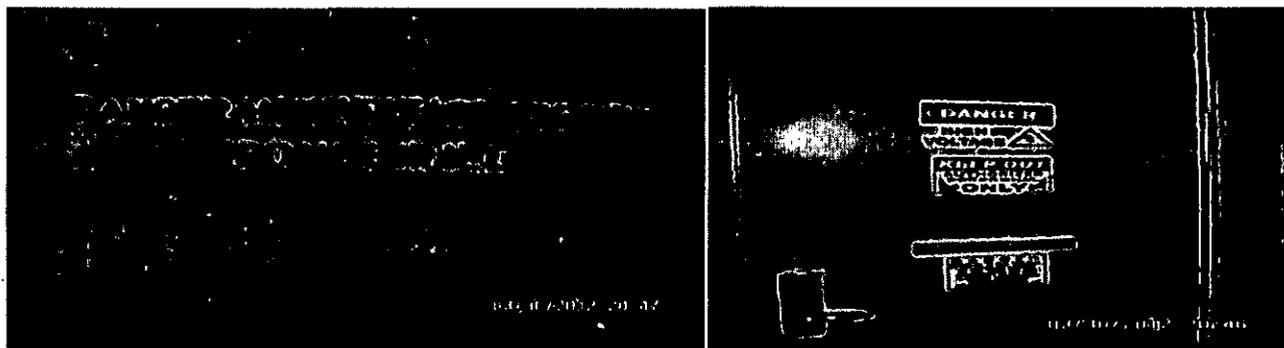


WTC Construction

## 1 WTC - ELECTRIFIED ROOMS AND CONDUIT BANKS

Effective March 26, 2012, certain Power Distribution Centers (PDC) associated concrete encased conduit runs have been energized and are now live. When working in and around these areas caution should be exercised. Drilling into these conduit runs is prohibited.

Below are examples of energized rooms and conduit runs that have recently been identified.



### **OSHA 1926.403 (j) (2) Enclosure for electrical installations states:**

Electrical installations in a vault, room, closet, or in an area surrounded by a wall, screen, or fence, access to which is controlled by lock and key or other equivalent means, are considered to be accessible to qualified persons only. A wall, screen, or fence less than 8 feet (2.44 m) in height is not considered adequate to prevent access unless it has other features that provide a degree of isolation equivalent to an 8-foot (2.44-m) fence. The entrances to all buildings, rooms or enclosures containing exposed live parts or exposed conductors operating at over 600 volts, nominal, shall be kept locked or shall be under the observation of a qualified person at all times.

If you are required to view, inspect or perform a task in PDC rooms, please contact the Anthony Fedor, Tishman Safety Manager at (347) 234-3756.

**ALL CONTRACTORS MUST REVIEW THIS BULLETIN WITH EMPLOYEES AT WEEKLY TOOLBOX TALKS**

**NOTE: Section 109 has been combined with Section 110**

**Safety, Health and Environmental Provisions**

- 1) Requirements included in this section are the minimum acceptable site requirements as referenced in the current version of the Port Authority World Trade Center Site Safety, Health and Environmental Program (herein referred to as SHEP), revisions to the SHEP, as well as all local, State and Federal requirements. Where conflicts or discrepancies exist between requirements, the most stringent requirement shall govern. All required plans identified in the above Program shall be submitted to the Port Authority Construction Management Team (herein referred to as CM) and others as identified in the Program for approval prior to the performance of work.
- 2) The Contractor shall comply with all current and revised provisions, regulations, guidelines and recommendations issued pursuant with Federal, state, and city laws, rules, ordinances, and regulations of regulatory authorities and agencies having jurisdiction, with regard to all matters relating to the safety and health of workers, the general public, and environmental protection. Compliance with government requirements is mandated by law and considered only a minimum level of safety performance. All work shall therefore be performed in accordance with best safe work practices recognized by the construction industry.
- 3) The Contractor shall be fully responsible for maintaining a safe, secure, and hygienic work place and for assuring that all work is performed in a manner that will not be injurious to safety or health, endangering to the public, or deleterious to the environment.
- 4) In the performance of the Contract, the Contractor shall exercise every precaution to prevent safety health and environmental hazards and incidents to site workers, the public, adjoining properties and utilities, and to secure against environmental releases.

**NOTE: Provisions 5, 6 and 7 shall be discussed with WTCC Safety prior to any solicitation of bid.**

- 5) The Contractor whose scope of work is, or will be covered under NYC DOB Chapter 33: Safeguards During Construction and Demolition, shall monitor and enforce job site safety through daily documented inspections by a NYC DOB Certified Site Safety Manager. A Certified Site Safety Manager shall be present at the worksite during all working hours, and shall have no other responsibilities other than the

implementation and management of the Contractor's health and safety plan. The candidate shall have First-Aid/CPR certification. The contractor shall provide a copy of the proposed candidate's resume and credentials for review and approval by the Port Authority prior to the individual being hired.

