

**Torres Rojas, Genara**

FOI #14976

**From:** phabas@barpc.com  
**Sent:** Thursday, June 05, 2014 3:40 PM  
**To:** Duffy, Daniel  
**Cc:** Torres Rojas, Genara; Van Duyne, Sheree; American, Heavyn-Leigh  
**Subject:** Freedom of Information Online Request Form

**Information:**

**First Name:** Patricia  
**Last Name:** Habas  
**Company:** Rogers McCarron & Habas, PC  
**Mailing Address 1:** 100 Dutch Hill Road  
**Mailing Address 2:** Suite 390  
**City:** Orangeburg  
**State:** NY  
**Zip Code:** 10962  
**Email Address:** [phabas@barpc.com](mailto:phabas@barpc.com)  
**Phone:** 8453595400  
**Required copies of the records:** Yes

**List of specific record(s):**

**Re:** World Trade Center Tower One Project Owner: Port Authority Contractor: Collavino Construction Inc  
Subcontractor: Eastern Concrete Materials Inc. Please provide the number of times Collavino was contacted by the Port Authority for the World Trade Center Project Please provide: copies of: contracts between Collavino and the Port Authority or their agents for the World Trade Center Project, years and duration for each contract, payment requisitions submitted by Collavino to the Port Authority, cancelled checks evidencing payment by the Port Authority to Collavino, all payment bonds for the World Trade Center Project including but not limited to any bond securing payment for subcontractors and suppliers of Collavino, correspondence documents re: termination of Collavino and documents concerning Collavinos claim, including determinations made by the Port Authority.

**THE PORT AUTHORITY OF NY & NJ**

FOI Administrator

April 21, 2016

Ms. Patricia Habas  
Rogers McCarron & Habas, PC  
100 Dutch Hill Road, Suite 390  
Orangeburg, NY 10962

Re: Freedom of Information Reference No. 14976

Dear Ms. Habas:

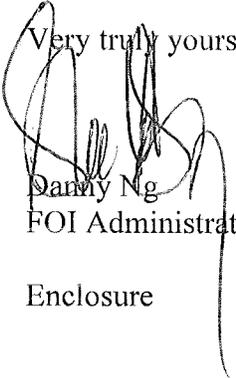
This is in response to your June 5, 2014 request, which has been processed under the Port Authority's Freedom of Information Code, copy enclosed, for copies of records related to "the number of times Collavino was contacted by the Port Authority for the World Trade Center Project Please provide: copies of: contracts between Collavino and the Port Authority or their agents for the World Trade Center Project, years and duration for each contract, payment requisitions submitted by Collavino to the Port Authority, cancelled checks evidencing payment by the Port Authority to Collavino, all payment bonds for the World Trade Center Project including but not limited to any bond securing payment for subcontractors and suppliers of Collavino, correspondence documents re: termination of Collavino and documents concerning Collavinos claim, including determinations made by the Port Authority.

Material responsive to your request can be found on the Port Authority's website at <http://corpinfo.panynj.gov/documents/14976-C/>. Paper copies of the available records are available upon request.

Certain portions of the material responsive to your request are exempt from disclosure as, among other classifications, security.

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

Very truly yours,

  
Danny Ng  
FOI Administrator

Enclosure

*4 World Trade Center, 18th Floor  
150 Greenwich Street  
New York, NY 10007  
T: 212 435 3642 F: 212 435 7555*

2015 DEC 30 A 11: 34 In the Matter of the Claim of

**COLLAVINO CONSTRUCTION COMPANY LIMITED**

against

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

PLEASE TAKE NOTICE that the undersigned claimant hereby makes claim and demand, pursuant to McKinney's Unconsolidated Laws §§ 7107 and 7108, as follows:

1. *The name and post-office address of each claimant and claimant's attorney is:*

Collavino Construction Company Limited  
5255 County Rd. 42  
Windsor, ON N8N 2M1

Peckar & Abramson  
41 Madison Ave.  
20<sup>th</sup> Floor  
New York, N.Y. 10010  
(212) 382-0909

THE PORT AUTHORITY OF NY NJ  
LAW DEPARTMENT  
2015 DEC 30 A 11: 50  
JHS ADMINISTRATION & RISK MANAGEMENT

2. *The nature of the claims:*

Failure and refusal to pay Collavino Construction Company Limited ("CCCL") for work, labor and services performed and materials, equipment and supplies furnished by CCCL, and, on its behalf, by its subcontractor, Collavino Construction Company Inc. ("CCCI", and collectively with CCCL, the "Debtors"),<sup>1</sup> under Contract WTC-1001.04-1 for the construction of the World Trade Center – Tower One project (the "WTC Project") dated February 8, 2007 (the "WTC Contract") despite due and repeated demand, which demand was ignored for a period of approximately 18 months while CCCL was denied access to a contractual alternative dispute resolution ("ADR") proceeding. The WTC Contract was entered into by and between CCCL and Tishman Construction Corporation as the agent for 1WTC, LLC a/k/a 1 World Trade Center, LLC a/k/a WTC Tower 1, LLC, a limited liability company wholly-owned by The Port Authority of New York and New Jersey (collectively, the "Port Authority"), and it was thereafter, from time to time, duly supplemented, amended and modified. On or around May 31, 2007, CCCL subcontracted with CCCI for the performance of work on the WTC Project. CCCI thereafter subcontracted with a number of trade vendors including, on or around

<sup>1</sup> CCCI and CCCL are debtors and debtors-in-possession in jointly administered chapter 11 bankruptcy cases pending before the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") and styled as *In re Collavino Construction Company Inc., et al.* (Case No. 14-12908-SCC), which cases were filed on October 17, 2014 and February 18, 2015, respectively.

November 14, 2007, with Harris Rebar Atlantic, Inc. ("Harris").<sup>2</sup> The Port Authority owns the WTC Project site; benefitted from the improvements made thereon by the Debtors; and is liable to and indebted to CCCL on the following claims:

(a) The Port Authority materially breached the WTC Contract by denying CCCL access to the ADR procedure under Article 31 of the WTC Contract for a period of approximately 18 months through its imposition of a condition precedent that the Port Authority unilaterally declare that the parties' dispute reach an impasse before it may be submitted to the Chief Engineer for resolution, which submission is a condition precedent to legal action against the Port Authority. The Port Authority claimed that the parties' dispute had not reached an impasse while at the same time refused to elevate CCCL's claim to the Chief Engineer pursuant to the WTC Contract, thereby depriving CCCL of access to the ADR remedy in the WTC Contract and preventing CCCL from holding the Port Authority responsible for its material breaches of the WTC Contract.

(b) The Port Authority materially breached its contractual obligations to CCCL in that following its election to terminate the WTC Contract for convenience effective January 18, 2013, it failed to compensate CCCL for the open and outstanding costs of the above grade structural concrete work justly due and owing to CCCL from the Port Authority, failed to properly pay CCCL for the costs of demobilization, wrongfully prevented the Debtors from recovering a substantial quantity of equipment owned or leased by them, and wrongfully failed to pay CCCL reasonable overhead and profit of 21% of the costs of the above grade structural concrete work notwithstanding that such amounts were due and owing CCCL as a matter of law following the termination for convenience. As a result of the Port Authority's material breach, the Debtors sustained significant damages and have been exposed to claims of trade vendors and other third parties which the Port Authority had agreed to pay for the work, labor, services, materials, equipment and supplies they furnished.

(c) The Port Authority materially breached the WTC Contract by, among other things, disrupting, delaying, impeding, and preventing CCCL's performance; by directing significant changes and additions to the scope of the above grade structural concrete work, which altered its character, and rendered it more costly and time-consuming to perform; by directing CCCL to work significant overtime to accelerate the pace of the work to overcome delays attributable to the Port Authority; by compelling CCCL to execute the work under jobsite conditions which were unanticipated and unforeseen and significantly and materially differed from the conditions under which CCCL originally anticipated it would be performing the above grade structural concreting operations; and by otherwise hindering and impeding CCCL's performance, all of which acts, omissions and breaches significantly increased CCCL's costs of construction to its great financial detriment.

(d) To induce CCCL to proceed with the work, at the point when the Port Authority's breaches had effectively rendered CCCL financially unable to continue

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<sup>2</sup> Certain claims asserted by Harris are set forth herein in accordance with the Debtors' obligations pursuant to a liquidating agreement entered into between CCCI and Harris.

executing the above grade structural concrete work, the Port Authority agreed to provide CCCL with the cash flow and funding necessary to permit it to continue concreting operations, and by agreeing to compensate CCCL for its costs of the work plus a reasonable fee upon completion, entered into a new agreement that converted the original contract into a Time and Materials ("T&M")/Cost Plus arrangement, pursuant to which CCCL was to be compensated for all its costs of the work and a reasonable fee, and the Port Authority, at that time, also assumed direct management control over critical aspects of the work, which arrangements as to payment and control existed until the Port Authority terminated CCCL's contract for convenience and thereafter repudiated its agreement as to funding the costs of the work plus payment of a reasonable fee.

(e) The provision of goods and services by CCCL to the Port Authority on the WTC Project, which conferred a substantial benefit to the Port Authority, is a fraudulent transfer pursuant to section 544 of the Bankruptcy Code because CCCL did not receive fair consideration in exchange for its performance of above grade structural concrete work on the WTC Project to substantial completion pursuant to the agreed T&M/Cost Plus arrangement and, as a result, was rendered insolvent, left with unreasonably small capital following its conveyance of goods and services, and caused CCCL to incur debts beyond its ability to pay as they matured.

(f) The Port Authority's breaches of contract, payment defaults, interferences, owner-initiated extra and additional work, changes, design revisions and delays on the WTC Project have given rise to a pass through claim asserted on behalf of CCCI's subcontractor Harris pursuant to its subcontract and liquidating agreement with CCCI.

3. *The time when, the place where and the manner in which the claims arose:*

The foregoing claims arose on December 29, 2015, when a Stipulated Order<sup>3</sup> was entered by the Bankruptcy Court (per Shelley C. Chapman, Judge), pursuant to which the Port Authority withdrew its objection and consented to the Bankruptcy Court exercising jurisdiction for all purposes to decide all matters relating to the resolution of CCCL's and CCCI's claims against the Port Authority, arising out of the WTC Contract and WTC Project, thereby effectively permanently staying and restraining the Port Authority's Chief Engineer from deciding said claims under the ADR provisions of Article 31 of the WTC Contract.

Subsequent to the Port Authority's termination of the WTC Contract for convenience, CCCL sought, without success, for approximately 18 months, to meet with the Port Authority to negotiate a settlement of the outstanding claims or, alternatively, invoke the ADR procedures under Article 31 of the WTC Contract to hold the Port Authority accountable for its breaches. Since the Port Authority refused to resolve these claims and since the Chief Engineer refused to entertain CCCL's claims and initiate the ADR procedures under the WTC Contract, CCCL was compelled to file for bankruptcy protection, as a result of which the ADR procedures were stayed, pursuant to Section 362(a) of the Bankruptcy Code (11 U.S.C. § 362(a)).

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<sup>3</sup> A copy of the Stipulated Order is annexed hereto as Exhibit "A".

The following claims relating to the Port Authority's wrongful and improper failure to pay CCCL for the work, labor and services performed and materials, equipment and supplies furnished to it under the WTC Contract for the WTC Project as well as the claims based on the Port Authority's failures to issue payment following termination of the WTC Contract for convenience and breach of the payment terms of the parties' agreement to pay CCCL on a T&M/Cost-Plus basis, all substantially occurred in the borough of New York in the City of New York, and more specifically at the WTC Project site.

All of the foregoing claims arise and stem from the Port Authority's breaches of contract, including its breach of its obligations to make proper, timely and full payment to CCCL for the work, labor, services it performed and the materials, equipment and supplies it furnished in fulfilling its obligations under the WTC Contract, as well as its denial of CCCL's access to the ADR procedure under Article 31 of the WTC Contract.

4. *The items of damages or injuries claimed are (include dollar amounts):*

The claim is in two parts, and as nearly as can now be determined, is as follows (see attached copy of claim computation, Exhibit "B" hereto):

a.	Claim for total cost damages on the above grade work:	\$87,312,257.13
b.	Additional claim asserted by supplier Harris:	\$3,173,313.00
	<b>Total amount claimed:</b>	<b>\$90,485,570.13</b>

**The total amount claimed set forth above does not include interest, reasonable attorney's fees, costs and disbursements, all of which are being sought by CCCL, together with such other and further relief as may be deemed by the Bankruptcy Court to be just and proper.**

The undersigned claimant therefore presents this claim for adjustment and payment. You are hereby notified that unless it is adjusted and paid within the time provided by law from the date of presentation to you, the claimant intends to commence a legal action on this claim.

Dated: December 29, 2015

ATTORNEY VERIFICATION

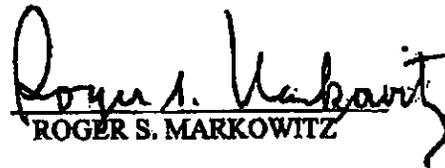
STATE OF NEW YORK     )  
  ) ss.:  
COUNTY OF NEW YORK    )

ROGER S. MARKOWITZ, being duly sworn, deposes and says:

I am a member of the law firm of Peckar & Abramson, P. C., special counsel for Collavino Construction Company Limited, debtor-in-possession in Chapter 11 proceedings now pending in the United States Bankruptcy Court for the Southern District of New York (the "Debtor"), and I affirm the following statements to be true under the penalties of perjury, pursuant to Rule 2016 of the CPLR:

I have read the foregoing Notice of Claim of Debtor and know the contents thereof, the same is true based upon my information and belief, which has been gained from review of documents maintained in the course of business by Debtor and documents produced in discovery by counsel for the Port Authority of New York and New Jersey and numerous conversations with Debtor.

The reason this Verification is made by deponent, and not by Debtor, is that at the time this document was prepared the Debtor was not present within the County of New York, where the deponent's office is located.

  
ROGER S. MARKOWITZ

Sworn to and subscribed before  
me this 24<sup>th</sup> day of December, 2015

  
(Notary Public)

DOUGLAS A. FRANKLIN  
Notary Public, State of New York  
No. 02FR8010100  
Qualified in New York County  
Commission Expires July 13, 2018

# EXHIBIT A

**EXHIBIT A**

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

In re:	Chapter 11
COLLAVINO CONSTRUCTION COMPANY INC., COLLAVINO CONSTRUCTION COMPANY LIMITED	Case No. 14-12908 (SCC) Case No. 15-10344 (SCC)
Debtors.	(Jointly Administered)

**STIPULATED AND AGREED ORDER BETWEEN THE DEBTORS  
AND THE PORT AUTHORITY PARTIES RESOLVING CERTAIN  
MOTIONS, OBJECTIONS AND RELATED RESPONSES**

This stipulated order ("Stipulated Order") is made and entered into by Collavino Construction Company Inc. ("CCCI"), Collavino Construction Company Limited ("CCCL" and, together with CCCI, the "Debtors"), the Port Authority of New York and New Jersey (the "Port Authority") and WTC Tower 1, LLC a/k/a 1 WTC Holdings, LLC a/k/a 1 World Trade Center, LLC ("1WTC" and, together with the Port Authority, the "Port Authority Parties") in connection with the resolution of the certain matters pending in the above-referenced cases.