- 6) The Contractor shall have present at the worksite during all working hours a dedicated safety supervisor possessing at a minimum, a current and valid OSHA 30-Hour Construction Industry Training Card, First-Aid/CPR certification, and have at least five (5) years of documented experience as a safety professional with experience in the type of work to be performed. This safety supervisor shall be responsible for safety, health, and environmental compliance and shall have no other responsibilities other than safety management. The contractor shall provide a copy of the proposed candidate's resume and credentials for review and approval by the Port Authority.
- 7) The Contractor shall designate, and will have present on site with each work crew for the duration of that work shift, at least one competent person as defined by the OSHA standard 29 CFR Part 1926.32, and as elsewhere referenced in other 29 CFR Part 1926 standards, and will at a minimum perform the duties as described in 29 CFR 1926.20(b) (2). The designated competent person shall be responsible, and have the authority from their employer to take prompt corrective action to eliminate the hazard(s). At a minimum, each competent person shall possess a current and valid OSHA 30-Hour Construction Industry Training card and First-Aid/CPR certification. The Contractor shall assign, when required by a specific 29 CFR Part 1926 standard, a qualified or authorized person as defined in OSHA standard 29 CFR Part 1926.32.
- 8) The Contractor's duties and responsibilities for the safety and protection of the work shall continue until such time as all the work is completed and the Contractor has removed all workers, remaining materials and equipment from the Site, or upon the issuance of the Port Authority Certificate of Final Completion, whichever shall occur last.
- 9) The Contractor shall promote a Drug, Alcohol & Smoke Free Workplace with their employees and will communicate what constitutes prohibited activities while performing work or providing services on the World Trade Center Site during their safety orientation. Workers that are found to be under the influence of or in possession of alcohol and/or illegal drugs, in possession of weapons, or smoking anywhere on Site shall be immediately removed and/or dismissed from the WTC Site with their WTC Site access credentials revoked, and/or subject to criminal prosecution as warranted by their action(s). As per the NYC Fire Code, section 1404.1 and NYC Building Code, sections 3301.1.2 and 3303.7 smoking on any construction site, inclusive of the WTC Site, is strictly

prohibited and violations may be issued to the contractor and/or other relevant parties.

- 10) The Contractor shall have a progressive disciplinary action program for all personnel who fail to enforce, follow or comply with established policies and procedures. Disciplinary action shall be handled through a 3-Strike Policy (i.e., 1-verbal, 2-written and/or limited removal from the WTC site, 3-limited to permanent removal from the WTC from the site), however, depending on the seriousness of the violation, immediate revocation of the employee's WTC Identification Badge can occur, as referenced in section 9. Records shall be available for review by the Port Authority.
- 11) For work performed under OSHA 29 CFR 1926 Subpart M: Fall Protection, each contractor shall submit to the CM prior to the start of work a comprehensive and enforceable 100% Fall Protection and Prevention Program consistent with Subpart M as well as the requirements outlined in the WTC Site Safety, Health, and Environmental Program. This program shall be followed by all employees, vendors, and consultants when working or walking on all unprotected vertical or horizontal side and edge, scaffold, and locations as identified in Subpart M, at a height equal to or greater than six feet above a lower level, or at any height above a dangerous process, operation, or piece of equipment. Fall protection systems shall be designed by qualified person, and installed and maintained by a competent person.
- 12) For work performed under OSHA 29 CFR 1926 Subpart R: Steel Erection, each Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable fall protection plan.
- 13) The Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable plan outlining the securing and anchorage of all materials and equipment to resist uplift attributable to high wind hazards.
- 14) The CM shall and ensure that all contractors provide a site safety orientation training session to their workers upon initial assignment. All site workers shall attend weekly "tool-box" training sessions held by the contractor who shall distribute meeting information to all project workers.
- 15) The Contractor shall ensure workers, and all sub-contractor workers are properly trained, and as required have in their possession while on-site valid and appropriate license(s), and/or certificate(s) consistent with regulations, laws, and best industry practices specific to their work activities and the tools/equipment being used as per manufacturer specifications. At a minimum, employees working at the World Trade Center site shall have a valid OSHA 10-Hour, 30-Hour Construction

Safety and Health Certification card or be an authorized OSHA trainer for the construction industry. This certification must be renewed every five (5) years. A training matrix shall be readily available for review and audit on site.

- 16) Depending upon the severity of a site condition or circumstances surrounding an accident or incident, the Port Authority may require the Contractor to order a "Safety Stand-down." Examples of conditions and circumstances that may prompt a Stand-down include, but are not limited to:
- a) Failure to maintain a safe and healthy work environment that could potentially result in danger to workers or the general public;
  - b) Recurring deficiencies;
  - c) Willful disregard of safety requirements;
  - d) Fatality, fire, explosion, significant injury, accident, or incident;
  - e) Chemical Release or Spill;
  - f) Failure to comply with Environmental Performance Commitments.

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

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

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

- 17) The Contractor shall obtain and submit to the CM, Material Safety Data Sheets (MSDS) for all materials to be stored, and used in the work. The MSDS shall be readily available whenever required, in a convenient location, in close proximity to where the materials are used on the project. All workers shall have ready access to the MSDS. The Contractor is responsible for full compliance with OSHA Hazard Communication Standard, 29 CFR 1910.1200 .
- 18) The Contractor shall establish a housekeeping program to ensure that debris, trash, slippery items, standing water, spills, and combustible materials are removed off floors and other surfaces daily. At no time will access and egress ways be obstructed, indistinguishable, or maintained in disrepair.
- 19) The Contractor shall establish the required programs, practices, means and methods to address and control the hazards associated with their work. Examples of such plans include, but are not limited to fall

protection, fire protection and prevention, scaffold use, material handling and sling use, and hand/power tool safety.

- 20) Each Contractor shall prepare an Emergency Action Plan as described in OSHA 29 CFR 1926.35, establish and maintain at all times at least two access and egress ways on their project, participate in WTC Site wide incident planning meeting, response and evacuation drills, and identify key support personnel.

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

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

- 25) Each Contractor shall utilize the Port Authority Safety Management System Tracking Tool to document and track safety, health and environmental performance.
- 26) As required each Contractor shall complete and submit for approval Personnel Platform Lift Plans, Hot Work Program, Lifting Plans and similar documentation prior to the performance of such operations to the CM as identified in the Program or as required by the CM.
- 27) Each Contractor shall on a daily basis inspect their motor vehicles, and mechanized equipment used at the WTC Site. At a minimum, the requirements of 29 CFR 1926, Subpart O shall be followed. Any vehicle or mechanized piece of equipment not in acceptable working condition shall be immediately removed from service. A log shall be maintained on site for review and audit.
- 28) Each Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable plan addressing the performance of any abrasive blasting, surface scarification, steam or water blasting, or high pressure water cutting.
- 29) Each Contractor shall submit to the CM prior to the start of work a comprehensive and enforceable plan identifying all proposed access routes, staging areas, crane locations, temporary traffic signal controls, worker and pedestrian crossings, vehicular and pedestrian gates for exit and entry, barriers, barricades, lighting, and fencing. The construction of temporary structures, other than those noted on Contract Drawings, shall require approval from the CM.
- 30) Prior to an activity which will impede, alter, impair, block, or in any way deactivate an active standpipe, sprinkler system, smoke detection system, hydrant, or existing fire protection or prevention system the Contractor shall notify the CM. Prior to performing an activity described above, the contractor shall submit to the CM for approval the following:
  - a) Date and duration of the impairment
  - b) Location and Scope of work
  - c) Area(s) impacted
  - d) Name of contractor performing work
  - e) Type of interim fire protection system that will in-place during impairment
  - f) Method of communicating emergencies
  - g) Name of person performing final inspection to verify work is complete and normal fire protection/prevention is active
  - h) Method of notifying CM of completion
- 31) The Contractor shall comply with the Rules of the City of New York (3RCNY§11-01) whereby all buildings under construction are subject to regular inspections conducted by the NYC Fire Department,

Administrative Fire Company and the Bureau of Fire Prevention Construction, Demolition and Alteration (CDA) Civilian group.

- 32) A minimum of two (2) business days prior to any excavating, the Contractor shall notify the CM. The Contractor shall notify the NYC One Call Center to allow member agencies to mark locations of underground utilities prior to any excavating and confirm such notifications with the CM.

**THE WORLD TRADE CENTER  
PERMIT TO USE A SUSPENDED PERSONNEL PLATFORM**

Effective May 19, 2009

**I. GENERAL INFORMATION**

<b>Project:</b>	Name:	<b>Prime Contractor:</b>	Name:
<b>Contractor performing work</b>	Name:	<b>Contractor performing lift</b>	Name:
<b>Location:</b>			
<b>CRANE USER:</b>	Address:		
<b>COMPANY PRINCIPLE:</b>			
<b>CRANE OWNER:</b>	Address:		
<b>Purpose of Lift</b> (Circle)	Inspection	Maintenance/Repair	Installation
	Demolition	Initial Test	Drill
<b>Emergency Response</b>			
<b>DESCRIPTION OF WORK</b>			
<b>Lift Date:</b>	<b>Lift Time:</b>	<b>Duration of Lift:</b>	

**II. SUPERVISORY ASSIGNMENTS**

<b>Lift Supervisor</b>	Name/Contractor:
<b>Safety Manager</b>	Name/Contractor:
<b>Safety Coordinator</b>	Name/Contractor:
<b>Person Conducting Pre-Lift Meeting</b>	Name/Contractor:
<b>Person Inspecting Platform Prior Lift</b>	Name/Contractor:
<b>Person Inspecting Sling and Attachments Prior to Lift</b>	Name/Contractor:
<b>Person Verifying Rigging Configuration</b>	Name/Contractor:
<b>Person Monitoring Trial Lift Load Test</b>	Name/Contractor:
<b>Person Monitoring Proof Lift Test</b>	Name/Contractor:
<b>Person verifying rigging is consistent with Engineer's/Licensed Master Rigger's Design</b>	Name/Contractor:

**THE WORLD TRADE CENTER  
PERMIT TO USE A SUSPENDED PERSONNEL PLATFORM**

Effective May 19, 2009

**III. CRANE INFORMATION**

<b>Crane Mfr, Make &amp; Model</b>		
<b>Crane CN Number</b>		<b>Exp. Date:</b>
<b>Crane Boom Length (Feet)</b>		
<b>Maximum Allowable Pick Radius</b>	<b>Allowable Pick Load at Maximum Radius</b>	
<b>*Actual Pick Load at Maximum Radius</b>	*Must not exceed 50% of the cranes rated capacity at the allowable maximum radius	
<b>Crane Location</b>		
<b>Crane Operator</b>	Name:	License Type:
	License Number	Expiration Date

\*If applicant is an engineer, the hoisting machine's Certificate of On-Site Inspection (CN) is required.

\*If applicant is a master rigger, the hoisting machine's Certificate of Operation (CD) and a sketch or description of the hoisting machine's foundation is required.

**IV. RIGGING CREW**

<b>Crew Foreman</b>	Name/Contractor:	
<b>Rigging Crew</b>	Name:	Name:
	Name:	Name:
<b>Signal Person(s)</b>	Name/Contractor:	Name:

**V. PERSONNEL PLATFORM RIGGING PLAN PREPARATION**

<b>Rigging Plan Prepared By</b> (place check in box)	<input type="checkbox"/> <b>NYC Licensed Master Rigger (Boom &lt;250 feet)</b>
	<input type="checkbox"/> <b>Professional Engineer (Boom &gt;250 feet)</b>
<b>NYC Licensed Master Rigger</b>	Name: _____ License Type: _____
	License Number: _____ Expiration Date: _____
<b>Professional Engineer</b>	Name: _____ State Issued: _____
	License Number: _____ Expiration Date: _____

**THE WORLD TRADE CENTER  
PERMIT TO USE A SUSPENDED PERSONNEL PLATFORM**

**Effective May 19, 2009**

**VI. RIGGING CONFIGURATION**

Prepare and attach a sketch of the rigging configuration for the personnel platform. The following information shall be provided on the sketch.

<b>Wire Rope<sup>1,2</sup></b>	Type	Size:	Load Capacity	Attachment Configuration
<b>Attachments<sup>1,2</sup></b>	Type	Size:	Load Capacity	Rigging Configuration
<b>Load Capacity of Wire Rope and Attachments Configuration</b>				
<b>Method to Attach Additional Safety Line from Lift to Load Line above the ball</b>				
<b>Capacity of Additional Safety Line and Attachments:</b>				

<sup>1</sup> All rigging must be labeled or tagged to identify the manufacturer, and load capacity rating. All rigging used for a personnel platform shall be dedicated for that application, and shall not be removed and be protected from the elements.