WHEREAS, on October 17, 2014 and February 18, 2015, respectively, CCCI and CCCL filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"); and

WHEREAS, on November 4, 2014, CCCI commenced an adversary proceeding against, among other defendants, the Port Authority Parties, in which a claim for civil contempt sanctions against the Port Authority Parties and Tower 5, LLC remains outstanding (the "Contempt Adversary Proceeding", Adv. Proc. No. 14-02402 (SCC)); and

THE PORT AUTHORITY OF NY NJ  
LAW DEPARTMENT  
2015 DEC 30 A 11: 50  
CLAIMS ADMINISTRATION &  
RISK MANAGEMENT

**WHEREAS**, on February 23, 2015, the Debtors filed the *Debtors' Motion for Civil Contempt Sanctions Under 11 U.S.C. § 105(a) Against the Port Authority of New York and New Jersey and Tishman Construction Company Based on Failure to Comply with Orders of the Court* (the "Contempt Motion") [CCCI Dkt. No. 103]; and

**WHEREAS**, on January 12, 2015 and May 7, 2015, respectively, 1WTC filed proofs of claim in the CCCI bankruptcy case [CCCI Claims Dkt. No. 35] and the CCCL bankruptcy case [CCCL Claims Dkt. No. 11] (collectively, the "1WTC Claims"); and

**WHEREAS**, on March 2, 2015, the Debtors filed the *Debtors' Objection to Proof of Claim Filed by WTC Tower 1, LLC a/k/a 1 World Trade Center, LLC a/k/a 1WTC, LLC* (Claim No. 35) (the "Claim Objection") [CCCI Dkt. No. 113] and received responses thereto [CCCI Dkt. Nos. 177, 189 and 191]; and

**WHEREAS**, on March 10, 2015, the Port Authority Parties filed the *Motion of the Port Authority Parties (I) For Relief from Automatic Stay to Continue Contractual Dispute Resolution Proceeding and (II) For Stay of Proceedings on Debtors' Objection to Claim* (the "Stay Relief Motion") [CCCI Dkt. No. 118] and received responses thereto [CCCI Dkt. Nos. 187 and 193]; and

**WHEREAS**, on May 18, 2015, the Debtors filed the *Debtors' Motion for Entry of an Order in the Exercise of the Court's Discretion (I) Denying Enforcement of the Alternative Dispute Resolution Proceeding Under the WTC Contract Regarding the WTC Claim and the Port Authority Proofs of Claim and (II) Retaining Jurisdiction of the WTC Claim and the Port Authority's Proofs of Claim* (the "ADR Motion") [CCCI Dkt. No. 164] and received responses thereto [CCCI Dkt. Nos. 186, 193, 200 and 202]; and

**WHEREAS**, the Bankruptcy Court held a hearing June 16, 2015, at which time the parties agreed to pursue a global resolution of their disputes through mediation; and

**WHEREAS**, on June 25, 2015, the Bankruptcy Court entered an *Order Assigning Master to Mediation and Appointing Mediator* (the "Mediation Order") [CCCI Dkt. No. 215] which, among other things, appointed Melanie Cyganowski, Esq. as mediator; and

**WHEREAS**, in accordance with the Mediation Order, the parties participated in several mediation sessions, but despite good faith efforts the parties were unable to reach a global resolution of their disputes; and

**WHEREAS**, at the request of the Debtors, the Bankruptcy Court has scheduled a hearing for January 20, 2016 on the ADR Motion; and

**WHEREAS**, in an effort to narrow the issues before the Bankruptcy Court, the parties have agreed to resolve certain pending matters in accordance with the terms of this Stipulated Order; and

**WHEREAS**, following approval of this Stipulated Order by the Bankruptcy Court, the Debtors intend to commence an adversary proceeding in the Bankruptcy Court asserting various claims against the Port Authority Parties and objecting to the 1WTC Claims.

**NOW, THEREFORE, IT IS HEREBY STIPULATED, CONSENTED TO AND AGREED BY THE UNDERSIGNED PARTIES, AND IT IS HEREBY ORDERED BY THE BANKRUPTCY COURT, that:**

1. The Port Authority Parties hereby withdraw their objection to the ADR Motion and consent to the jurisdiction of the Bankruptcy Court for all purposes to decide all matters relating to the resolution of the Debtors' claims against the Port Authority Parties and the Port Authority Parties' claims against the Debtors.

2. The Port Authority Parties hereby withdraw the Stay Relief Motion.
3. The Debtors hereby withdraw the Contempt Motion.
4. The January 20, 2016 hearing will be converted into a status conference regarding the subject matter of this Stipulated Order and the Contempt Adversary Proceeding.
5. This Stipulated Order may be executed in one or more counterparts, each of which shall be deemed an original and all of which together shall constitute one and the same document. Signatures delivered by electronic mail or by facsimile shall have the same force and effect as delivery of an original signature.
6. The Bankruptcy Court shall retain jurisdiction to enforce any of the provisions of this Stipulated Order.
7. The terms and conditions of this Stipulated Order shall be effective and immediately enforceable upon execution hereof by the parties, subject only to the Bankruptcy Court approval of this Stipulated Order.

**STIPULATED AND AGREED:**

Dated: December 28, 2015

**CULLEN AND DYKMAN LLP**  
Attorneys for the Debtors

**DLA PIPER LLP (US)**  
Attorneys for the Port Authority Parties

By: /s/ Nathan Dee  
C. Nathan Dee, Esq.  
Elizabeth M. Abouafia, Esq.  
100 Quentin Roosevelt Boulevard  
Garden City, New York 11530

By: /s/ Kevin Kobbe  
C. Kevin Kobbe, Esq.  
Jamila Justine Willis, Esq.  
1251 Avenue of the Americas, 27th Floor  
New York, New York 10020

**SO ORDERED:**

Dated: December 29, 2015  
New York, New York

/S/ Shelley C. Chapman  
**THE HONORABLE SHELLEY C. CHAPMAN**  
**UNITED STATES BANKRUPTCY JUDGE**

# EXHIBIT B

**EXHIBIT B**

**COLLAVINO CONSTRUCTION COMPANY LIMITED CLAIM COMPUTATION**

Component	Amount
1. Total Reported Direct Above Grade Job Costs to January 18, 2013 Termination for Convenience	\$340,604,154
2. Reasonable Markup on Total Direct Above Grade Costs at 10% Overhead/10% Profit	\$71,526,872
3. Total Above Grade Job Costs	\$412,131,027
4. Total Agreed Payments on Account from Authority for Above Grade Work	\$324,818,770
5. CCCL Total Cost Damages on Above Grade Work	\$87,312,257.13
6. Harris Total	\$3,173,313.00
7. Total Amount Claimed: <sup>1</sup>	<b>\$90,485,570.13</b>

THE PORT AUTHORITY OF NY NJ  
LAW DEPARTMENT  
2015 DEC 30 A 11: 51  
CLAIMS ADMINISTRATION &  
RISK MANAGEMENT

<sup>1</sup> The total amount claimed set forth above does not include interest, reasonable attorney's fees, costs and disbursements, all of which are being sought by CCCL, together with such other and further relief as may be deemed by the Bankruptcy Court to be just and proper.

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**In the Matter of Claim of**

**COLLAVINO CONSTRUCTION COMPANY LIMITED**

**Against**

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

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**NOTICE OF CLAIM**

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**PECKAR & ABRAMSON, P.C.**  
*Attorneys for Claimants Collavino  
Construction Company Limited and Collavino Construction Company, Inc.*  
*Office and Post Office Address, Telephone*  
**41 MADISON AVENUE, 20<sup>TH</sup> FLOOR**  
**NEW YORK, NY 10010**  
**(212) 382-0909**  
**(212) 382-3456 (Fax)**

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115 Broadway, 11<sup>th</sup> Floor  
New York, NY 10006  
phone (212) 748-1001  
fax (212) 748-1199  
via: mail & e-mail

January 18, 2013

Mr. Renzo Collavino  
Collavino Construction Company  
5255 County Rd 42, RR#2  
Windsor, ON N8N 2M1

Re: Termination Notice  
Trade: TCA-WTC 1001-04.1: Concrete (Tower)

Dear Renzo,

In accordance with your Contract - Chapter IV clause 31, please be advised that the Owner has elected to Terminate your Contract as of January 18, 2013.

Sincerely,

**TISHMAN CONSTRUCTION CORPORATION**  
As Agent to 1WTC LLC.

A handwritten signature in black ink, appearing to read 'Mel Ruffini', written over a horizontal line.

Mel Ruffini  
Executive Vice President

Cc:  
S. Plate - PANYNJ  
B. Fox - 1WTC, LLC  
M. Mennella - TCC  
CCC File



File – Concrete – Below Grade Contract WTC – 1001.04-1

May 30, 2007

VIA MESSENGER

Mr. Milo Rivero  
Executive Vice President  
1WTC, LLC  
c/o The Port Authority of NY & NJ  
115 Broadway - 10th Floor  
New York, New York 10006

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

TRADE: CONCRETE – BELOW GRADE CONTRACT WTC-1001.04-1

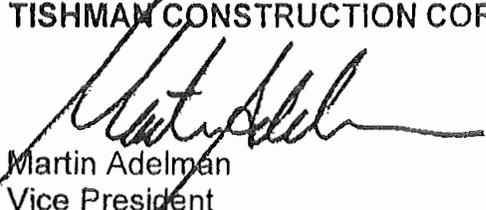
Dear Milo,

Pursuant to item #2A of the executed Limited Authorization To Proceed, dated May 29, 2007, Tishman has executed a Lump Sum Trade Contract with **Collavino Construction Company Ltd.**, dated February 8, 2007 in the amount of \$115,000,000.

Enclosed please find two (2) originals of the executed Contract for your use and information.

Very truly yours,

TISHMAN CONSTRUCTION CORPORATION



Martin Adelman  
Vice President

enclosure



Cc: M. Mennella – Letter only  
J. Durkin – Letter only  
J. Capone – Letter & Contract  
J. Estevez – Letter only  
R. Koller – Letter only

May 30, 2007

File: Concrete – Below Grade Contract WTC – 1001.04 -1

Mr. Renzo Collavino  
Collavino Construction Company Ltd.  
5255 County Road 42; RR 2  
Windsor, Ontario, Canada N8N 2M1

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

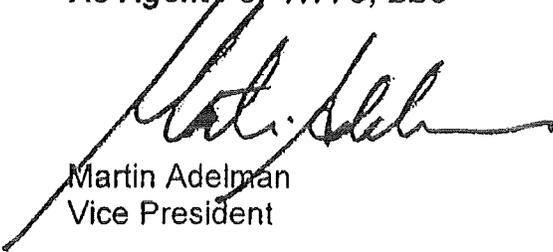
TRADE: CONCRETE – BELOW GRADE CONTRACT WTC-1001.04-1

Dear Renzo,

Enclosed please find one (1) copy of the executed Contract dated February 8, 2007 in the amount of \$115,000,000, for the above referenced project, for your use and information.

Very truly yours,

TISHMAN CONSTRUCTION CORPORATION  
*As Agent For 1WTC, LLC*



Martin Adelman  
Vice President

Enclosure

WORLD TRADE CENTER

CONCRETE (BELOW GRADE)  
LUMP SUM CONTRACT

CONTRACT WTC-1001.04-1

February 8, 2007

This Proposal is not complete unless bidder's  
signature appears on page

RECEIVED  
MAY 30 2007  
TISHMAN  
1WTC



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

**TRADE:** CONCRETE – 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:** COLLAVINO CONSTRUCTION COMPANY LIMITED  
5255 COUNTY ROAD 42  
WINDSOR, ONTARIO  
N8N 2M1  
(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:**

COLLAVINO CONSTRUCTION COMPANY LIMITED

TISHMAN CONSTRUCTION CORPORATION

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

\_\_\_\_\_  
(as Agent for the "Owner")

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

(Signature)

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

Martin Adelman, Vice President

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

May 29, 2007

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

May 10, 2007

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## LIST OF RIDERS

- Rider "A", General Addendum, dated February 8, 2007 (Revision #2)
- Rider "B", List of Drawings and Specifications, dated January 15, 2007
- Rider "C", Alternatives & Unit Prices, dated February 8, 2007 (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, February 8, 2007
- Rider "U", Additional Provisions, dated March 23, 2007
- List Of Pads And Curbs Sketches, dated January 8, 2007
- Curb Layout For Plaza annotated on Drawing L1.00, dated January 12, 2007
- Sketch ASK-3876: Workpoints of Modified Liner Wall, dated December 20, 2006
- Rider "A-ALT #5", General Addendum, dated February 8, 2007 (Revision #1) – ONLY PERTAINS TO  
ADD ALTERNATE #5 IN RIDER "C".

## 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.

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| 7.  | <p><b>Council for Airport Opportunity</b><br/>           90-04 161st Street Jamaica,<br/>           NY 11432<br/>           (718) 523-7100<br/>           Fax (718) 526-3472</p>                | 8.  | <p><b>Urban Business Assistance Corp.</b><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><b>Greater Jamaica Development Corp.</b><br/>           90-04 161st Street<br/>           Jamaica, NY 11432<br/>           (718) 291-0282<br/>           Fax (718) 291-7918</p>              | 10. | <p><b>NYS Assn. Of Minority Contractors</b><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><b>Professional Women in Construction</b><br/>           315 E. 56th Street, Suite 202<br/>           New York, NY 10022<br/>           (212) 486-7745<br/>           Fax (212) 486-0228</p> | 12. | <p><b>NY/NJ Minority Purchasing Council</b><br/>           205 East 42nd Street<br/>           New York, NY 10017<br/>           (212) 573-2385<br/>           Fax (212) 522-4004</p>  |
| 13. | <p><b>Jamaica Chamber of Commerce</b><br/>           90-25 161st Street, Room 505<br/>           Jamaica, NY 11432<br/>           (718) 657-4800<br/>           Fax (718) 658-4642</p>          | 14. | <p><b>Queens Overall Economic<br/>           Development Office</b><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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| <p>15.      <b>York College Small Business Development Center</b><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.      <b>Small Business Development Center - Rutgers University, University Heights</b><br/> 49 Bleeker Street<br/> Newark, NJ 07102<br/> (973) 353-1927<br/> Fax (973) 353-1110</p>                |
| <p>17.      <b>Small Business Development Center - Kean University</b><br/> East Campus, Room 242<br/> Union, NJ 07083<br/> (908) 527-2946<br/> Fax (908) 527-2960</p>                              | <p>18.      <b>New Jersey Air Services Development Office</b><br/> Newark Liberty International Airport Building #80 - Second Floor<br/> Newark, NJ 07114<br/> (973) 961-4278<br/> Fax (973) 961-4282</p> |
| <p>19.      <b>Caribbean-American Chamber of Commerce</b><br/> Brooklyn Navy Yard Brooklyn,<br/> NY 11205<br/> (718) 834-4544<br/> Fax (718) 834-9774</p>   | <p>20.      <b>Manhattan Hispanic Chamber of Commerce</b><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.      <b>Asian Women in Business</b><br/> 358 Fifth Avenue, Suite 504<br/> New York, NY 10001<br/> (212) 868-1368<br/> Fax (212) 868-1373</p>   | <p>22.      <b>Asian American Business Development Center</b><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

(PAGE 1 OF 6)

- 
- <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 <sup>4</sup> :	_____ _____ _____
The telephone number of the bidder is:	_____
The fax number of the bidder is:	_____
The E-Mail address of the bidder is:	_____

<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>5</sup>**

Dated, \_\_\_\_\_, 20

(Signature of individual or name of corporation or partnership)	_____
(Signature of agent, partner or corporate officer)	By <sup>6</sup> <sup>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 5 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:

**One Hundred Fifteen Million Dollars and Zero Cents (\$115,000,000.00)** (throughout this Contract called the "Lump Sum"), and such compensation only, subject only to the express provisions of this Contract specifically setting forth actual, defined additions to or deductions from such compensation.

The enumeration in this Form of Contract and in the Specifications of particular things to be furnished or done at the Contractor's expense, or without cost or expense to the Construction Manager, or without additional compensation to the Contractor shall not be deemed to imply that only things of a nature similar to those enumerated shall be so furnished and done.

## 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.

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.

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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".

**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 1 WTC.

Construction Manager shall retain five percent (5%) retention from all Payment Applications. In the event that Add Alternate #5 in Rider C (Alternates and Unit Prices), pertaining to the Concrete work in the Tower, is exercised, the five percent (5%) retention for this Lump Sum Contract (Concrete – Below Grade) shall be bifurcated and processed independently of Alternate #5, and shall be released exclusive of the costs for the pads and curbs work at the Plaza Level .

Each Payment Application period shall consist of two (2) payment applications per month. The date that the pencil draft of the first Payment Application in a calendar month to be submitted to Construction Manager and 1 WTC shall be determined by 1 WTC. On the 20th of each month, Contractor shall submit to Construction Manager and 1 WTC a pencil draft of the second 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.

Contractor will be permitted to include "Mobilization" as a line item in the Schedule Of Values (as set forth in Rider L), in the amount of 3.5% of the Lump Sum (value equals \$4,025,000), exclusive of retainage. This 3.5% "Mobilization" cost will be credited from each Payment Application accordingly at a 3.5% value for the Lump Sum Contract work.

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 (1) the Contractor may assign all or any portion of this Contract to Collavino Construction Company, Inc., a Delaware corporation, which is a wholly owned subsidiary of Contractor ("Contractor's Subsidiary"), or (2) subcontract all or any portion of this Contract to Contractor's Subsidiary, without the prior written consent of Construction Manager, such consent being hereby granted. The Contractor may subcontract portions of the Work to such persons as the Construction Manager may, from time to time, expressly approve in writing. The Corporate and Personal Guarantee Agreements, included in Rider U (Additional Provisions) shall be reaffirmed for all Assignments and Subcontracts to new entities. 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**

**SPECIFICATIONS  
DIVISION 1  
GENERAL PROVISIONS**

**60. CONSTRUCTION REQUIRED BY THE SPECIFICATIONS**

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

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

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

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

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

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

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

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

#### **61. AVAILABLE PROPERTY**

Subject to the conditions elsewhere stated herein, those areas to be occupied by the permanent construction will be made available to the Contractor upon the commencement of his first operations at the construction site, together with an area shown cross-hatched on Contract Drawing No. G003 and designated "Area Available For Contractor's Use".