<sup>2</sup> Wire rope, shackles, rings, master links, and other rigging hardware must be capable of supporting without failure at least five (5) times the maximum intended load applied or transmitted to that component. Where rotation resistant rope is used, the slings shall capable of supporting without failure at least ten (10) times the maximum intended load.

**VI. USE OF PERSONNEL LIFT PLATFORM**

<b>Name of occupants to be lifted</b>	Name:	Name:
	Name:	Name:
<b>Personal Fall Arrest System</b>	Type:	Model:
<b>Attachment Method:</b>	Location:	Method:
<b>Method of Communications</b>		

\*When the personnel platform is used in response to a medical emergency, the number of occupants will be limited to injured worker, a signal person, and first and medical responders from PAPD ESU and FDNY EMS. Overall occupancy will not exceed that platform's rated capacity.

<b>Platform Manufacturer:</b>	Name:			
Rated Load Capacity	Maximum Intended Load	Trial Lift Load Weight	Proof Test Load Weight:	# of Occupants:
<b>Prepared By:</b>	Name:	Title:		
	Date:	Contractor:		

THE WORLD TRADE CENTER  
PROCEDURE FOR THE USE OF SUSPENDED PERSONNEL PLATFORMS  
FOR OPERATIONS AND EMERGENCY RESPONSE

Effective May 19, 2009

All Contractors and Subcontractors regardless of tier shall comply with the requirements of the Occupational Safety and Health Administration's (OSHA) regulatory Subpart N, Cranes, Derricks, Hoists, Elevators, and Conveyors, standard 29 CFR 1926.550, Cranes and Derricks and 1926.552, Material Hoists, Personnel Hoists, and Elevators, and the New York City Building Code's (NYCBC) Reference Standard (RS) 19: Power Operated Cranes and Derricks, section 23.6: Hoisting Personnel.

The use of a crane or derrick to hoist employees on a platform is prohibited except when the erection, use, and dismantling of conventional means of reaching the work location such as a personnel hoist, ladder, stairway, aerial lift, elevating work platform or scaffold, would be more hazardous, or is not feasible because of structural design or worksite conditions.

In the event of an emergency, should the injured person need to be raised or lowered to the ground level and there is no access to a personnel hoist **and** transport via stairway (if available) is not feasible, then a platform dedicated to rescue purposes shall be used to extricate the injured person. The platform will be used to supplement the primary means if needed. The primary means will be the use of a Stokes basket carried up the stairway most accessible. It will be the decision of the first responder, medical professional, or other medical authority to determine if a platform will be used for rescue.

1. **Prior to Use:** Three days prior to the use of a personnel platform at the WTC Site the contractor shall provide the following to WTCC Safety and the Resident Engineer's Office (REO) at the WTC Site:
  - a. Written notification by a Professional Engineer licensed in the State of New York, or master rigger licensed in the City of New York documenting the following:
    1. The type of work to be performed
    2. Location of the work
    3. The prime/general contractor
    4. The name of the principle from the prime/general contractor
    5. The contractor performing the work
    6. The name of the principle from the contractor performing the work
    7. The date and time of the work
    8. The duration of the work
    9. Identification of crane to be used (crane owner, crane user, crane type, crane manufacturer and model, and NYCBC CN and/or CD number)
    10. A copy of the crane's CN indicating its use with platforms; and
    11. The reason(s) why conventional means of access cannot be used to achieve this work and the hazards associated with the use of conventional access means.
  - b. Certifications
    1. The name and New York State/New York City license number and expiration date of the Professional Engineer or licensed master rigger
    2. The name and NYCBC license number and expiration date of the site safety manager or coordinator that will be on-site during platform use
    3. The name and qualifications of the person who will be witnessing the required OSHA Subpart N platform Trial Lift

THE WORLD TRADE CENTER  
PROCEDURE FOR THE USE OF SUSPENDED PERSONNEL PLATFORMS  
FOR OPERATIONS AND EMERGENCY RESPONSE

Effective May 19, 2009

4. The name and New York City license number of the rigger who will be supervising the rigging of the platform
  5. The name(s) and qualifications of personnel who will be inspecting the rigging
  6. The name(s) of personnel authorized and trained for emergency personnel platform operations
- c. Drawings
1. Platform manufacturer design drawings signed and sealed by a Professional Engineer in the State of New York. The drawing needs to include, but not be limited to:
    - a. Platform Suspension
    - b. Loading Capacities
    - c. Maximum Occupancy
    - d. Guard rails
    - e. Tie-offs for Fall Protection Harnesses
    - f. Date of manufacture and location of final assembly
    - g. Hand rails
  2. Loading and landing locations for the platform
  3. If the applicant is a licensed rigger, a sketch or description of the foundation for the crane (hoisting machine) is required.
- d. Plans
1. Storage location for rigging
  2. Method of platform rigging
  3. Selection of rigging components with rated loading plus verification that rigging can support a load five (5) times its maximum intended loading without failure
  4. Verification that the loaded platform will not exceed 50% of the rated capacity for the radius and configuration of the crane
  5. Verification that the load line of the crane can support without failure at least seven (7) times the maximum intended load
  6. Verification that all rigging has the manufacturer's tag identifying load capacity
2. **Prior to Operation:** Prior to operation of a personnel platform on the WTC Site, the contractor shall proceed as follows:
- a. Conduct a trial lift as required by OSHA 1926.550(g)(5)(i – v)
    1. A licensed engineer or master rigger shall complete the **Permit to Use a Suspended Platform** prior to use of a suspended platform
    2. A lift supervisor shall conduct a pre-lift safety meeting to review the scope and performance of work
  - b. Conduct a proof test as required by OSHA, 1926.550(g)(5)(vi)
3. **Emergency Use:** The use of a personnel platform in the event of an emergency medical response at the WTC Site requires pre-planning and recurring exercises to ensure personnel are adequately trained and ready to respond.
- a. Documentation requirements:

THE WORLD TRADE CENTER  
PROCEDURE FOR THE USE OF SUSPENDED PERSONNEL PLATFORMS  
FOR OPERATIONS AND EMERGENCY RESPONSE

Effective May 19, 2009

1. Complete the **Permit to Use a Suspended Platform** for each individual platform that may be used in the event of an emergency medical response.
- b. Immediately prior to use:
  1. Conduct a trial lift and proof test immediately prior to placing personnel on the platform. The trial lift and proof test can be conducted by loading (weighting) the platform to 125% of the rated capacity. Once securely loaded, the platform shall be lifted over the anticipated travel path. Once completed, the weighted load shall be removed, and the platform put into use.
  2. Conduct a pre-lift meeting attended by the crane or derrick operator, signal person(s) (if necessary for the lift), employee(s) to be lifted, and the person responsible for the task to be performed including a review of the appropriate requirements. This meeting shall be held prior to the proof lift and shall be repeated for all employees assigned to the operation. Steps 1 and 2 may be done concurrently;
4. **Inspections:** The contractor shall make available to WTCC REO and Safety the following:
  - a. Daily inspection logs of all emergency use platforms
  - b. Daily inspection logs of all rigging equipment associated with platform
  - c. Records of trial lifts
  - d. Records of proof tests
  - e. Permits to Use a Suspended Platform
5. **Incident Response:**

In the event of an accident or emergency involving a crane notification is required. Please refer to the current WTC Site Emergency Incident Response Map (the "IR Map") available from the WTC Site Safety Director, Joseph M. Schwed @ [jschwed@panynj.gov](mailto:jschwed@panynj.gov).

THE WORLD TRADE CENTER  
PROCEDURE FOR THE USE OF SUSPENDED PERSONNEL PLATFORMS  
FOR OPERATIONS AND EMERGENCY RESPONSE

Effective May 19, 2009

**Revision Tracking:**

Revision	Date	Comments
-	5/4/2009	Original Issuance
1	5/19/2009	Clarifications/Documentation requirements



THE PORT AUTHORITY OF NY & NJ

**WORLD TRADE CENTER SITE  
IN CASE OF EMERGENCY**

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Call the Port Authority Police Department (PAPD)

(212) 608-5111

(212) 608-5115

- I am reporting an incident/accident at \_\_\_\_\_ .
- My name is \_\_\_\_\_ .
- I work for \_\_\_\_\_ . My cell # is \_\_\_\_\_ .
- The injured party's location is \_\_\_\_\_ .
- The number of injured is \_\_\_\_\_ .
- The body part affected is the \_\_\_\_\_ .
- The injury is as a result of \_\_\_\_\_ .  
(ie. A fall, struck by, electrocution, etc)
- We request an Ambulance.

Prepared by Risk Mgmt., PAPD, OEM, WTCC,  
and reviewed by Law Dept. Rev. 5/09

### **WORLD TRADE CENTER SITE**

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**We are committed to safe and secure working conditions and employees working safely.**

- At a minimum, all employees shall wear a hard hat, construction sturdy/steel tip safety shoes, safety glasses with side shields, and reflective vest or clothing.
- All employees shall be properly trained, certified and/or licensed for the work task being performed or shall notify supervisor of requirement.
- Absolutely no smoking once employees enter through any secure gate.
- Alcohol, illegal substances, or weapons on-site will result in immediate revocation of WTC Identification badge.
- Stay alert. Be aware. Speak up. Don't hesitate to report suspicious activity.

**We Are All In This Together!  
Watch Out For Each Other!  
Wear the Required Gear!  
Work As Safely As Possible!**



# WTC CONSTRUCTION SITE EPC'S

NOTE: The implementation measures on these sheets are from a construction perspective only.

## AIR QUALITY

<b>WTC Site Environmental Performance Commitment</b>	<p align="center"><b>Common Implementation and Verification Procedures</b></p> <p align="center">The implementation measures on these sheets are from a construction perspective only. There are other "implementation measures" not indicated that are from a design perspective.</p>
<b>Diesel Emission Plan (ULSD; DPF; Electric Powered Equipment that can practically replace diesel powered equipment; Limit Unnecessary Idling; Locate Diesel Equipment away from Fresh Air Intakes)</b>	<p align="center"><b>Diesel Emission Plan shall be submitted and approved by the PA. It is to specify standard operating procedure within the project site during construction and Non-construction activities, which shall include but not be limited to:</b></p> <p><b><u>ULSD Implementation:</u></b></p> <ul style="list-style-type: none"> <li>• Ultra Low Sulfur Diesel (ULSD) for all diesel-powered non-road equipment to be used in the performance of work. The fuel sulfur concentration shall be &lt; 15 parts per million.</li> </ul> <p><b><u>ULSD Verification:</u></b></p> <ul style="list-style-type: none"> <li>○ Fuel delivery summary and slips to be submitted as per contract to PA REO &amp; PA EPC field Supervisor. REO forwards to PA MEU for review &amp; comment.</li> <li>○ Random fuel sampling done by PA MEU</li> </ul> <p><b><u>After-Treatment Device Implementation:</u></b></p> <ul style="list-style-type: none"> <li>• Use of post 1995 fuel injection engines which meet Tier 2 engine emissions standards on all non-road diesel engines of 50 horsepower and greater.</li> <li>• Use of Diesel Particulate Filters (DPF's) required unless contractor justifies otherwise (i.e., for purposes of safety considerations, mechanical reasons, or where the technology would not function properly). The REO submits waiver request for approval to PA MEU. If such a waiver is granted, a Diesel Oxidation Catalysts (DOC) shall be used, unless otherwise directed by PA MEU.</li> <li>• Use of DPFs or other devices shall be verified technology, as 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 approved by PA MEU.</li> <li>• Use of electrically powered equipment when possible</li> <li>• Limit unnecessary idling times to 3 minutes</li> <li>• Locate diesel equipment away from fresh air intakes</li> </ul> <p><b><u>After-Treatment Device Verification:</u></b></p> <p><b>Prior to site access -</b></p> <ul style="list-style-type: none"> <li>○ Equipment list, with backup documentation, submitted weekly to PA REO &amp; PA EPC field Supervisor(s) for the review &amp; approval. Field verification by PA EPC Supervisor to follow. <b>Note:</b> <i>When new equipment is scheduled to come to the site immediate notification along with documentation is to be submitted to the PA REO &amp; PA EPC Supervisor(s) for review and approval prior to site access.</i></li> <li>○ PA REO visual idling checks with on-site contractors and supervisors &amp; PA EPC field Supervisor(s) physical inspections (stickers) for Compliance.</li> <li>○ Contractor's reinforcement is required. PA Inspectors &amp; Safety Manager site walk-through observations will be conducted.</li> <li>○ Periodic verification site visits by LMCCC for Lower Manhattan EPC – air quality cumulative effect and adjustments are to be made accordingly.</li> </ul> <p><b><u>Purpose:</u></b> - Air quality's cumulative impact stay well below the national ambient air quality standards limits for construction-related particle matter (PM 10 and PM 2.5).</p> <p><b><u>Goal:</u></b> - Implementation of process between Office and Field operations so that all non-road equipment is compliant prior to site delivery</p>



# WTC CONSTRUCTION SITE EPC'S

NOTE: The implementation measures on these sheets are from a construction perspective only.

WTC Site Environmental Performance Commitment	<b>Common Implementation and Verification Procedures (AIR QUALITY)</b>
Dust Control Plan	<p><b>Dust Control Plans</b> shall be submitted and approved by the PA and it is to specify how fugitive dust emissions will be controlled (standard operating procedure) within the project site which shall include but not limited to earth moving &amp; demolition activities (e.g. saw-cutting, pavement milling, haul roads, etc.),:</p> <p><b>Implementation:</b>  <b>Fugitive dust emissions within the construction site shall be contained at all times including non-working days, weekends and holidays</b></p> <ul style="list-style-type: none"> <li>▪ Wheel washing of all construction Non-Road, On-Road and passenger vehicles leaving the site is to be implemented daily, including the containment and treatment of the wash water</li> <li>▪ The routine wetting and cleaning of work area and access roads/streets within and part of the project site</li> <li>▪ The spraying of a (non-hazardous, biodegradable) dust suppressing agent</li> <li>▪ The physical containment of fugitive dust particulates through the use of tarps or other wind protection devices</li> <li>▪ The adjustment for meteorological conditions, as appropriate</li> <li>▪ The wetting and covering of all trucks' loads containing materials removed from the site that may generate fugitive dust</li> </ul> <p><b>NOTE:</b> PA water truck (<i>Guardian</i>), when necessary, ONLY sprays site's common areas</p> <p><b>Verification:</b></p> <ul style="list-style-type: none"> <li>○ Daily walk thru for physical verification by Contractor &amp; PA field personnel. Adjustments are to be made accordingly &amp; promptly.</li> <li>○ Periodic visual verification site visits by LMCCC for Lower Manhattan EPC – air quality cumulative effect and adjustments are to be made accordingly. (<i>Perimeter of Site</i>)</li> </ul> <p><b>Purpose/Goal:</b>  - Air quality's cumulative impact, including fugitive dust emissions outside the perimeter of the site, stay well below the national ambient air quality standards limits for construction-related particle matter (PM 10 and PM 2.5).</p>



# WTC CONSTRUCTION SITE EPC'S

NOTE: The implementation measures on these sheets are from a construction perspective only.

## NOISE

### Common Implementation and Verification Procedures

The implementation measures on these sheets are from a construction perspective only. There are other "implementation measures" not indicated that are from a design perspective.

**WTC Site Environmental Performance Commitment**

1. Schedule individual projects to avoid or minimize adverse impacts.

2. Coordinate construction activities with projects under construction in adjacent and nearby locations to avoid or minimize impacts. Coordinate construction activities with projects under construction in adjacent and nearby locations to avoid or minimize impacts.

3. Prepare contingency measures in the event established limits are exceeded.

**Noise Control & Mitigation Plan shall be submitted and approved by the PA and it is to specify how noise levels will be controlled (standard operating procedure) within the construction site during all activities, which shall include but not limited to:**

**Implementation:**

- Noise intensive construction activities limited to daytime hours
- No intensive construction activities after 11 p.m.
- Noise monitoring of construction activity to verify compliance (Use of handheld meters by competent person should be used). Adjustments to activity are to be made accordingly & promptly.
- Installation of sound blankets around perimeter fence of contractor's project site.
- Use noise-attenuated equipment as appropriate
- Installation of smart backup alarms on all trucks (On & Off Road)

**Verification:**

- PA Noise monitoring around the perimeter of site (8-hour Leq (dBA) Limit):  
**Location of some of the sensitive receptors:** *Hilton Millennium Hotel (55 Dey St.); Embassy Suites (102 N. End Ave.); Residential on Park & West Broadway; Residential (114 Liberty St.); WFC (W. side Hwy bet. Vesey & Liberty St.); Residential (90 West St. - corner of W. Side Hwy & Liberty St.)*
- **Noise Threshold not to exceed (8-hour Leq (dBA) Limit) :**  
*Weekdays (7AM to 6 PM) - 80 dBA*  
*All Other Times - 70 dBA*
- Contractor's Noise monitoring of construction activity within the perimeter of site (OHSAs Requirements & Sensitive Receptors):
- Compliance is verified by daily PA EPC site walk-throughs with sound level measurement reports from hand held device and site wide monitoring. Exceedances are to be addressed immediately via contractor's mitigation plan and input from PA REO and/or EPC field supervisor.
- Daily walk thru for verification of Contractor's work plan by PA field personnel. Adjustments are made accordingly & promptly.
- Physical verification at site by Contractor & PA field personnel for use of sound attenuated equipment, sound measurements and use of worker's PPE.