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

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

The Contractor shall daily clean up the areas made available to him so that they are free at all times of refuse, rubbish, scrap material or debris.

#### **62. OPERATIONS OF OTHERS**

During the time that the Contractor is performing the Contract, other persons will be engaged in other operations on or about the construction site including the work of other Authority contracts all of which shall remain uninterrupted.

The Contractor shall so plan and conduct his operations as to work in harmony with others engaged at the construction site and not to delay, endanger or interfere with the operations of others (whether or not specifically mentioned above), all to the best interests of 1 WTC, the Authority and the public and as may be directed by the Construction Manager.

#### **63. LABOR ACTIONS**

Whenever any labor strike, slowdown, work stoppage, picketing or other labor action which might interfere with the performance of the Contract, or of other Construction Manager, 1 WTC, Authority or PATH contracts, or the operation of any 1 WTC, Authority or PATH facility, or any operations at the World Trade Center site occurs at the World Trade Center site or at any other 1 WTC, Authority or PATH facility as a result of the Contractor's (or its Subcontractor's) utilization of particular means, methods or manpower to perform the Work required by the Contract, the Contractor shall pursue all remedies which are appropriate and available to him to avoid such interference.

#### **64. CONTRACTOR'S MEETINGS**

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

The Contractor shall attend separate job progress and coordination meetings with the Construction Manager every week, or at times otherwise requested by the Construction Manager.

## **65. CONTRACT DRAWINGS**

The Contract Drawings, referenced in **Rider B** (List of Drawings and Specifications), do not show all of the details of the Work and are intended only to illustrate the character and extent of the Work to be performed. Accordingly, they may be supplemented during the performance of the Work by the Construction Manager or by the Contractor subject to the approval of the Construction Manager, to the extent necessary to further illustrate the Work.

An indication on the Contract Drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials does not constitute a representation as to the conclusions to be drawn therefrom nor a representation that no others exist in addition to those shown, even in the same location; nor does the absence of any indication on said drawings of the existence, nature or location of any utilities, structures, obstructions, conditions or materials constitute a representation that none exist.

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

## **66. INTENTIONALLY DELETED**

## **67. SHOP DRAWINGS, CATALOG CUTS AND SAMPLES**

The Contractor shall specifically prepare for this Contract all Shop Drawings which may be required in addition to the Contract Drawings or in addition to any other drawings which the Design Team or Construction Manager may issue in supplementing the Contract Drawings.

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

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

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

All submissions shall be identified as the Construction Manager may require. The data shown on the Shop Drawings shall be complete with respect to quantities, dimensions, conformance to the specified performance and design criteria, materials, test results and similar information to enable the Construction Manager to review the submittal as required.

The Contractor shall also submit nine (9) copies to the Construction Manager for review, and for approval by the appropriate member of the Design Team, pursuant to the approved Submittal Schedule, of all Catalog Cuts and samples for conformance to the requirements of the Contract Drawings. All Catalog Cuts and samples shall have been reviewed by the Contractor and shall be accompanied by a specific written indication that the Contractor has reviewed the submittal for conformance with the Contract Drawings and shall be identified clearly as to material, supplier, manufacturer's procedures and pertinent data such as catalog numbers and the use for which intended.

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

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

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

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

In preparing the Shop Drawings, the Contractor may adopt a sheet of any reasonable size which best suits its needs, but having adopted such size, all sheets thereafter of a similar nature shall be of the same size as that adopted. Each drawing shall have a margin on the top, bottom and right-hand side of one-half inch and on the left hand side a margin of one and one-half inches. Upon receipt of the submittal, the Construction Manager will review the Shop Drawing, Catalog Cut or sample for conformance to the design information and materials shown on the Contract Drawings and contained in the Specifications. Review by the Construction Manager and approval by the Design Team shall not constitute a complete review or approval of the means, methods, techniques, sequences or procedures of construction, except where a specific means, method, technique, sequence or procedure of construction is specifically delineated in or required by the Contract Drawings or Specifications, and the approval shall not constitute a review and approval in regard to safety precautions or programs incident thereto. The review and approval of a separate item will not in itself indicate approval of the assembly in which the item functions. Any design shown on the Shop Drawings and prepared by the Contractor, its Subcontractors, their detailers, or their professional engineers is the complete responsibility of the Contractor.

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

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

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

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

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

All drawings, data, calculations and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared in connection with this Contract and submitted to the Authority and 1 WTC shall become the property of 1 WTC. 1 WTC shall have the non-exclusive right to use or permit the use of all such drawings, data and other papers and any ideas or methods represented thereby for any purpose and at any time without additional compensation. No such papers shall be deemed to have been given in confidence. Any statement or legend to the contrary in connection with such drawings, data or other papers and in conflict with the provisions of this paragraph shall be void and of no effect.

## **68. SUBSTITUTION**

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

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

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

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

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

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

## **69. WORKMANSHIP AND MATERIALS**

Workmanship and materials shall in every respect be free from defects of any kind and shall be in accordance with the best modern practice and whenever the Contract Drawings, Specifications or directions of the Construction Manager admit of a doubt as to what is permissible or fail to note the quality of any construction the interpretation which calls for the best quality is to be followed. Workmanship shall conform to applicable Specifications, manufacturer's instructions and recommendations for installation of products for the applications shown on the Contract Drawings, all of which shall be subject to the provisions of the Section of Division 1 GENERAL PROVISIONS entitled "Inspections and Rejections".

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

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

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

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

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

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

All inventions, ideas, designs and methods contained in the Specifications and Contract Drawings in which 1 WTC has or may acquire patent, copyright or other property rights are hereby expressly reserved for the exclusive use of the Authority and/or 1 WTC. The Specifications and Contract Drawings contain confidential information which is disclosed only to enable this Contract to be performed. Said Specifications and Drawings must not be used for any purpose detrimental to the interest of 1 WTC and must not be produced or copied in whole or in part or used for furnishing information to others without the written consent of 1 WTC, provided, however, that the Contractor may, when the performance of the Contract so requires, furnish said information to others for the purpose of engaging or informing Subcontractors and Materialmen.

If, in accordance with this Contract, the Contractor furnishes research, development or consultative services in connection with the performance of the Contract and if in the course of such research, development or consultation patentable subject matter is produced by the Contractor, its officers, agents, employees, Subcontractors or Materialmen, 1 WTC and/or the Authority shall have, without cost or expense to it, an irrevocable, non-exclusive, royalty-free license to make, have made, and use, either itself or by anyone on its behalf, such subject matter in connection with any activity now or hereafter engaged in or permitted by 1 WTC and/or the Authority. Promptly upon request by the Construction Manager or 1 WTC, the Contractor shall furnish or obtain from the appropriate person a form of license satisfactory to 1 WTC, but as between the Contractor and 1 WTC the license herein provided for shall nevertheless arise for the benefit of 1 WTC immediately upon the production of said subject matter and shall not await formal exemplification in a written license agreement as provided for above. Such license may be transferred by 1 WTC to its successors, immediate or otherwise, in the operation or ownership of any real or personal property now or hereafter owned or operated by 1 WTC, but such license shall not be otherwise transferable.

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

The Contractor shall defend, indemnify the 1 WTC Indemnitee Group against and save them harmless from all loss and expense, including, without limitation, attorneys' fees and costs, incurred in the defense, settlement or satisfaction of any claims in the nature of patent, copyright or other intellectual property right infringement arising out of or in connection with 1 WTC or Authority use, in accordance with the preceding two paragraphs of this numbered clause, of such subject matter or material, software, firmware, compositions of matter, manufactures, apparatus, appliances, processes of manufacture or types of construction to which a patent, copyright or other intellectual property right applies or may apply. If requested by the Construction Manager or 1 WTC and if notified promptly in writing of any such claim, the Contractor shall conduct all negotiations with respect to and defend such claim without expense to 1 WTC or the Authority. If 1 WTC or the Authority be enjoined from using any of the facilities which form the subject matter of this Contract and as to which the Contractor is to indemnify the 1 WTC Indemnitee Group against patent, copyright or other intellectual property right claims, 1 WTC may, at its option and without thereby limiting any other right it may have hereunder or at law or in equity, require the Contractor to supply, temporarily or permanently, facilities not subject to such injunction and not infringing any patent, copyright or other intellectual property right or to remove all such facilities and refund the cost thereof to 1 WTC or to take such steps as may be necessary to ensure compliance by 1 WTC with such injunction, all to the satisfaction of 1 WTC and all without cost or expense to any member of the 1 WTC Indemnitee Group.

## **70. INSPECTIONS AND REJECTIONS**

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

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

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

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

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

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

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

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

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

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

Contractor may appeal to 1 WTC Construction Manager's rejection of any portion of the Work within five (5) days of such rejection. 1 WTC's decision of such appeal shall be final.

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

#### **71. MANUFACTURERS' CERTIFICATION**

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

#### **72. NO RELEASE OF CONTRACTOR**

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

### **73. ERRORS AND DISCREPANCIES**

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

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

### **74. ACCIDENTS AND FIRST AID PROVISIONS**

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

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

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

### **75. SAFETY PROVISIONS**

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

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

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

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

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

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

The Contractor's duties and responsibilities for the safety and protection of the Work shall continue until such time as all the Work is completed and the Contractor has removed all workers, material and equipment from the construction site, or the issuance of the Certificate of Final Completion, whichever shall occur last.

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

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

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

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

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

In the event the Contractor encounters at the construction site, material reasonably believed to be asbestos, polychlorinated biphenyl (PCB) or any other hazardous material, the Contractor shall immediately stop Work in the area affected and report the condition in writing to the Construction Manager. Work in the affected area shall not thereafter be resumed by the Contractor except upon the issuance of a written order to that effect from the Construction Manager.

Within fifteen (15) days of the acceptance of his Proposal, the Contractor shall submit to the Construction Manager, for Construction Manager's review and approval, the Contractor's Safety Program which shall comply with all applicable federal, state, municipal and local and departmental laws and shall include, among other things, the designation by the Contractor of a qualified individual to administer such Safety Program.

#### **76. DAILY PROGRESS, EQUIPMENT AND LABOR REPORTS**

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

#### **77. LAWS AND ORDINANCES**

Contractor shall apply for and obtain all required permits to perform its Work. In order to effectuate the policy of the Authority, which the Construction Manager and 1 WTC adopt as set forth herein, the Contractor shall comply with all provisions of federal, state, municipal, local and departmental laws, ordinances, rules, regulations, permit requirements, and orders which would affect the Contract and the performance thereof and those engaged therein if said Contract were being performed for a private corporation, except where stricter requirements are contained in the Contract Drawings, in which event the latter requirements shall apply. However, the Contractor shall not apply for any permits, licenses or variances in the name of or on behalf of the Construction Manager and 1 WTC, but shall do so in Contractor's own name, unless otherwise prohibited by law. Contractor shall not apply for any variance without first obtaining the approval of the Construction Manager and 1 WTC.

#### **78. IDENTIFICATION**

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

#### **79. SIGNS**

No advertisement or sign, other than the name and address of the Contractor, will be permitted on any fences, temporary structures or elsewhere on the construction site and such advertisement will be permitted only upon the condition that it is first approved by the Construction Manager. In any event, the advertisement shall not exceed six feet by eight feet (6' x 8') in overall dimensions.

#### **80. CONTRACTOR'S FIELD OFFICE AND REPRESENTATIVE**

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

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

Orders and directions may be given orally by the Construction Manager and shall be received and promptly obeyed by the Contractor or his representative or any superintendent, foreman or other employee of the Contractor who may have charge of the particular part of the Work in relation to which the orders or directions are given. A confirmation in writing of such orders or directions will be given by the Construction Manager when so requested by the Contractor.

## **81. SURVEYS**

The Construction Manager will establish a bench mark and a base line based on information provided by Engineer at or adjacent to the location of the Contractor's operations. The Contractor shall perform all surveys which may be required for the performance of the Contract. He shall carefully preserve any base line and bench mark which may be established by the Construction Manager.

The Contractor shall, in addition, furnish to the Construction Manager, without additional compensation therefor, any or all information and data regarding points, lines, grades, elevations and other survey information established by the Contractor during the performance of the Contract.

Surveys and measurements of quantities for purposes of computing Contractor's compensation shall be made by the Contractor as directed by and in the presence of, or jointly with, the Construction Manager, at the Construction Manager's option. Computations of quantities for payment shall be made by the Contractor and shall be subject to the approval of the Construction Manager.

## **82. TEMPORARY STRUCTURES**

Unless otherwise provided in this Contract, the Contractor shall determine the need for and shall design, furnish and construct all barricades, fences, staging, falsework, formwork, shoring, scaffolding and other temporary structures required in the performance of the Contract, whether or not of the type enumerated in the Specifications or on the Contract Drawings, including those which would be required by law or regulation if this Contract were being performed for a private corporation. All such temporary structures shall be of adequate strength for the purposes for which they are constructed and shall be provided with graphics, warning signs and warning lights as required to inform personnel and the public of the hazards being protected against, and the Contractor shall maintain them in satisfactory condition. The design and drawings for such structures are to be prepared by the Contractor, and when requested by the Construction Manager they shall be submitted for Construction Manager's review before being used. Neither such approval, however, nor any requirements of the Engineer, Construction Manager or Contract Drawings shall relieve the Contractor of his responsibility for the design, construction and use of the temporary structures or from any obligations and risks imposed on him under this Contract, and any such approval or requirements shall be deemed merely to relate to minimum standards and not to indicate that the temporary structures are adequate or that they meet the Contractor's obligations under this Contract.

Temporary structures shall be painted with an approved dark color paint and shall be repainted whenever necessary during the period that the Contract is being performed. Upon completion of all Work under this Contract, the temporary structures shall be removed from the construction site.

### **83. PERMIT AND REQUIREMENTS FOR WELDING**

Prior to the commencement of any cutting or welding operations at the construction site, the Contractor shall notify the Construction Manager and obtain a 1 WTC cutting and welding permit. 1 WTC will issue this permit without payment of a fee, and application forms may be obtained from Construction Manager. Unless otherwise approved by 1 WTC, all cutting and welding operations shall be performed in accordance with the conditions which form a part of said permit. The permit application must be filled out and submitted in duplicate to the Construction Manager at least forty-eight (48) hours prior to commencing welding or cutting operations at the construction site.

### **84. FINAL INSPECTION**

When, in the opinion of the Contractor, the construction is completed and ready for final inspection, he shall so notify the Construction Manager in writing, who will give said construction (including any portions with respect to which Certificates of Partial Completion have been issued) a minute and thorough inspection. Before any Certificate of Final Completion will be issued, any defects or omissions noted on this inspection must be corrected by the Contractor.

### **85. WARRANTIES**

The Specifications may provide for certain warranties of portions of the permanent construction. These warranties are intended for the greater assurance of 1 WTC and not as a substitute for rights which 1 WTC might otherwise have. Although such warranties shall be enforceable as provided, neither any requirement of this Contract with respect to warranties by the Contractor nor any guarantee or warranty given to the Contractor or 1 WTC by any manufacturer shall be deemed to be a limitation upon any rights which 1 WTC would have, either expressed or implied, in the absence of such guarantees or warranties.

### **86. UTILITY RECORD DRAWINGS**

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

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

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

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

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

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

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

**RIDER "D"**  
**INSURANCE RIDER**

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

**TRADE: CONCRETE – 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-returned 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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**1. Owner Controlled Insurance Program.**

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

**1.2 Enrolled Parties and Their Insurance Obligations.**

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

(i) 1 WTC, the Authority, and other affiliated entities;

(ii) Construction Manager;

(iii) eligible Contractors, eligible Subcontractors of any tier, and eligible Subconsultants of any tier, who are approved by 1 WTC, Construction Manager, and Aon for purposes of inclusion in the OCIP; and

(iv) such other persons or entities as 1 WTC, Construction Manager, and Aon may designate.

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



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

**1.3 Excluded Parties and Their Insurance Obligations.**

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

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

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

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

**1.6 Evidence of Coverages.**

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

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

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

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

**1.8 Enrolled Parties Responsibilities – Insurance Costs.**

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

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

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

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

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

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

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

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

**1.9 Contractor's OCIP Obligations.**

(a) Contractor shall:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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Attachment DX-1

**Summary of OCIP Coverages**

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**ATTACHMENT DX-1**

**SUMMARY OF OCIP COVERAGES**

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

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

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

A. Workers' Compensation

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

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

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

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**ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued**

**B. Commercial General Liability Insurance**

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

1. Primary \$2,000,000 Combined Single Limit (CGL) each one occurrence.
2. \$498,000,000 each occurrence in excess of the \$2,000,000 primary limit.
3. Losses insured under the Commercial General Liability and Excess Liability policies may be subject to certain annual, or period, aggregation of limits of liability as more fully described in the insurance policy documents.
4. General Liability and Excess Liability policies include the following coverages and provisions:
  - **Bodily Injury and Property Damage Liability**
  - Completed Operations extended for three (3) years from the date of termination of the Insurance Policy or completion of the Contract, whichever comes first. "Completed Operations Liability", means liability for "Bodily Injury" and/or "Property Damage" arising out of the "Insured's" operations or reliance upon a representation or warranty made at any time with respect thereto, but only if the "Bodily Injury" and/or "Property Damage" happens after such operations have been completed or abandoned and happens away from the premises owned by or rented to any "Insured" (other than those premises owned or operated by the named "Insured").
  - Personal Injury Liability
  - **Cross Liability in respect to Bodily Injury claims**
  - Incidental Malpractice Liability
  - Advertising Liability
  - **EXCLUSIONS** include, but are not limited to:
    - Aircraft Liability
    - Asbestos/Environmental
    - Automobile Liability and Physical Damage
    - Intentional acts
    - Pollution
    - Professional Liability

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**ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued**

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

**C. Builder's Risk Insurance**

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

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

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

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**ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES – continued**

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

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

3. The policies contain various EXCLUSIONS, including but not limited to:

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

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**ATTACHMENT DX-1 - SUMMARY OF OCIP COVERAGES - continued**

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

D. Contractors Pollution Liability

Contractors Pollution Liability coverage is as follows:

1. Limits - \$100,000,000 each loss for the Combined Project, with a \$100,000,000 policy aggregate.
2. Sub-limit - \$10,000,000 Microbial Matter.
3. Bodily injury, property damage, or environmental damage caused by pollution conditions resulting from covered operations (the project work) only, and must be unexpected and unintended from the standpoint of the Insured.
4. The bodily injury, property damage, or environmental damage must occur during the policy period.

E. Terrorism

1. Limits - \$500,000,000

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

Coverage includes acts considered "certified" and "non-certified" acts of terrorism.



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

**EXHIBIT C**

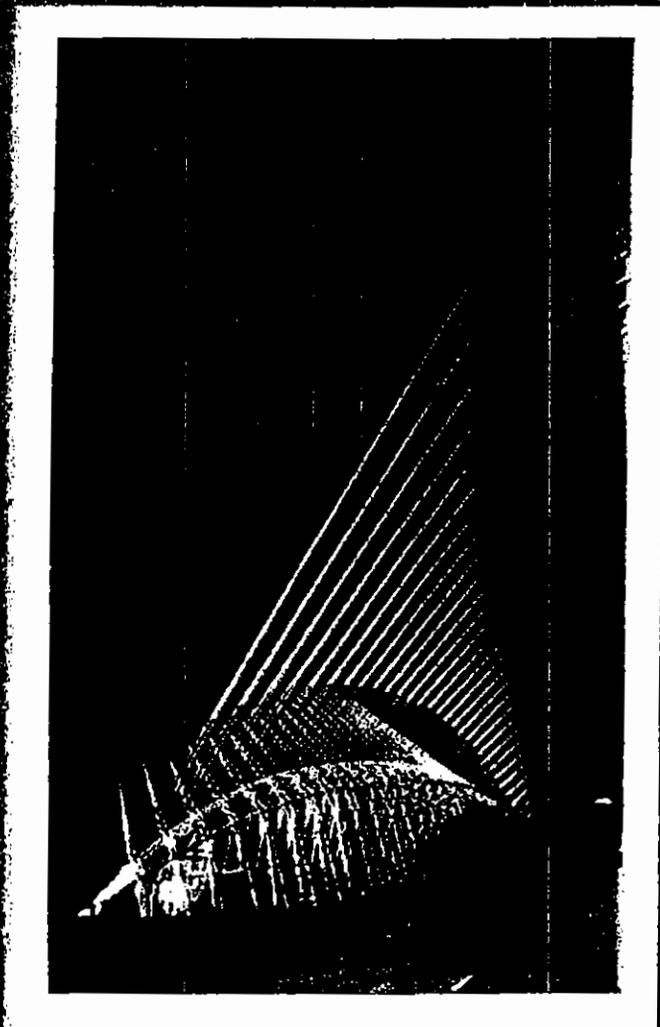
**SECURITY INFORMATION PRACTICES AND PROCEDURES (SIPP)**

**(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

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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>
<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>

<b>Identifying Information of Certain Transportation Security Personnel</b>	<b>SSI</b>	<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>
<b>Critical Aviation or Maritime Infrastructure Asset Information</b>	<b>SSI</b>	<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>
<b>Systems Security Information</b>	<b>SSI</b>	<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.



**THE PORT AUTHORITY OF NY & NJ**

Appendix I.

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

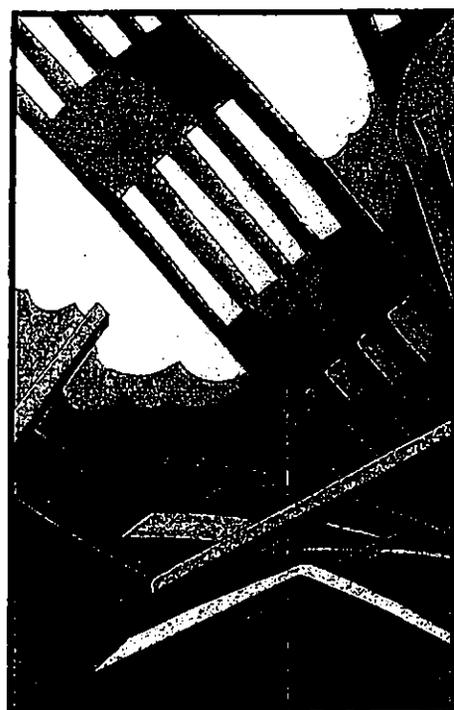


# The Need

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

U.S. Department of Homeland Security:

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



## Introduction

# Port Authority Confidential and Privileged Security Information

## Sensitive Security Information

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

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

## What are we protecting?

# The Goal of the Program

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

Trying to get everyone  
on the same page.

# The Main Components of the Program

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

Integration

# Security Manual: establishes procedures for ...

Use and storage

Reproduction

Transmission/Shipment of Sensitive Information

Disposal of information

Marking of Sensitive Material

Team Rosters

Document Accountability Log

Information Technology Systems

## Handling Requirements

# Practically Speaking ...

**What** information do we protect?

&

**How** do we protect it?

What do I need to do?

# The Security Manual: establishes procedures for ...

- **Use and storage**

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

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

- **Reproduction**

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

# The Security Manual: establishes procedures for ...

- **Team Roster**

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

These lists will be exchanged among the project team.

- **Transmission & Shipment**

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

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

# The Security Manual: establishes procedures for ...

- **Disposal of Security Information**

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

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

- **Marking of Security Information**

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

# Access Control Guide: Which Information Gets Protected?

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

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

## Identification

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

Design Requirements and Calculations for Blast Protection

Design Drawings with Specific Forced Entry Ratings

Specifications for Sensitive Contractor Design Items

Shop Drawings that provide Specific Rating Information

Record Documents Identifying Protective Measures around  
Operations & Control Centers

Record Documents identifying the Location of Police and  
Emergency Communication Lines

## Which information?

# Confidentiality Agreement

## Non-Disclosure and Confidentiality Agreement:

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

## Individual Acknowledgement:

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

# The Security Information Manager

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

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

Key point of contact

# Security Violations

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

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

## Failure to comply

# Next Steps

Non-Disclosure & Confidentiality Agreement /  
Acknowledgement

The Security Manual / Access Control Guide

Selection of a Security Information Manager

Briefings & Training

## Implementation

Exhibit "C"

**World Trade Center Construction Department  
Downtown Restoration Program  
Port Authority Projects\* at the WTC Site  
Security Information Practices and Procedures (SIPP)**

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

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

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

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

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4. Safeguarding Security Information	3
5. Marking Documents	5
6. Authorized Personnel Project Lists	(not included)
7. Document Accountability Log	(not included)
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## **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:	
 THE PORT AUTHORITY OF NY & NJ	

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

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

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

#### **Multiple Copies**

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

#### **SECTION 6. Authorized Personnel Project Lists, not included**

#### **SECTION 7. Document Accountability Log, not included**

#### **SECTION 8. Information Technology Systems**

##### **Purpose**

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

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

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

##### **Transmission/ Exchange of Electronic Information**

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

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

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

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

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

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

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

#### **Secure Data Disposal**

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

## **SECTION 9. Bidding & Procurement**

### **Introduction**

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

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

### **Process**

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

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

The numbering system should comply with the following:

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

Other items of note/ concern include:

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

### **Procedure**

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

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

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

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

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

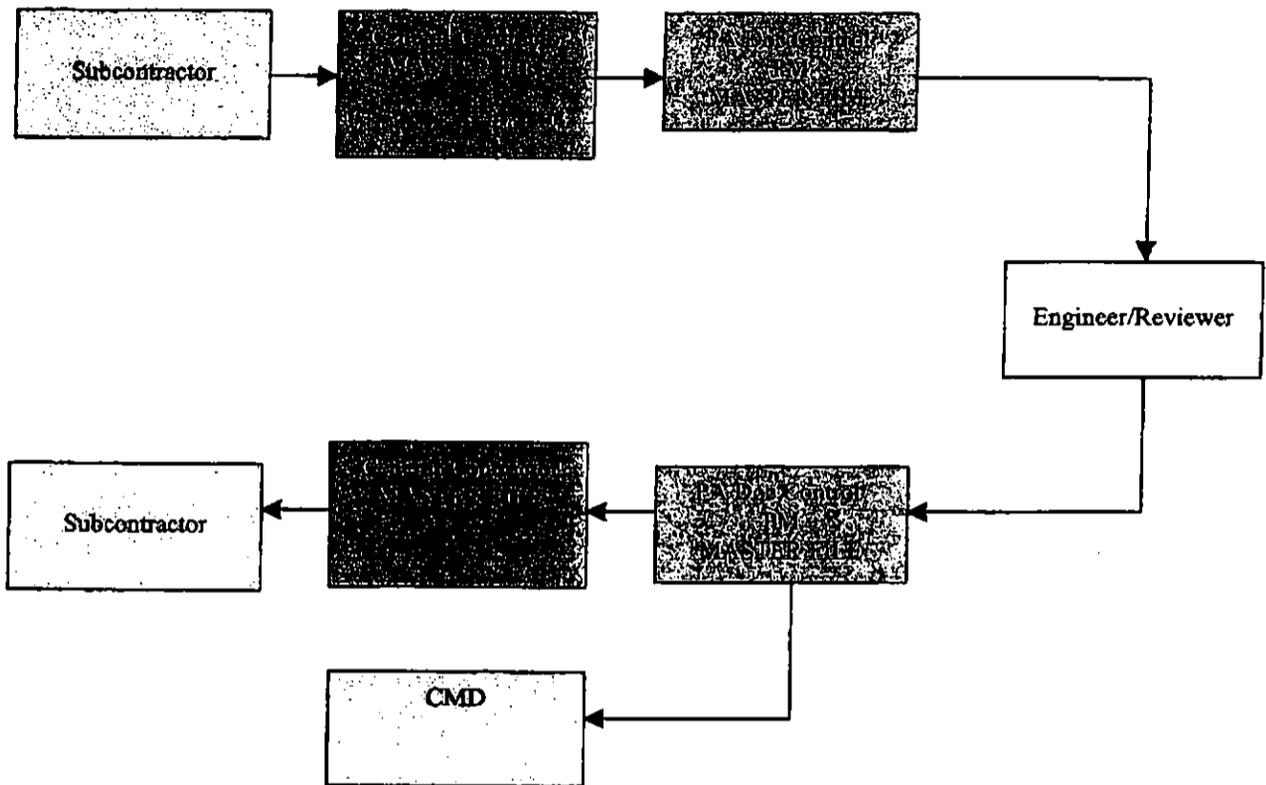
The engineer/ architect reviewer completes the review within the required time frame, maintains one copy for its records, and returns the marked-up remainder to PA Document Control. A TAF is required to be signed by PA Document Control and returned to the engineer/ architect reviewer.

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

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

(See Flow Chart attached).

## C&P Shop Drawing Procedure Flow Chart



## **SECTION 10. Security Access Control Guide**

### **Purpose**

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

### **Standards**

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

### **Applicability**

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



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

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

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

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

The guidelines are available at the following link:  
[http://renewnyc.com/content/pdfs/rod/04\\_Appendix\\_D.pdf](http://renewnyc.com/content/pdfs/rod/04_Appendix_D.pdf)

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

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

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

**A. Non-compliance**

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

**B. Payment, Liability, and Claims**

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

**C. Testing and Inspection**

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



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

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

**A. SDG SEQ-5: Construction Environment Plan**

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

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

**Action:**

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

**1. Air Quality: Diesel Emission Mitigation**

**a. Ultra Low Sulfur Diesel Fuel**

All diesel-powered non-road equipment to be used in the performance of Work under this Contract shall use Ultra Low Sulfur Diesel (ULSD) fuel that is certified to contain an average sulfur content of no more than 15 parts per million (ppm) as determined over a six month period. In the event that the Contractor can clearly demonstrate that ULSD fuel with an average sulfur content of not more than 15 ppm is not available, a written

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waiver may be granted by the Construction Manager until such time that the ULSD fuel has become available, or an approved equal is determined by the Construction Manager to satisfy the intent of this Rider. The Construction Manager shall collect monthly samples of the ULSD fuel used during the period directly from the fuel tanks of the non-road diesel-powered equipment used on the construction site. The Testing Standards shall include but are not limited to:

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

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

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

[http://www.epa.gov/otaq/retrofit/cont\\_fuels.htm](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 Bathtub (as such location is commonly referred to), and the Construction Manager determines that a potential exists for the existing slurry wall to be damaged, the Contractor shall furnish and install appropriate protective measures approved by the Construction Manager that provide a clear, unobstructed, recognizable and respectful view of the wall.
2. **Protection of Historic Resources from Construction Vibration:** The Contractor shall develop and implement specific mitigation measures with respect to Contractor's Work (as discussed in Section 4 Vibration Abatement) to protect other surrounding properties from increased vibration levels associated with construction activities at the site. Such measures shall reduce vibration to a level below the threshold criterion of 0.12 in/sec (approximately 95 VdB):

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**d. Monitoring Program**

**1. Periodic Monitoring:**

Prior to construction, the Contractor shall meet with the Construction Manager to establish a program to periodically inspect and examine all protection measures in place to verify compliance with the applicable provisions of the RPP. The Contractor shall develop and submit a written monitoring program for the review and approval of the Construction Manager. The program shall include an Emergency Remediation Plan (the "ERP") identifying the emergency contacts and outlining the procedures to be followed should an unforeseen condition or unanticipated damage arise that compromises or places at risk any historic element on the WTC site. Once approved by the Construction Manager, the Contractor shall set aside the materials, products and equipment in a safe and accessible location on the WTC site to ensure an immediate response to any such occurrence.

**2. Routine Monitoring:**

During the progress of the Work, the Construction Manager will routinely review (inspect) all protection measures in place to verify compliance with the applicable provisions of the RPP. Upon the completion of the Construction Manager's review, a meeting will be conducted with the Contractor to discuss and document the following:

- a. The progress achieved since the previous inspection;
- b. An assessment of the performance of the protection measures in place, and a determination of the adjustments or modifications required to correct non-compliances with the requirements of the RPP;
- c. A review of the upcoming scheduled Work activities, a determination of the required protection measures, and a verification that the existing protective measures are adequate for such activities. If necessary, there will be a determination of supplemental measures to be implemented for compliance with the requirements of the RPP.

**3. Emergency Remediation**

Should any condition arise or damage occur during performance of Contractor's Work or other construction that compromises the integrity of the in-place protection measures, or adversely affects any historic element on the WTC site, the Contractor shall stop its Work in the affected area, immediately notify the Construction Manager, and implement the relevant measures outlined in the approved ERP as directed by the Construction Manager. At a minimum, the notification to the Construction Manager shall include a description of the following:

- a. The situation that arose;
- b. Its cause, if known;
- c. Response measures implemented;
- d. Recommendations for further intervention, if any.

The Construction Manager will determine whether or not the Contractor may resume Work in the affected area. If not, the Contractor shall repair and/or furnish and install all supplemental remediation and mitigation measures deemed appropriate by the Construction Manager. All repair Work shall be done in such a manner as to minimize the adverse impact to the affected historic element.