**Cooperation with LMCCC regarding developing additional measures as required to minimize cumulative effects that exceed established thresholds**

- Periodic physical verification by LMCCC site visits (Using handheld meters at the fence line of site). Adjustments are made accordingly.
- PA is working with the City Department of Environmental Protection to measure and reduce noise at the WTC site. Recommendation are seriously considered.



# WTC CONSTRUCTION SITE EPC'S

NOTE: The implementation measures on these sheets are from a construction perspective only.

## VIBRATION

### Common Implementation and Verification Procedures

The implementation measures on these sheets are from a construction perspective only.  
There are other "implementation measures" not indicated that are from a design perspective.

**WTC Site Environmental Performance Commitment**

1. Schedule individual projects to avoid or minimize adverse impacts.

2. Coordinate construction activities with projects under construction in adjacent and nearby locations to avoid or minimize impacts. Coordinate construction activities with projects under construction in adjacent and nearby locations to avoid or minimize impacts.

3. Consider condition of surrounding buildings, structures, infrastructure, and utilities where appropriate.

4. Prepare contingency measures in the event established limits are exceeded.

**Vibration Control & Mitigation Plan shall be submitted and approved by the PA and it is to specify how vibration levels will be controlled (standard operating procedure) within the construction site during all activities, which shall include but not limited to:**

**NOTE:** There are other vibration monitoring that is being adhered to within the WTC project site by various Contractor's per their contractual agreement for infrastructure and utilities.

**Implementation of historical property adjacent to the WTC Site:**

*Construction vibration measures will be established for the protection and avoidance of structural and architectural damage to historic properties within 90 feet of the construction zone.*

- Vibration monitoring is being done around designated historical properties.  
**Locations:** 90 West Street; Beard Building, 125 Cedar Street; 114-118 Liberty Street; St. Paul's Chapel and Graveyard; 26 Cortlandt Street (Former East Street Savings Bank)

**Vibration Threshold not to exceed:**  
*0.12 in/sec (approximately 95 VdB)*

**Verification:**

- Compliance is verified by daily vibration level measurement reports. Exceedances are addressed immediately via contractor's mitigation plan and input from PA RE and/or EPC field supervisor.
- Physical verification at site for use of vibration attenuated equipment and use of devices.

**Purpose/Goal (NOISE & VIBRATION):**

- To avoid or minimize adverse impacts to adjacent/nearby historical properties.



# WTC CONSTRUCTION SITE EPC'S

NOTE: The implementation measures on these sheets are from a construction perspective only.

## CULTURAL & HISTORIC RESOURCES

<b>WTC Site Environmental Performance Commitment</b>	<p align="center"><b>Common Implementation and Verification Procedures</b></p> <p align="center">The implementation measures on these sheets are from a construction perspective only. There are other "implementation measures" not indicated that are from a design perspective.</p>
<p>1. Establish coordination between project construction activities to avoid or minimize adverse impacts.</p>	<p><b>Protective Measures in Place for the following cultural &amp; historic resources within the WTC site:</b>  <b>Tower Perimeter column base remnants outlining the North and South Tower footprint areas within the Tower Limits (PATH HUB &amp; Memorial projects); E subway entrance (PATH HUB &amp; Tower 2 projects); East and West Slurry walls (PATH HUB &amp; Freedom Tower projects) ; Vesey Street stairs (PATH HUB &amp; Memorial projects)</b></p> <p><b>NOTE:</b> Other site historic resources and mitigation measures are respectively determined by FTA and LMDC's Section 106 processes.</p> <p><b>Implementation:</b></p> <ul style="list-style-type: none"> <li>• Protective measures have been implemented to preserve cultural &amp; historic elements within the WTC site as stipulated in individual project's Section 106 documents.</li> </ul> <p><b>Verification:</b></p> <ul style="list-style-type: none"> <li>○ PA's historical architect does periodic visits &amp; reporting to ensure that protective measures are being maintained. If necessary, observation &amp; recommendations are submitted to the various WTC projects.</li> </ul>



# WTC CONSTRUCTION SITE EPC'S

NOTE: The implementation measures on these sheets are from a construction perspective only.

## ACCESS AND CIRCULATION

### Common Implementation and Verification Procedures

WTC Site  
Environmental  
Performance  
Commitment

1. Establish a project-specific pedestrian and vehicular maintenance and protection plan.  
2. Ensure sufficient alternate street, building, and station access during construction period.

**Maintenance & Protection of Traffic Plan** shall be submitted and approved by the PA and it is to specify the following as appropriate:

**Implementation:**

Proposed project staging, with detailed notes ensuring maintenance and protection of vehicular and pedestrian traffic during each stage

- Incorporate changes as conditions merit, as approved by the PA engineer in charge of the WTC site.
- Ensure adherence to plans through the daily diligence of project site inspectors
- Maintain active communication with appropriate PA personnel.

**Goal:** To the extent practicable, minimize disruption to residences, businesses and amenities in general area of project site

# WTC Safety Bulletin

May 31, 2012

WTC Construction

## FALL PROTECTION POLICY – EFFECTIVE MAY 16, 2012

The Port Authority of NY & NJ in partnership with our Contractors and Unions has revised the fall protection policy at the World Trade Center Site. The goal of this policy is to ensure that supervisors and employees are held accountable when working where fall hazards exist and personal protective equipment is required.