**6. [Intentionally Left Blank]**

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**7. Discoveries of Archeological Resources and Effects on Historical Resources**

In the event that archaeological deposits or features are encountered during the performance of construction activities, the Contractor shall stop all Work immediately, flag or fence off the archaeological discovery location, and immediately notify the Construction Manager. The Contractor shall not recommence its Work until so directed by the Construction Manager.

**8. Construction Protection Plan**

The Contractor shall develop and submit to the Construction Manager for review and approval a comprehensive Construction Protection Plan (CPP) to address the implementation, enforcement and monitoring of the Environmental Performance Commitments (EPCs) as outlined in the previous Sections 1 through 6 of this Specification for Air Quality: Diesel Emission Mitigation and Dust Control, Noise and Vibration Abatement, Cultural and Historic Resource Protection, and Archaeological Discoveries. The CPP shall be submitted to the Construction Manager for review and approval within thirty (30) calendar days of acceptance by the Construction Manager of the Contractor's proposal. No Work by the Contractor shall commence until the CPP is approved by the Construction Manager. The CPP will be organized to address each EPC Section, and shall include the following plans:

- **Diesel Emission Mitigation (DEM) Plan** (as per Section 1);
- **Dust Control (DC) Plan** (as per Section 2);
- **Noise Control and Abatement (NCA) Plan** (as per Section 3);
- **Vibration Control And Abatement (VCA) Plan** (as per Section 4);
- **Emergency Remediation (ERP) Plan** (as per Section 5);

**B. SDG SEQ-6: Construction Storm Water Runoff and Pollution Prevention**  
**LEED SS-P1 – Erosion and Sedimentation Control Plan**

Unless otherwise directed by the Construction Manager, the Contractor shall provide all methods and means to control site erosion and reduce negative impacts on hydrological and atmospheric systems produced by construction activities in compliance with SEQ-6, Construction Storm Water pollution Prevention Plan and LEED 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.

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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 utilized 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 utilized 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.

<b>M.</b>	<b><u>LEED EQ C4.1</u></b>	<b><u>Low Emitting Materials – Adhesives and Sealants</u></b>
	<b><u>LEED EQ C4.2</u></b>	<b><u>Low Emitting Materials – Paints and Coatings</u></b>
	<b><u>LEED EQ C4.3</u></b>	<b><u>Low Emitting Materials – Carpet Systems</u></b>
	<b><u>LEED EQ C4.4</u></b>	<b><u>Low Emitting Materials – Composite Wood and Agrifiber</u></b>

**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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**LEED CERTIFICATION GENERAL REQUIREMENTS**  
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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.



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All contractors working in or about the PATH Right of Way (ROW) shall comply with the following requirements. All costs related to such compliance shall be included in the contract price. In addition, contractors working on the B-4 level, shall be restricted to performing work at off peak times and shall meet Port Authority and PATH requirements. PATH force account employees will be working in the PATH and adjacent areas doing maintenance and construction work and shall not be interrupted by Contractor personnel.

**1. Notification of Security Requirements:**

The Port Authority of New York and New Jersey (Port Authority) has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Port Authority reserves 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 the Port Authority. These security requirements may include but are not limited to the following:

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

The Contractor may be required to have its staff, and any subcontractor's staff, authorize the Port Authority or its designee to perform background checks. Such authorization shall be in a form acceptable to the Port Authority.

The Contractor shall, if directed by the Construction Manager, have identity checks and background screening performed by a firm designated by the Construction Manager. The Contractor will be compensated for having such identity checks and background screening performed by such firm designated by the Construction Manager, and the cost of such work to be paid by WTC Redevelopment LLC and at no cost to the Port Authority.

The Construction Manager may impose, increase, and/or upgrade security requirements for the Contractor and its staff and subcontractors during the term of this agreement to address changing security conditions and/or new governmental regulations.

**2. General Requirements**

In the performance of the Contract, the Contractor shall exercise every precaution to prevent injury to workers and the public or damage to property.

The Contractor shall, at its 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.

If necessary, PATH flagman will be provided in the track area at no cost to this Contractor.

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. The Contractor shall provide names of all



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supervisors and their office, home and cell phone numbers in case of emergency. The competent person shall be onsite whenever this Contractor's work is being performed.

The Contractor shall 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 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 workers who are physically fit and are free from contagious or communicable diseases.

The Contractor shall use only machinery and equipment adapted to operate with the least possible noise, and shall so conduct its operations such 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 is 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 its 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, false work, temporary fences and other temporary structures, including foundations thereof, plant of any description and debris of every nature resulting from its operations and shall put the construction site in a neat, orderly condition. At the end of every shift prior to turning the area back over to PATH, the EIC will do a walk through with the Construction Manager's Superintendent to ensure that all men and materials are clear.

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 Port Authority. 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

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Construction Manager.

Within 15 days of the acceptance of its Proposal, the Contractor shall submit to the Construction Manager, for its 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.

**3. Maintenance of Traffic and Work Area Protection**

**a. Definitions**

As used in this numbered Section, and this Section only, the terms used herein shall have the following meaning:

1. The terms "Traffic Lane", "Lane", "Active Roadway", "Street", and "Roadway" shall mean, in addition to the normally traveled pavement areas, other areas including but not limited to ramp terminal gore areas, roadway shoulders, and all other areas that may foreseeably be occupied by moving vehicles.
2. "Flashing Arrow Sign Unit" (FASU) shall mean an engine/generator-, solar-, or battery-powered flashing light sign with lights displayed in the shape of an arrow.
3. "Variable Message Sign Unit" (VMSU) shall mean an engine/generator-, solar-, or battery-powered variable text sign using a matrix composed of elements such as fluorescent flip-disc, fiber optic, light-emitting diode (LED), or incandescent bulb elements.
4. "Nighttime Hours" shall mean the local time period between ½ hour after sunset to ½ hour before sunrise.
5. "Slow-Moving Vehicles" shall mean vehicles or equipment that travel at or under a speed corresponding to 15 mph less than the posted speed limit.
6. "Work Area" shall mean the area immediately surrounding the Work in progress, typically where workers are afoot, and/or the space within a Roadway where Work on the Roadway is being done by the Contractor.

**b. General Requirements**

The work shall conform to the following:

1. Portions of the latest editions, including all amendments thereto, of the Federal Highway Administration (FHWA): "Manual on Uniform Traffic Control Devices" (MUTCD) Part VI as hereinafter specified and applicable portions of the companion "Traffic Control Devices Handbook" (TCDH): "Standard Highway Signs", "Standard Specifications for Construction of Roads and Bridges on Federal Highway Projects"; and, the "Standard Color Tolerance Charts".
2. American Association of State Highway and Transportation Officials (AASHTO): "Roadside Design Guide", Chapter 9: Safety Appurtenances for Work Zones; and "Standard Specifications for Highway Bridges", as hereinafter specified.
3. The requirements of the Americans with Disabilities Act (ADA) laws in all respects as specified in the "ADA Accessibility Guidelines for Buildings and Facilities" (ADAAG).
4. American Traffic Safety Service Associations (ATSSA): "Guidelines for the Use of Portable Changeable Message Signs".
5. Maintenance of traffic and Work area protection features included herein and as

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shown on Contract drawings to be furnished to the Contractor.

6. In the event of a technical conflict between a requirement in the publications referenced herein and the Contract documents, the requirements of the Contracts documents shall control, unless otherwise directed by the Port Authority.
  7. There may be more than one Work Area within the confines of a closed Roadway or Traffic lane. Each Work Area shall be individually protected as specified herein.
- c. Contractor-Furnished Materials and Equipment
1. Provide and maintain in good working order all materials, equipment, temporary construction signs and facilities required for proper maintenance of traffic and Work Area protection, as specified herein and/or shown on the Contract Drawings. All said equipment/devices shall remain the property of the Contractor unless otherwise shown on the Contract drawings.
  2. All items provided under paragraph C.1 shall be new or undamaged previously used materials in serviceable condition conforming to requirements specified herein.
  3. The Contractor shall use only fire rated materials for temporary and permanent construction. For safety purposes, metal studs or sheet-metal will not be permitted for temporary enclosures or ballast retention.

**4. Path Operations and Conditions**

The Contractor shall comply with the following provisions and requirements:

a. Construction Site Conditions

- 1) Schedule and perform the Work, in accordance with a plan submitted to and approved by the Construction Manager, and in such a manner as not to delay, endanger, or interfere with PATH operations. To the extent feasible the schedule sequence, if any, and the times of the Contractor's operations, once approved, will be adhered to and operations of PATH and others will be scheduled so as to cause the least interference with the Contractor's operations. However, should the Construction Manager advise that any portion of the area in which the Contractor is working is required by PATH, the Contractor will be required to suspend operations and remove personnel, and obstructing plant, equipment and materials from such areas, within ½ hour of notice to suspend operations and stand by, if necessary, until directed by the Construction Manager to resume operations in such areas.
- 2) Should the Contractor be specifically directed to suspend operations as provided in A.1, and if solely because of such direction and not due to fault of the Contractor, the Contractor is required to be kept idle at the PATH work area, the Contractor will redirect it forces to work elsewhere. The Contractor will not be compensated for these occurrences.
- 3) To enable the Contractor to plan Work of the Contract, and to enable PATH to plan train service operations, maintenance operations, and operations of others, the Contractor shall prepare and submit for approval in accordance with "Coordination" hereof, a weekly schedule of operations for Work of the Contract. The Contractor shall submit its weekly schedule to PANYNJ – Priority Capital Programs (PCP), who will in turn submit to PATH for approval, no later than the Monday preceding the week of the planned start date.

- 4) At least 7 days but not more than 10 days prior to performing excavation, call 1-

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800-272-4480 and provide the information required for excavations(s) in New York and call 1-800-272-1000 and provide the information required for excavations(s) in New Jersey.

- 5) Take all precautions necessary for protection of persons and property during dust or fragment generating operations, concrete mixing or placing, painting or other operations which may stain, soil or damage property, or injure persons. Provide and erect waterproof, fire-resistant, UL labeled tarpaulins with flame spread rating of 15 or less or other protective enclosures as approved by the Port Authority.
- 6) The Contractor, employees of the Contractor, subcontractors, materialmen or other persons over whom the Contractor has control (hereinafter in this Section "Contractor's Personnel") shall conform to the following:
  - a. Do not park any vehicles, including construction vehicles, company vehicles or personal vehicles within any area of the WTC site without prior approval of the Port Authority, and no representation is made that parking, if approved, will be available throughout the Work of the Contract. Company vehicles are to be clearly marked.
  - b. Do not enter upon PATH ROW unless a Port Authority Construction Management EIC assigned to the Contractor, or path flagger if designated by the EIC, has given permission.
  - c. Do not permit material, equipment or other objects to lie within or project into the PATH ROW, except as specifically approved by PATH.
  - d. Do not permit the use of the PATH employee facilities in the station or access to the station for or during the performance of the work
- 7) Provide sound suppression devices on gasoline and diesel powered construction equipment and pneumatic tools as required to maintain noise exposure below the limits specified in the Code of Federal Regulations (CFR) 29 CFR 1926 Occupational Safety and Health Regulations for Construction (OSHA). Maintain such sound suppression devices in proper operating condition throughout the time of their use and make adjustments and repair as required to maintain noise within exposure levels stipulated in 29 CFR 1926.52, Table D-2.
- 8) Do not store combustible products or flammable materials at areas of Work.
- 9) Restrict smoking to areas designated by the Port Authority for this purpose.
- 10) At all times while performing Work, provide workers with wear tear away reflective safety vests, eye protection, hard hats and boots with non-slip type soles. Reflective safety vests shall have a visible reflective surface of not less than 100 square inches on front and back.
- 11) Do not burn or bury debris of any type on Port Authority or PATH property, or wash waste materials down sewers or into waterways.
- 12) In the event of damage to or disruption of existing construction, the Contractor shall repair, replace or reinstall such construction to the satisfaction of the Construction Manager. Should the Contractor fail to perform such repair or replacement, the Construction Manager reserves the right to perform such Work and deduct from the Contractor's compensation an amount representing the cost of such Work, as determined by the Construction Manager.
- 13) In addition to the requirements of the Section of Division 1 GENERAL

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PROVISIONS entitled "Safety Provisions", provide and maintain at areas of Work, two "Pyrene 95-P20M" extinguishers as manufactured by RC Industries, Inc., Linden, N.J, or approved equal UL rated 20A-80BC 20 pound dry chemical multi-purpose fire extinguishers.

b. Construction Site Conditions in Tunnels, Stations and below the B4 slab:

- 1) The use of propane heaters and gasoline or diesel powered construction equipment within tunnels or at underground stations is prohibited.
- 2) Use of liquids having a flashpoint below 73 degrees F and boiling point below 100 degrees F is prohibited, unless specifically approved by the Port Authority.
- 3) Provide and operate air moving equipment when fume generating operations are in progress. During such operations provide air monitoring and test for toxicity (PPM), oxygen deficiency and combustible gas (% LEL).
- 4) Work will be permitted in only one tunnel at any one time unless otherwise shown on the Contract Drawings or specifically approved by the Port Authority.
- 5) Provide forced air ventilation at all footing and excavation pits and other enclosed areas where machines will be working.

c. Access To Areas of Work

Work of this contract is at areas that are accessible by road. Transportation for personnel, material and equipment delivery, and debris removal shall be via road transportation provided by the Contractor.

d. Hours of Work

- 1) PATH system operates service 24 hours per day 7 days a week. Work is to be scheduled and performed in a sequence that will not delay, endanger or interfere with PATH operations.
- 2) Hours of work in PATH ROW will be based on the schedule below "PATH ROW Footing Construction Permitted Work Hours" attached herein.
- 3) Do not perform work outside of such time periods.

e. PATH Rail Transportation

- 1) Under no circumstances will the Contractor be permitted to use PATH passenger trains for transporting men, material or equipment of any kind in connection with performance of the Work.
- 2) Work trains are not permitted.

f. PATH Flagger Service

- 1) PATH will provide flaggers and their use is required for the following operations in connection with performance of the Work: See "PATH ROW Footing Construction Permitted Work Hours" for additional information.
  - a. Work within or closer than ten (10) feet to the ROW.
  - b. Work that requires crossing or obstruction of tracks.
  - c. Work that in any way interferes with or interrupts PATH train service operations.
  - d. Work which, in the sole discretion of the Port Authority, requires flaggers for

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safety purpose.

e. Wherever working outside of Contractor's approved work enclosures.

2) Arrange for PATH flagger service in accordance with "Coordination" hereof.

**g. Traction Power and Existing Utilities**

- 1) The Contractor's attention is called to the fact that there will be high voltage electric lines and rails for PATH traction power at or adjacent to the areas of Work and no representation is made that such lines and rails will be de-energized during performance of the Work of the Contract. The Contractor shall take all necessary precautions to protect its personnel and others affected by its operations from injury from such high voltage electric lines and rails. Such lines and rails will remain energized for PATH operations except where shut-off is approved by the Port Authority. (No precautions can be made by the Contractor other than stay clear. The Contractor cannot drape protective blankets over the contact rail).
- 2) Maintain operation of existing utility services such as compressed air, water, sewers, electricity, ventilation or fire protection and PATH surveillance cameras, signal and communication systems during performance of Work of the Contract, except as absolutely necessary for cutoff, cutover or other change of the affected systems, as approved by the Port Authority. Coordinate with the Port Authority PCP prior to interrupting or otherwise affecting any operating system, utility or service.
- 3) Removal and restoration of traction power or existing utility, signal or communication service will be performed by PATH.
- 4) The Contractor shall not, under any circumstance, connect to, tie in to, or use the existing compressed air, stand pipe or traction power.
- 5) Notify the Port Authority of such removal or restoration requirements in accordance with "Coordination" hereof.
- 6) The Contractor shall not cut the PATH contact (third) rail to furnish a gap for the construction. Any damage to the track or contact rail structures due to the Contractor's activities will be repaired by PATH at the expense of the Contractor.

**h. Coordination**

1a) The Contractor shall provide a detailed work plan and schedule. The work plan and schedule shall be submitted to PANYNJ PCP, and shall include, but not be limited to, the following:

- a. Description of operations, location of Work per track and /or tunnels, and station closings, if any.
- b. Start and completion dates of each operation.
- c. Dates and times of Work that:
  - i. Require closing of PATH tracks or tunnels
  - ii. Require crossing or obstruction of tracks
  - iii. Is within or closer than ten (10) feet to ROW
  - iv. Interferes with or interrupts PATH train service operations and PATH utilities

1b) The Contractor shall provide a detailed work plan for protecting the dust barrier wall from

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damage by its operations for:

- a. all work that is within ten (10) feet of the crash-wall bordering Zone A and Zone C. Use of heavy equipment during rush hours will not be permitted within this ten (10) foot Zone.
  - b. all work that is within ten (10) feet of the barrier wall to be installed at Zone C bordering Zone B. Use of heavy equipment during rush hours will not be permitted within this ten (10) foot Zone.
- 2) Submit written notification to the Port Authority PCP for PATH support, not later than 4:00 P.M. Monday of the week preceding each day that the following services are required:
- a. PATH flagger services
  - b. Work to be performed within PATH tunnels and right of way, whether located within or outside of Contractor's approved work enclosures.
  - c. Power Railman
- 3) Written notification shall include, but not be limited to, the following items:
- a. For PATH flagger services:
    - i. The dates, times and locations of area of work
    - ii. Description of operations to be performed at areas of Work
- 4) Where shut-off services of PATH traction power or other utility or service are permitted, notify the Port Authority in writing not less than 3 work days prior to the anticipated need for such services. Each notification shall be written and shall include:
- a. The dates, times and locations of areas of Work involved.
  - b. Description of what utility or service shut-off or turn on is required.
  - c. Duration of shut-off times.
- i. Coordination Rescheduling or Cancellation
- 1) When the Contractor obtains approval under "Coordination" hereof for the use of PATH services, Work in PATH tunnels for a particular day or days, and should the Contractor thereafter require a rescheduling or cancellation of such services for the approved days, submit written notification of such rescheduling or cancellation to the Construction Manager not less than 12 hours in advance of each day for which approval was given. The Construction Manager will notify PANYNJ PCP, who will in turn notify PATH
  - 2) Notification not less than two weeks prior to erection or installation of: permanent construction, temporary construction, scaffolding, platforms, shoring, work enclosures, barrier walls, ballast retention system or other construction aids within PATH tunnels or at locations above or adjacent to the right-of-way. Construct frangible mock-up which duplicates edge and end profiles of such proposed erection or installation. The mock-up shall be provided by the contractor and shall be structurally adequate to resist without replacement the positive and negative wind loads imposed by passing PATH train operations but not cause damage to or create a hazard for PATH trains in the event that such end and edge profiles obstruct required PATH railway clearances.

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- 3) When directed by the Port Authority, dismantle mock-up and remove from PATH property.
- j. No requirement of or omission to require any precautions under this Contract shall be deemed to limit or impair any responsibility or obligation assumed by the Contractor under or in connection with this Contract and the Contractor shall at all times maintain adequate protection to safeguard the public and all person engaged in Work and shall take such precautions as will accomplish such end, without undue interference with the public or the operations of PATH.
- k. PATH requires that all Contractor personnel who may enter the track area (including those working within enclosures at track level) at any time be certified by successfully completing the "PATH ON-TRACK SAFETY PROGRAM", in compliance with the Rules and Regulations set forth in Federal Railroad Administration (FRA) Regulation 49 CFR PART 214, Subpart C, entitled "RAILROAD WORKER PROTECTION". Contractor personnel not certified under this program will not be permitted to enter the PATH track area. On a monthly basis, 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 letter will be permitted to enter the track area. Federal Railroad Administration requirements impose a \$10,000 personal fine on any person entering the PATH ROW who is not properly certified.

**5. Construction Site Conditions**

- 1) During the time the Contractor is performing the Work, it may at times be necessary because of emergency or abnormal site conditions, to suspend the Contractor's operations or to postpone the time at which the construction site becomes available for performance of Work. Should the Contractor be specifically directed to suspend operations at the construction site, or should the designated work area not be available by the times specified elsewhere in the Contract, and if solely because of such suspension of operations or late availability of the construction site, the Contractor is necessarily kept idle at the construction site, the Contractor will redirect its forces elsewhere and not be compensated for these occurrences.
- 2) At least 7 days but not more than 10 days prior to performing excavation, call 1-800-272-4480 and provide the information required for excavations(s) in New York and call 1-800-272-1000 and provide the information required for excavations(s) in New Jersey.
- 3) No vehicles of the Contractor, employees of the Contractor, subcontractors, materialmen or other over whom the Contractor has control will be permitted to park in or on Port Authority property, except for construction vehicles which will be permitted to park at the area of Working during the times when the Work is being performed.
- 4) Securely fasten material or construction that must be left in place between working periods in a manner approved by the Port Authority so as not to be a hazard. No material is to be stored adjacent to any track area as to impede PATH Transportation from running a normal schedule.
- 5) Take all precautions necessary for protection of persons, traffic and property during dust or fragment generating operations, concrete mixing or placing, or other operations that may stain, soil or damage property or injure persons. Provide and erect waterproof, dust-proof, fire-resistant, UL labeled tarpaulins with flame-spread rating of 15 or less, or other protective enclosures as approved by the Construction Manager.
- 6) Restrict smoking to areas designated by the Construction Manager for this purpose.

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- 7) Do not burn or bury debris of any type on Port Authority property, or wash waste materials down sewers or into waterways.
- 8) Provide sound suppression devices on gasoline and diesel powered construction equipment and pneumatic tools as required to maintain noise exposures below the limits specified in the Code of Federal Regulations (CFR) 29 CFR 1926 Occupational Safety and Health Regulations for construction (OSHA). Maintain such sound suppression devices in proper operating condition throughout the time of their use, and adjust and repair as required to maintain noise within exposure levels stipulated in 29 CFR 1926.52, Table D-2.
- 9) Restrictions When Working on the B-4 Level  

Contractors performing work on the B-4 Level shall submit a plan of work activities to the Port Authority two weeks in advance of the planned start date. The following restrictions shall apply:

  - i. Contractor shall submit for approval calculations by its licensed engineer, showing that the construction loading and temporary support conditions on the two-way reinforced Level B4 slab do not exceed that permitted by the Port Authority.
  - ii. Heavy equipment and materials requiring shoring or mats to carry or distribute loads shall not be moved across the B-4 Level overhead of the track areas during morning and afternoon rush hours.
  - iii. Contractor shall not make penetrations through the B-4 slab without prior approval by the Port Authority.
  - iv. Contractor shall not allow water used in construction activities to pond on the B-4 slab or leak through it into the track area below.
  - v. Contractor shall be responsible for maintaining the dust protection barriers installed by others at an earlier date.
  - vi. Contractor shall be comply with all Environmental Performance Commitments for equipment as described in Rider "G".
  - vii. Contractor notes access to the work areas, as also described in the Means and Methods book, as follows:
    - a. Truck and pedestrian traffic via the PANYNJ's existing Acro bridge ramp, which may be relocated from time to time.
    - b. One stair tower (*to be furnished and installed by Excavation and Foundation contractor*) located within the northwest diaphragm from level B5 up to B4
    - c. One stair tower (*to be furnished and installed by Excavation and Foundation contractor*) at east end of work area from level B4 up to Street level.
    - d. One stair tower (*to be furnished and installed by Excavation and Foundation contractor*) at west end of work area from level B4 up to Street level
- 10) No requirement of or omission to require any precautions under this contract shall be deemed to limit or impair any responsibility or obligation assumed by the Contractor under or in connection with this Contract and the Contractor shall at all times maintain adequate protection to safeguard the public and all persons engaged in the Work and shall take such precautions as will accomplish such end, without undue interference with the public or the operations of the Port Authority.
- 11) The Contractor shall comply with all rules and regulations of the Federal Railroad Administration (FRA). The Contractor will comply with all directives of any FRA inspectors at the site. Contractor's personnel must carry their On Track Safety cards and be ready to present them on demand. Failure to do so means no access to the track areas.

**RIDER "H"**  
**REQUIREMENTS FOR WORK IN PATH RIGHT OF WAY**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

June 16, 2006

**TRADE: CONCRETE (BELOW GRADE)**

- 12) In the event that this Contractor's operations cause or require (i.e. burning operations near smoke detectors) the active Fire Alarm System to be taken out of service, this contractor will provide, at this Contractor's expense, a fire watch by a NYC certified individual. The fire watch is to remain until the Fire Alarm System is restored to operation.
- 13) All protective enclosures installed by each Contractor shall be painted Safety Yellow by same Contractor.
- 14) The Contractor shall submit weekly, a back-up work-plan to for use in redirecting its workforces in the event that the PATH requires to clear the Contractor from all or portions of the PATH ROW.
- 15) The Contractor shall employ a licensed NYSPE experienced in railroad engineering.
- 16) The Contractor will not be permitted to use the PATH Standpipe system for its own use.  
  
Water supply may be taken from a fire hydrant, provided that the Contractor secures the necessary DEP permits, and installs back-flow preventors and manifolds as required.
- 17) The Contractor is to submit detailed work plans for approval for working on and within the enclosures and on the ballast retainers.
- 18) This Contractor shall provide power for it's own operation. In the event that the PATH allows this Contractor to use the PATH's house power, this contractor will be responsible for the cost of the power used, and any metering or electrical work required.



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.



\_\_\_\_\_ 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,



## 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 interior fiber optic and copper cable, property necessary to maintain the proper temperature and environment such as air filtration and air conditioning, property related to fire control, power generators, protective barriers, property that when installed will constitute raised flooring, and property related to providing security to the center.) The customer must furnish the contractor a completed Form ST-121.5, *Exempt Use Certificate for Operators of Internet Data Centers (Web Hosting)*.
  - Used directly and predominantly in the receiving, initiating, amplifying, processing, transmitting, re-transmitting, switching, or monitoring of switching of telecommunications services for sale, or Internet access service for sale.
  - Machinery, equipment, and other tangible personal property (including parts, tools, and supplies) used by a television or radio broadcaster directly and predominantly in the production and post-production of live or recorded programs used by a broadcaster predominantly for broadcasting by the broadcaster either over-the-air or for transmission through a cable television or direct broadcast satellite system. (Examples of exempt machinery and equipment include cameras, lights, sets, costumes, and sound equipment.) This exemption also includes machinery, equipment, and other tangible personal property used by a broadcaster directly and predominantly to transmit live or recorded programs. (Examples of exempt machinery and equipment include amplifiers, transmitters, and antennas.)
- D. Installed or placed in the project in such a way that it remains tangible personal property after installation. The contractor must collect tax from its customer when selling such tangible personal property or related services to the customer, unless the customer gives the contractor an appropriate and properly completed exemption certificate.
- E. Used predominantly (more than 50%) either in farm production or in a commercial horse boarding operation, or in both, for which the customer has provided the contractor a completed Form ST-125, *Farmer's and Commercial Horse Boarding Operator's Exemption Certificate*. The exemption is allowed on tangible personal property whether or not the property is incorporated into a building or structure.
- F. Machinery or equipment used directly and predominantly to control, prevent, or abate pollution or contaminants from manufacturing or industrial facilities.
- G. Incorporated into a building, structure, or real property located in the empire zone in which the qualified empire zone enterprise (QEZE) has qualified for tax benefits. The exemption is allowed on the New York State tax rate and on the 3/8% 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 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 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 1 800 634-2110. If you do not own a TDD, check with independent living centers or community action programs to find out where machines are available for public use.



**Persons with disabilities:** In compliance with the Americans with Disabilities Act, we will ensure that our lobbies, offices, meeting rooms, and other facilities are accessible to persons with disabilities. If you have questions about special accommodations for persons with disabilities, please call 1 800 972-1233.

New York State and Local Sales and Use Tax  
**Certificate of Capital Improvement**

After this certificate is completed and signed by both the customer and the contractor performing the capital improvement, it must be kept by the contractor.

**Read this form completely before making any entries.**

**This certificate may not be used to purchase building materials.**

Name of customer (print or type)			Name of contractor (print or type)		
Street address			Street address		
City	State	ZIP code	City	State	ZIP code
Certificate of Authority number (if any)			Certificate of Authority number (if any)		

**To be completed by the customer:**

Describe capital improvement to be performed:

Project name			
Street address (where the work is to be performed)	City	State	ZIP code

I certify that:

- I am the  owner,  tenant, of the real property identified on this form, and
- The work described above will result in a capital improvement to the real property within the guidelines listed on the back of this form, and
- This contract (check one)  includes,  does not include, the sale of tangible personal property that, when installed, retains its identity as tangible personal property and does not become a permanent part of the real property.

I understand that:

- I will be responsible for any sales tax, interest, and penalty due on the contractor's total charge for tangible personal property and for labor, if it is determined that this work does not qualify as a capital improvement, and
- I will be required to pay the contractor the appropriate sales tax on tangible personal property (and any associated services) transferred to me pursuant to this contract, when the property installed by the contractor does not become a permanent part of the real property; and
- I will be subject to civil or criminal penalties (or both) under the Tax Law, if I issue a false or fraudulent certificate.

Signature of customer	Title	Date
-----------------------	-------	------

**To be completed by the contractor:**

I, the contractor, certify that I have entered into a contract to perform the work described by the customer named above. (A copy of the written contract, if any, is attached.)

I understand that my failure to collect tax as a result of accepting an improperly completed certificate will make me personally liable for the tax otherwise due, plus penalties and interest.

Signature of contractor or officer	Title	Date
------------------------------------	-------	------

**This certificate is not valid unless all entries are completed.**

## Guidelines

If a contractor gets a properly completed (that is, no required entries on the form are left blank) Form ST-124, *Certificate of Capital Improvement*, from the customer within 90 days after rendering services, the customer bears the burden of proving the job or transaction was a capital improvement (that is, was not taxable to the customer).

If a contractor does not get a properly completed *Certificate of Capital Improvement* within 90 days, the contractor bears the burden of proving the work or transaction was a capital improvement. The failure to get a properly completed certificate, however, does not change the taxable status of a transaction; that is, a contractor may still show that the transaction was a capital improvement. If a contractor erects a building for a customer, or performs some other work that constitutes a capital improvement, the contractor must pay tax on the purchase of building materials or other tangible personal property, but is not required to collect tax from the customer for the capital improvement. If the work performed is taxable (such as repair, service, or maintenance), the contractor must collect tax from the customer on the full charge to the customer, including labor and materials.

The contractor must keep any exemption certificate for at least three years after the due date of the last return to which it relates, or the date the return was filed, if later. The contractor must also maintain a method of associating an exempt sale made to a particular customer with the exemption certificate on file for that customer.

When the customer completes this certificate and gives it to the contractor, it is evidence that the work to be performed will result in a capital improvement to real property.

A capital improvement to real property is defined in section 1101(b)(9) of the Tax Law and Sales Tax Regulation section 527.7(a)(3), as an addition or alteration to real property that:

- (a) substantially adds to the value of the real property or appreciably prolongs the useful life of the real property,  
and
- (b) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself,  
and
- (c) is intended to become a permanent installation.

The work performed by the contractor must meet all three of these requirements to be considered a capital improvement. This certificate may not be issued unless the work qualifies as a capital improvement.

**A contractor, subcontractor, property owner, or tenant, may not use this certificate to purchase building materials or other tangible personal property tax free.** A contractor's acceptance of this certificate does not relieve the contractor of the liability for sales tax. A contractor must pay sales tax on the purchase of building materials or other tangible personal property subsequently incorporated into the real property as a capital improvement (see Publication 764, *Home Improvements and Repairs*, for additional information) unless the contractor can legally issue Form ST-120.1, *Contractor Exempt Purchase Certificate*.

The term *materials* is defined as items that become a physical component part of real or personal property, such as lumber, bricks, or steel (Sales Tax Regulation, section 541.2(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.



**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**

*Corwin Construction Company Limited*  
("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  
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		

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:
- a. voluntarily engaged the services of an integrity monitor, independent private sector inspector general, or integrity compliance consultant (hereinafter collectively referred to as an "integrity monitor") in connection with the performance of any public or private contract?  
 No  Yes
  - b. been required to engage the services of an integrity monitor in connection with the award of, or in order to complete, any public or private contract?  
 No  Yes
  - c. otherwise been the subject of audits/investigations performed by an integrity monitor in connection with any public or private contract?  
 No  Yes

If yes to any portion of question 22, explain below:

\_\_\_\_\_

\_\_\_\_\_

23. Has the Company or any of its current or past Key People or affiliate firms:
- a. been under investigation involving any alleged violation of criminal law relating to business activities?  
 No  Yes

An INVESTIGATION includes an appearance before a grand jury by representatives of a business entity, any oral or written inquiry or review of the entity's documents by a public agency, temporary commission or other investigative body including, but not limited to, subpoenas and/or search warrants, or questioning of employees concerning the general operation or a specific project or activities of such business entity.