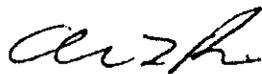
Effective immediately, any employee discovered to be without appropriate fall protection will be subject to the following progressive disciplinary action:

- The first occurrence will result in the employee and the supervisor/competent person being suspended from the WTC Site. On the day following the occurrence, access privileges to the site will be suspended for one (1) full working day and the employer will be charged \$2,000.00 for each suspended worker per occurrence. Retraining must be completed.
- The second occurrence will result in the employee and the supervisor/competent person being suspended from the WTC Site. On the day following the occurrence access privileges will be suspended from the Site for up to 30 working days and the employer will be charged up to \$10,000.00 for each suspended worker per occurrence. Upon returning to work, the employee(s) shall provide proof that they have retaken the OSHA 10-Hour in Construction Safety and Health course. In addition, the employee and their supervisor/competent person shall re-take the WTC Safety and Security Orientation at 116 Nassau Street prior to returning to the site.
- The third occurrence will result in the permanent revocation of the employee's WTC site access privileges.

The Port Authority, in cooperation with the construction managers, contractors and unions may meet periodically to discuss the above policy, and elect to revise the above stated penalties without prior written notice.

The WTC Site appreciates the efforts of all to make this Project safe. If you have any questions or further suggestions, please contact the PANYNJ WTC Safety, Security and Operations Director, Joe Schwed, at 212-435-5515 or [jschwed@panynj.gov](mailto:jschwed@panynj.gov).

Sincerely,



Alan Reiss  
Deputy Director, WTC Construction

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

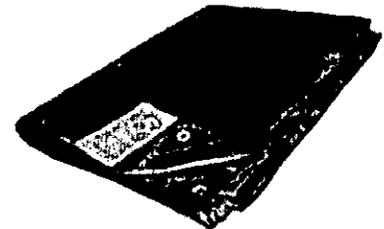
February 9, 2012



WTC Construction

## Fire Retardant Coverings (Tarps)

At the World Trade Center Site, tarpaulins ("tarps") which are used to cover equipment, protect finish work and insulate concrete, are made from different materials and treated with special fire retardant properties to perform a given function. For a combustible fabric to be rendered fire retardant it must be applied with a chemical application and pass a testing process. These coverings require regular inspections and must be approved for use by the Contractor Construction Fire Safety Manager.



The use of non-combustible panels, flame-resistant tarps or other approved materials is required as defined in NFPA 241: Standard for Safeguarding Construction, Alteration and Demolition Operations. The standard also requires that other fabrics or plastic films be certified in accordance with the test methods as defined in NFPA 701: Standard Methods of Fire Tests for Flame Propagation of Textiles and Films.

Section 801.3 (Flame-retardant treatments) of New York City Fire Code requires: "When a material or item is treated with a flame-retardant chemical to meet the requirements of this chapter for a flame-resistant material, such chemical and its method of application shall be approved. Flame-retardant treatments shall be maintained so as to **retain the effectiveness of the treatment under conditions encountered in actual use.**"

According to manufacturers, many variables alter the "effectiveness" of the treatment; such as temperature, UV exposure, humidity, snow/rain/ice, duration of use, work environment and worksite operations such as dusts, vapors and surface contaminants. Due to these variables, the treatment for each covering can deteriorate completely over time.

During weekly fire protection audits, if a tarp (interior or exterior) is suspect due to the variables noted above or if there are no identifiable manufacturer markings indicating that the covering is fire-retardant, a field flame test consistent with the requirements of NFPA may be performed.

This test shall only be done by the Port Authority and in the presence of the contractor. If the covering fails the test, the contractor must remove and replace the tarp.

**Please contact Fire Protection Coordinators, Bill Dougherty at (973) 332-8665 or Mike Grieco at (917) 417-8987 if you have any questions.**

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**

# WTC Safety Bulletin

February 21, 2012

WTC Construction



## HOT WORK - FIRE PREVENTION

Hot Work is often synonymous with welding, grinding and cutting but also includes any work activity with the potential to create ignition sources or excessive heat. Sparks and molten material from Hot Work can be scattered more than 35 feet during welding, cutting and grinding and that area is called the Hot Work area.

Safety standards have been established in the NYC Fire Code and must be followed to reduce the risk of fire during a Hot Work activity.

Combustible waste, including rubbish, construction and demolition materials which can easily be ignited must not accumulate within buildings and shall be removed at the end of each work shift, and at least once a day as written in Section 1404.2 (Waste Disposal) of the NYC Fire Code. Section 2604.1.1 (Separation from Combustibles) of the NYC Fire Code requires Hot Work areas shall not be less than 35 feet from

combustible materials and waste or shall be provided with appropriate shielding to prevent sparks, slag or heat from igniting the exposed combustibles.



Two fire safety functions have been established to prevent injury and loss of property from fire. Through careful planning, a *Responsible Person* (NYC Fire Code term) must complete a Pre-Hot Work checklist. The checklist states that the Responsible Person must check that there are no combustibles in the Hot Work area. Before Hot Work is authorized and at least once per day while the authorization is in effect, the Hot Work area shall be inspected by the Responsible Person to ensure that it is a fire safe area.

A *Fire Guard* (NYC Fire Code term) is a person with a Certificate of Fitness who observes the Hot Work activity and ensures that no combustibles are in the Hot Work area. The Fire Guard must be in direct sight of the Hot Work and be able to extinguish any spot fire with a fire extinguisher and summon an emergency response if necessary.

Every fire incident of any size is preventable by eliminating the contributing factors.

- Check the Hot Work area for combustibles before the arc is struck, the torch is lit or the grinder is turned on.
- Keep careful watch on surrounding areas including work areas beneath the Hot Work activity.
- Clear or cover combustibles, wet down planking and relocate fuel cans away from the Hot Work area.

**Please contact Fire Protection Coordinators, Bill Dougherty (973-332-8665) or Mike Grieco (917-417-8987) if you have any questions.**

**ALL PROJECTS MUST REVIEW THIS BULLETIN AT THEIR SAFETY COMMITTEE MEETING**