- b. had records in its or his/her control, custody or ownership subpoenaed by any law enforcement agency?  
 No    Yes
- c. been questioned by any officer or agent of a law enforcement agency regarding any practices or conduct relating to the providing of construction related services?  
 No    Yes
- d. been advised of being the target or subject of an investigation involving any violation of criminal law?  
 No    Yes
- e. been notified of being the subject of court ordered electronic surveillance?  
 No    Yes
- f. been arrested or indicted or otherwise named as an unindicted co-conspirator in any indictment or other accusatory instrument?  
 No    Yes
- g. been convicted, after trial or by plea, of any felony under state or federal law?  
 No    Yes
- h. been convicted of any misdemeanor involving business-related crimes?  
 No    Yes
- i. entered a plea of nolo contendere to any felony and/or business-related misdemeanor?  
 No    Yes
- j. entered into a consent decree?  
 No    Yes
- k. been granted immunity from prosecution for any business-related conduct constituting a crime under state or federal law?  
 No    Yes
- l. taken the Fifth Amendment in testimony regarding a business related crime?  
 No    Yes

If 'yes', to any portion of question 23, supply details below and submit documentation.

Agency Or Court	Nature Of Action	Person Or Entity Named or Involved	Date	Status/Outcome

- 24. Do any current or past Key People listed in this application have any felony or misdemeanor charges pending against them that were filed either before, during or after their employment with the Company?  
 No    Yes

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)

### EXHIBIT A CERTIFICATION

Certifications must be notarized when signed.

I RENZO COLAVITO, being duly sworn, state that I am PRESIDENT  
(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.

RENZO COLAVITO  
Name (please print)

[Signature]  
Signature

Sworn to before me

this 26 day of APRIL 2007.

**Victi Ann Colavino**  
A Commissioner, etc., County of Essex

[Signature]  
Notary Public Expires July 21, 2008



**RIDER "L"**  
**CONTRACTOR PAYMENT PROCEDURES**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

**December 14, 2006**  
**(Revision #1)**

**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 95% of the balance of the Lump Sum unpaid. In no event will the Construction Manager be required to pay in excess of 95% 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



A handwritten signature or mark, possibly a stylized letter 'A' or similar, located below the stamp.

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.

REQUISITION NO.

TO

DATE

TISHMAN CONSTRUCTION CORP

BUILDER

CONTRACTOR \_\_\_\_\_ TRADE \_\_\_\_\_  
 ADDRESS \_\_\_\_\_ PROJECT PERIOD ENDING \_\_\_\_\_

ITEM	CONTRACTOR USE ONLY	DO NOT WRITE IN THIS COLUMN
1. Amount on Contract .....		
2. Change Orders Issued to Date (Item II, Attached Summary) .....		
3. Pending Change Orders (Item III, Attached Summary) .....		
4. Total of Above .....		
5. Value of Work Completed to Date (Item IV, Attached Breakdown) .....		
6. Less 10% Retained .....		
7. Net of Items 5 and 6 .....		
8. Total Prior Payments .....		
9. Amount of This Requisition (Net of Item 7 less 8) .....		
10. Total Payments to Date .....		

Attached hereto is our Contract Breakdown together with claimed value of work completed to date substantiating the amount specified in Item 5 above. Neither payment on account hereof or any invoice, change order or other request, nor any entry by Builder in its records relating to such payment or work, shall constitute acceptance by Builder of any part of any work or the completion or value thereof or serve to waive any of Builder's rights under the Contract. If the Builder is acting in the capacity of a General Contractor all references in this entire requisition to "Contractor" shall be deemed to mean "Subcontractor."

By \_\_\_\_\_ Contractor  
 \_\_\_\_\_ (Title)

AFFIDAVIT ON REVERSE SIDE MUST BE EXECUTED BY CONTRACTOR  
 (DO NOT WRITE BELOW)

Checked by \_\_\_\_\_ Approved by \_\_\_\_\_ \$ \_\_\_\_\_  
 Approved by \_\_\_\_\_ Final Release in hand \_\_\_\_\_

ACCOUNTING USE ONLY

REQUISITION NUMBER	DATED / /	CHECK NUMBER	CHECK DATE		
P R R E Q					
PROJE	CONTRACTOR NO	TRADE	TE MANT	VALUE OF WORK	PAYMENT

Remarks \_\_\_\_\_

## COST BREAKDOWN SUMMARY

Project: \_\_\_\_\_ For Period Ending \_\_\_\_\_

Contractor \_\_\_\_\_ Trade \_\_\_\_\_

### I CONTRACT BREAKDOWN

Total Contract \$ \_\_\_\_\_ Total Completed to Date \$ \_\_\_\_\_

Do not Write  
In This Col.

### II CHANGE ORDERS ISSUED TO DATE

CHANGE ORDER NO.	DESCRIPTION	AMOUNT	VALUE COMPLETED	Do not Write In This Col.
1	_____	_____	_____	
2	_____	_____	_____	
3	_____	_____	_____	
4	_____	_____	_____	
5	_____	_____	_____	
6	_____	_____	_____	
7	_____	_____	_____	
8	_____	_____	_____	
9	_____	_____	_____	
10	_____	_____	_____	
11	_____	_____	_____	
12	_____	_____	_____	
13	_____	_____	_____	
14	_____	_____	_____	
15	_____	_____	_____	
16	_____	_____	_____	

Total Change Orders \$ \_\_\_\_\_ Total Completed to Date \$ \_\_\_\_\_

### III PENDING CHANGE ORDERS

DATE & DESCRIPTION	AMOUNT	VALUE COMPLETED	Do not Write In This Col.
1	_____	_____	
2	_____	_____	
3	_____	_____	
4	_____	_____	
5	_____	_____	
6	_____	_____	
7	_____	_____	
8	_____	_____	
9	_____	_____	
10	_____	_____	
11	_____	_____	
12	_____	_____	
13	_____	_____	
14	_____	_____	
15	_____	_____	
16	_____	_____	

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 other said Taxes except as stated in paragraph 3 below, and any claim for such amounts is hereby forfeited and waived, exclude (1) any claims previously made in writing by Contractor and (2) claims for adjustments in the Contract Schedule and/or Lump Sum resulting from extras or change orders which have not been the subject of a contract amendment.
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 effective 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 \_\_\_\_\_ 2006

**1 World Trade Center, LLC**

\_\_\_\_\_  
(NOTARY)

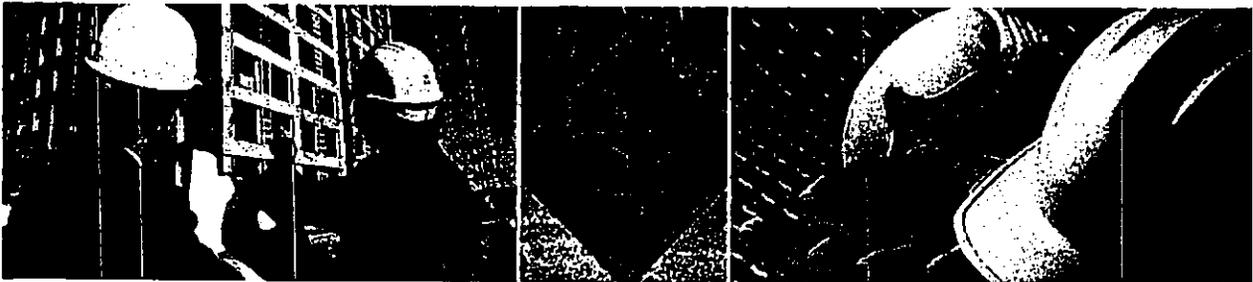


Rider "M"

# Tishman Construction Safety Guidelines

*"Tishman Values Safety"*

Tishman Construction Corporation  
666 Fifth Avenue  
New York, NY 10103



INITIAL HERE  
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## FORWARD

### The Tishman Construction Safety Guidelines:

- ▶ *Serve as a guide to the implementation of safety procedures and administration for your project.*
- ▶ *Identify **general** Tishman Construction Policy regardless of location and site requirements.*
- ▶ *Outline qualifications and responsibilities of the CM and the contractor's respective safety representative.*
- ▶ *Serve as a **guide** to OSHA CFR 1926.1 and its applicable provisions for the inspection and program administration, as well as provide information on OSHA inspection and complaint procedures.*

**Note: Regional requirements may augment, add to, or enhance, but shall not replace these guidelines.**

## **PART I**

### **TISHMAN CONSTRUCTION'S SAFETY OVERVIEW**

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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)
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- 3.14 Toilets & Washing Facilities
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- 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)

- ▶ The contractor shall furnish a health and safety plan as prescribed by OSHA 1926 Subpart C & D. The plan shall include, at a minimum, general company policies, fall protection plan, job safety analysis, personal protective equipment, general safety rules, accident reporting, general first aid practice, safety responsibilities of supervisors, disciplinary policy, and employee training.

- ▶ Contractor shall develop and submit their HASP to the safety representative for review. The HASP shall specifically address hazards to be encountered by the contractor during the installation of his/her work. The HASP shall be in compliance with the applicable parts of 29 CFR 1926 and 1910, OSHA standards for construction and general industry and any other applicable federal, state and local regulatory requirements.

Tishman bears no responsibility for either the quality of such plans or their enforcement. As required by law, each contractor is responsible for protecting the health and safety of their employees ensuring a safe and healthful place to work.

### 3.2.1 POSTING REQUIREMENTS

The following forms should be posted at each job site:

- ▶ OSHA poster
- ▶ OSHA Annual Summary
- ▶ Emergency Phone Numbers
- ▶ OSHA 300 Form

### 3.2.2 THE HAZARD COMMUNICATION STANDARD (CFR 1910.1200 (Hazardous Communication) (Toxic and Hazardous Substances)

The Hazard Communication Standard (HCS), as stipulated in section 1910.1200 of the Code of Federal Regulations, is comprised of four basic areas that must be complied with by the contractor:

- ▶ An HCS program must be written.
- ▶ A chemical inventory and Material Safety Data Sheets (MSDS) of all chemicals used on site must be made available to employees and ARTICLE 19/OSHA officials.
- ▶ All containers and pipes must be properly labeled.



OSHA Poster

- 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

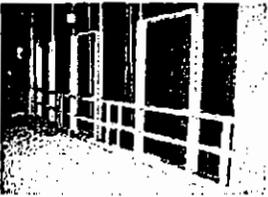
The contractor shall furnish a written fall protection plan for the scope of Unless otherwise contractually specified, it shall be the goal to achieve 100% fall protection (guardrails, safety nets, personal fall arrest systems, All conditions shall be controlled where there is a danger of employees or materials falling through floor openings, roof openings, holes, roof



Orange Vertical Debris Nets



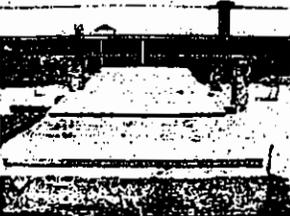
*Perimeter Fall Protection*



*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*

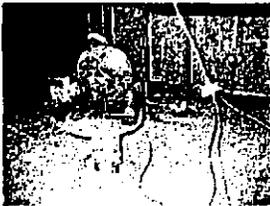
- † Wall openings from which there is a drop of more than three feet shall be guarded.
- † Runways shall be guarded by standard railing or the equivalent on all open sides 19 inches or more above the floor or ground level. A toeboard shall be provided on each exposed side when tools, machine

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.



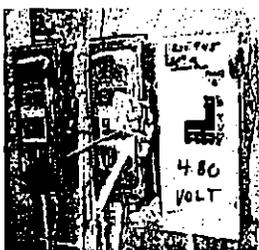
*Electrical cords attached to a Ground Fault Circuit Interrupter*

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.



### 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.



*Illumination*

### 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 braking 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))

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.

Class	What Burns	Fire Extinguishers
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*

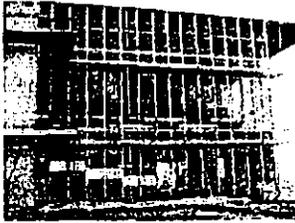
Where permanent or temporary stairways or suitable ramps are not provided, ladders to be used must meet the following guidelines:

- ▶ 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:

Number of Scaffolds	Maximum Load
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:

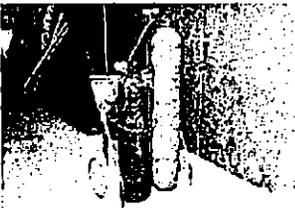


*Construction worker using a GFCI (Ground Fault Circuit Interrupter) with a power tool*

- 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.

- ▶ Secure work with a clamp or vice, freeing both hands to operate tool. Never clamp a hand-held grinder in a vice.
- ▶ Avoid accidental starts. Do not hold a finger on the start button while carrying a plugged in tool.
- ▶ Never stand close to moving parts. Abrasive wheel tools may explode during start-up and an employee should not stand directly in front of the wheel until it reaches its full operating speed.
- ▶ Pneumatic tools that shoot nails, rivets, or staples and operate at pressures more than 100 pounds per square inch, must be equipped with a special device that prevents pulling the trigger until the safety device is manually released.
- ▶ Pneumatic power tools and hose connections shall be secured to the hose or whip by some positive means to prevent the tool from becoming accidentally disconnected.
- ▶ Tools that require combustible, flammable gases must be in accordance with the Fire Department and requires a Fire Department permit 99% of the time.
- ▶ No welding, cutting, or heating shall be done where flammable paints, flammable compounds, or heavy dust exists. Sparks or heat transfer from the tool may introduce a fire hazard.
- ▶ Jacks must be set-up so that the base rests in a firm, level surface and is correctly centered.

#### *Gas Cylinders (Program and Standards) (CFR 1926.350)*



*Gas Cylinders*

- ▶ When stored, all compressed gas tanks must be valved shut at the tank and not at the device.
- ▶ Compressed gas cylinders will not be stored inside of ANY structure nor brought into a closed or confined space. Compressed gas cylinders shall not be stored in any structure without approval of TCC safety representative and/or local fire department requirements. Cylinders should be capped and secured in an upright position.
- ▶ When cylinders are moved they shall not be hoisted or transported by means of a magnet or choker slings. Cylinders when hoisted shall be secured on a cradle, slingboard, or pallet.
- ▶ The contractor shall furnish a list of compressed gas cylinder suppliers to the safety representative and ensure timely removal from the project as required and/or as per the direction of the safety representative.

- Empty cylinders shall be marked “EMPTY”.
- Cylinders shall be kept away from sources of heat and out of the direct rays of the sun.
- Oxygen cylinders shall not be stored close to cylinders containing acetylene or other fueled gas. These tanks should be separated by a minimum of 20 feet or by a non-combustible barrier with at least a two (2) hour fire rating.

*Welding, Cutting and Burning (Standard) (CFR 1926.350)*

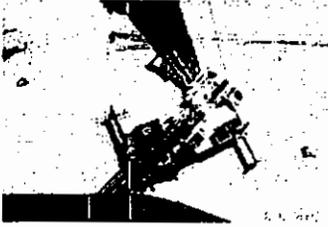


*Hat, eye protection and gloves*

- No welding, cutting, burning, or other spark- or flame-producing operation shall be permitted until the owner/ construction manager/ general contractor/ program manager has issued a flame/spark permit.
- A proper fire extinguisher is required to be positioned near each separate cutting and welding operation.
- Welding screens and shields must be used at all times.
- All hoses should be frequently inspected for leaks, worn places, and loose connections. Elevate hoses at least eight feet above the work area to allow passage of workers and equipment.
- If objects to be welded can not be moved and all the fire hazards can not be removed, a positive means shall be taken to confine heat, sparks, and slag, and protect the immovable fire hazard.
- Hot Work Permits shall be provided to the safety representative. Fire watch procedures shall be followed as per OSHA standard.
- All portable fire extinguishers used for fire protection shall have the classification at a minimum an ABC fire classification.

**3.21 CRANES (CFR 1926 Subpart N)**

- Employee shall comply with the manufacturer’s specifications and limitations at all times.
- **The designated competent person shall inspect all machinery and equipment both prior to each use and during use. All deficiencies shall be repaired and defective parts shall be replaced before continued use.**
- ANSI standard hand signals shall be used at all times.



*Controlled Access Zone for Crane*

- ▶ **The swing radius of the crane shall be clearly marked and barricaded to prevent any person(s) from being struck or crushed by the crane.**
- ▶ **Combustible and flammable materials shall be removed from the immediate area prior to operations.**
- ▶ **Tag lines shall be used with all crane picks.**
- ▶ **Contractors shall ensure annual inspection is in place upon arrival of crane on site. All cranes shall be inspected in accordance to the manufacturer's recommendation.**

### **3.22 CONFINED SPACE (CFR 1926.21, 1910.146)**

- ▶ **Confined space permit (vessel entry permit) shall be furnished to construction safety representative 24 hours prior to entry.**
- ▶ **Danger signs shall be posted in areas of confined space.**
  - **For example: "DANGER — PERMIT-REQUIRED CONFINED SPACE, DO NOT ENTER".**

It is critical that no employee be exposed to hazards in confined spaces. The unfavorable ventilation in a confined space can cause the atmosphere to become hazardous. This standard has been developed to establish procedures and controls for employees who enter confined spaces that may contain hazardous atmospheres. These atmospheres are divided into four categories:

1. Flammable
2. Toxic
3. Asphyxiating
4. Irritant and/or Corrosive

These can exist in combinations.

Entry into a permit-required confined space (Permit Space) requires special training, procedures and equipment and shall not be attempted by personnel who are not familiar with these protocols. Any contractor intending to perform work inside a confined space shall provide to Tishman a copy of a written program that complies with the requirements of 29 CFR 1910.146 (c) (OSHA).

The written program shall include provisions for implementing a permitting system and a copy of a blank permit form. Implementation of

the written program shall be the sole responsibility of the contractor. This shall include, but not be limited to, providing any type of air monitoring equipment needed to safely perform the work, making arrangements for rescues personnel and guarding of unattended confined spaces.

Tishman reserves the right to audit confined space entry work procedures to ensure compliance with applicable standards and the contractors' written plan.

Any contractor intending to perform confined space entry work shall provide prior notice to the Tishman General Superintendent.

A confined space has limited or restricted means of entry or exit, is large enough for an employee to enter and perform assigned work, and is not designed for continuous occupancy by the employee.

A permit-required confined space is one that meets the definition of a confined space and has one or more of the following characteristics:

1. Contains or has the potential to contain a hazardous atmosphere;
2. Contains a material that has the potential for engulfing an entrant;
3. Has an internal configuration that might cause an entrant to be trapped or asphyxiated by inwardly converging walls or by a floor that slopes downward and tapers to a smaller cross section;
4. Contains any other recognized serious safety or health hazards.

No one will enter a confined space unless a qualified person has completed a confined space entry permit.

The use of appropriate environmental and chemical monitoring devices, such as oxygen monitors, combustible gas meters, and toxic gas monitors are required prior to and during the entry.

An attendant named on the confined space entry permit shall remain outside the confined space at all times. He/she shall maintain continuous communication by voice, visual observation, radio, telephone or other equally effective means with all the entrants he/she is responsible for. If it is not possible for one attendant to maintain communications with each entrant, then other arrangements will be made to assure that the attendant is continuously aware of the location and condition of every entrant he/she is responsible for. The attendant must remain at his/her post until replaced by another qualified person.

No employee involved in a confined space operation shall perform any confined space function (qualified person, entrant, attendant, or rescue personnel) until he/she has been trained to the level required by the job function. Certification of this training must be presented to the Tishman Safety Representative.

## **SECTION IV FORMS**

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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 \_\_\_\_\_



## SAFETY VIOLATION

CONTRACTOR \_\_\_\_\_

As per your contract, failure to comply with the safety requirements of the project will result the following amounts being deducted from the contract price.

- |                    |                                   |
|--------------------|-----------------------------------|
| 1. First Offense   | Warning --- No monetary deduction |
| 2. Second Offense  | \$500.00                          |
| 3. Third Offense   | \$1000.00                         |
| 4. Further Offense | \$2000.00 for any further offense |

ON \_\_\_\_\_ (DATE) @ \_\_\_\_\_

ON/IN \_\_\_\_\_ (LOCATION) \_\_\_\_\_

Your worker(s) were observed engaging in unsafe activities as defined by the Safety Requirements of the Project Specifically:

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\_\_\_\_\_  
Site Safety Manager



## HOT WORK PERMIT

CONTRACTOR: \_\_\_\_\_

FIRE WATCH: \_\_\_\_\_

LOCATION: \_\_\_\_\_

WORK BEING PERFORMED: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

### BEFORE OPERATION CHECK LIST

1. Remove combustible materials/flammable materials in the area
1. Place welding screens/blankets in place to protect Workers/equipment/material
2. Ventilation for welding fumes
3. Fire protection
4. Valid NYC certificate of fitness/welding license

### PRECAUTIONS AFTER OPERATION

1. Secure all heat producing devices (valves, cylinders, torch)
2. Checked for any smoldering material
3. Visually check area/material for damage

\_\_\_\_\_

Site Safety Manager



### Tishman Hazard Prevention and Control Inspection Log

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

Project: \_\_\_\_\_

	Hazard	Corrective Action	Location	Contractor Assigned Abatement
1				
2				
3				
4				
5				
6				
7				
8				
9				
10				
11				
12				
13				
14				

*\* See Tishman Safety Manager for additional instructions*





THE PORT AUTHORITY OF NY & NJ

***World Trade Center Site***  
**RULES and REGULATIONS**

*Effective January 1, 2006*



*[Handwritten signature]*

## **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*

**IMPORTANT TELEPHONE NUMBERS**

**Port Authority Police**  
(212) 608-5111 or 5115

**WTC Site Manager**  
(212) 435-5501

**WTC Site Security**  
(212) 732-8415

**WTC Site Safety Manager**  
(212) 435-5524

Copies of this booklet may be obtained  
at the following location:

WTC Site Manager  
Priority Capital Programs  
The Port Authority of New York and New Jersey  
115 Broadway, 5th Floor  
New York, NY 10006

WTC Site Manager bulletins may be issued by the Site Manager  
as necessary to implement these Rules and Regulations.

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## **PART A. General Conditions.**

### **1. Use of Premises May be Denied or Withdrawn.**

The WTC Site Manager or the persons designated to act in his or her stead, may deny permission to enter or remain on the WTC Site to persons who violate Port Authority rules or regulations, WTC Site policies or procedures, applicable laws, ordinances or regulations of other government bodies, or for such other reason as may be permitted by law.

### **2. Closed and Restricted Areas.**

- a. No person shall enter or remain in any area posted as a closed area, or otherwise identified as closed, without permission of the WTC Site Manager, or the persons designated to act in his or her stead.
- b. No person shall enter or remain in any area posted as a restricted area, or otherwise identified as a restricted area, unless such person complies with any applicable restriction, or is given permission to enter or remain by the WTC Site Manager, or the persons designated to act in his or her stead.

### **3. Fences.**

- a. The climbing of any fence, the marking or painting of any fence, the affixing of any sign or object to any fence, or the removal of any fence is prohibited.
- b. The foregoing does not apply to the Port Authority, or any person authorized to act on behalf of the Port Authority, or any person engaged in construction or maintenance activity at the World Trade Center Site pursuant to an agreement with the Port Authority or pursuant to an agreement with a lessee of the Port Authority.

#### 4. Compliance with Orders.

No person shall refuse to follow the lawful order of any Port Authority employee including a Port Authority police officer.

#### 5. Endangering Persons or Property.

No person shall do or omit to do any act if the doing or omission thereof unreasonably endangers persons or property.

#### 6. Interference with Traffic or Activities.

No person shall unreasonably interfere with:

- a. Pedestrian or vehicular traffic.
- b. Use of any doorway, entrance, or exit; stairway or landing, entrance or exit thereof; elevator, entrance or exit thereof; escalator or landing thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area; sidewalk cut or sidewalk adjacent to a crosswalk.
- c. Entry to or exit from any vehicle.
- d. The formation of any line of persons waiting to enter or use any thing, place or service described in b. or c.
- e. Any reclamation, construction or maintenance activity.
- f. The duties of a flag person.
- g. Instructions or information found on or within a sign, pavement marking, or traffic signal.
- h. The storage of materials, equipment, supplies, vehicles, debris, waste, garbage, or refuse.

#### 7. Duty of Individuals Involved in Accidents.

- a. Any individual involved in an accident at the WTC Site which results in death, personal injury or property damage shall provide his or her name and address, and if a motor vehicle is involved, display the relevant operator's license, vehicle registration and proof of insurance document, upon demand at the scene of the accident, to any injured person, any owner of damaged property, and, to any police officer, or employee of The Port Authority of New York and New Jersey, at, or who arrives at, the scene of the accident.
- b. The operator of a motor vehicle involved in an accident shall make a report of such accident in conformance with the law of the State of New York.

#### 8. Animals.

- a. No animal shall be brought onto or remain on the WTC Site unless it is continuously restrained by a leash or harness or by a fully closed cage or carrier.
- b. Any person who has custody of an animal shall not permit the animal to urinate or defecate in any place other than in a roadway, and shall not permit the animal to do so if such action will interfere with traffic or pose a danger to the animal or any person or property.
- c. Any person who has custody of an animal that has defecated at the WTC Site shall collect the feces in suitable wrapping material for disposal as refuse.
- d. This section is not applicable to any disabled person to the extent such person is unable to comply therewith with respect to such person's service animal.
- e. This section is not applicable to law enforcement or search canines.

## 9. Defacing or Damaging of Property.

No person shall deface, mark, damage, or affix any thing or object to, any wall, post, surface, walkway, street fixture or any other property at the WTC Site.

## 10. Abandonment of Property.

No person shall intentionally abandon any property at the WTC Site.

## 11. Garbage Disposal.

### a. Public Areas.

No person shall dispose of garbage, debris, or any refuse except by depositing such material in waste containers as shall be placed at the WTC Site for such purpose. If no waste containers are available, all garbage, debris, or refuse shall be carried from the WTC Site.

### b. Closed and Restricted Areas.

- i. Each person is responsible for the garbage he/she generates and any other garbage within his/her area of control.
- ii. Each entity is responsible for the garbage generated within its area of control.
- iii. All garbage, debris, or refuse generated by persons individually or on behalf of others, including one or more entities, shall be disposed of by the person(s) generating such garbage, debris or refuse, or by the person(s) controlling the area within which the garbage, debris or refuse is located, or by the entity controlling the area.

- iv. Such garbage, debris, or refuse shall be disposed of in containers provided by the entity controlling the area. Such containers shall be emptied regularly to lawful disposal locations outside of the World Trade Center Site, at a frequency that prevents the attraction of rodents and other pests, odors, seepage, and overflow.

## 12. Alcoholic Beverages.

### a. Public Areas.

No person shall drink, or carry an open container of, any alcoholic beverage in a public area.

### b. Closed and Restricted Areas.

Alcoholic beverages are prohibited within closed and restricted areas. No person shall drink, carry an open container of, or carry a closed container of, any alcoholic beverage in a closed and restricted area.

## 13. Personal Hygiene.

- a. No person shall spit, urinate or defecate except in toilet facilities.
- b. No person other than authorized persons shall bathe, shower, shave, launder, change clothes or remain undressed in any restroom, washroom, wash station, sink, or washing facility.

## 14. Touching.

The intentional touching of any person without his or her consent is prohibited.

**15. Sitting, Lying Down, Sleeping.**

**a. Public Areas.**

- i. Except for a person in a wheelchair, stroller, or other similar apparatus, or a person waiting for emergency medical assistance, no person may sit or lie down.
- ii. No person may sleep at the WTC Site.

**b. Closed and Restricted Areas.**

- i. No person may sleep at the WTC Site.

**16. Skateboarding, Roller-Skating, Bicycle Riding.**

- a. Skateboarding, roller-skating, bicycle riding or use of a scooter or other similar motorized or self-propelled apparatus is prohibited.
- b. This section is not applicable to use of a wheelchair or similar apparatus by a disabled person, or to use of a motorized or self-propelled apparatus used in reclamation, construction or maintenance activity.

**17. Noise.**

**a. Noise Resulting from Activity other than Reclamation, Construction or Maintenance Activity.**

- i. No person may make or cause to be made any sound in excess of 86 dBA on the A weighted scale measured at 5 feet from the source of the sound.
- ii. No person shall operate or use any personal radio, television, compact disk, tape recorder or other sound reproduction device in such manner that the sound reproduction device is audible to another person.

**b. Noise Resulting from Reclamation, Construction or Maintenance Activity.**

- i. Tenants, contractors, and subcontractors, or other parties performing reclamation, construction or maintenance activity, shall comply with all applicable federal laws and regulations with respect to noise control and mitigation, and shall act in conformance with all state and local laws and regulations with respect to noise control and mitigation which would be applicable if the WTC Site were owned and operated solely by a private party.

**ii. Environmental Performance Commitments Pertaining to Noise.**

Tenants, contractors, and subcontractors, or other parties performing reclamation, construction, or maintenance activity, shall comply with all Environmental Performance Commitments pertaining to noise. A copy of the current Environmental Performance Commitments (EPCs) is available from the Port Authority Resident Engineer or Port Authority Program Manager responsible for the reclamation, construction, or maintenance activity.

**18. Structures.**

**a. Public Areas.**

The erection of any table, chair, mechanical device or other structure is prohibited, except:

- i. pursuant to a written permit issued by, or a written agreement with, the Port Authority, or Port Authority lessee; or

- ii. as provided in the section describing "Continuous Expressive Activity."

**b. Closed and Restricted Areas.**

Construction and redevelopment activity at the WTC Site shall commence only after receiving Port Authority approval in the form of one of the following:

- i. approved Tenant Construction Application (TCA) or Tenant Alteration Application (TAA),
- ii. fully executed contract with The Port Authority of New York and New Jersey, or
- iii. other fully executed agreement with The Port Authority of New York and New Jersey containing conditions for construction and/or redevelopment activity.

**19. Distribution or Sales.**

The following is prohibited, whether for free or for payment, unless conducted pursuant to a written permit issued by, or a written agreement with, the Port Authority:

- a. The distribution of any merchandise including, but not limited to, jewelry, foodstuffs, candles, and flowers.
- b. The provision of any service including, but not limited to, shoe shining.

**20. Gambling and Contests.**

The conduct of any actual or purported game of chance or skill is prohibited.

**21. Continuous Expressive Activity.**

- a. For the purpose of these regulations, "continuous expressive activity" refers to the following: Continuous expressive

activity directed at passersby, including display of a sign to passersby, continuous distribution of literature to passersby, and continuous speech addressed to passersby.

- b. Continuous expressive activity is permitted at the following locations, subject to Section 21 d:

- i. On the pavement adjacent to Church Street, 12.5 feet or less from the pavement curb.
- ii. Within the location described as Location E in the diagram attached to these regulations as Exhibit A, when that location is not being used by persons engaged in activity authorized by a written permit issued by, or a written agreement with, the Port Authority.
- iii. By a person engaged in coordinated continuous expressive activity as part of a group of 25 or more persons, within the locations described as Locations A through D in the diagram attached to these regulations as Exhibit A pursuant to Section 21 c herein.

- c. A person may engage in coordinated continuous expressive activity as part of a group of 25 or more persons only if a permit has been issued for that activity as set forth in Section 21 f herein, subject to the following restrictions:

- i. A person may engage in coordinated continuous expressive activity as part of a group of 25 or more persons only in the following locations:

- (A) Within the locations described as Locations A through D and 1 through 9 in the diagram attached to these regulations as Exhibit A.

- (B) Within the location described as Location E in the diagram attached to these regulations as Exhibit A, when that location is not being used by persons engaged in activity authorized by a written permit issued by, or a written agreement with, the Port Authority.
- (C) Coordinated continuous expressive activity by a group of 25 or more persons may not occur simultaneously in both (I) one or more of locations A through E on the diagram attached to these regulations as Exhibit A and (II) one or more of locations 1 through 9 on the diagram attached to these regulations as Exhibit A.
  - ii. The number of persons within each of the locations available for coordinated continuous expressive activity, as designated on the diagram maintained by the WTC Site Manager, described as Locations A through E and 1 through 9 on the diagram attached to these regulations as Exhibit A may not exceed the maximum number of persons indicated for that area on Exhibit A.
- d. i. Notwithstanding Part A, Section 21 b i, continuous expressive activity is prohibited in, or within 10 feet of, any of the following: Doorway, entrance or exit; stairway or, entrance or exit landing thereof; sidewalk cut or crosswalk; elevator or entrance or exit thereof; escalator or landing, entrance or exit thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area;
  - ii. Notwithstanding any other regulation, including Part A, Sections 21 b-c, continuous expressive activity is prohibited in, or within 10 feet of, any of the following: reclamation, construction or maintenance equipment

- or activity; a barrier marking or surrounding an area containing reclamation, construction or maintenance equipment or activity.
- iii. Interested persons may contact the WTC Site Manager at (212) 435-5501 for identification of the locations described in Sections 21 b-c which are not available at that time for use for expressive activity pursuant to Section 21 d i or 21 d ii.
- e. No person, while engaged in continuous expressive activity, shall:
  - i. Distribute any merchandise including, but not limited to, jewelry, foodstuffs, candles, and flowers.
  - ii. Misrepresent through words, signs, leaflets, attire or otherwise, an affiliation or association with, or support from, any person, organization, group, entity or cause, including any affiliation with or support by The Port Authority of New York and New Jersey or a subsidiary thereof, or an organization or association of employees thereof, or a victim of the events of September 11, 2001, or any organization or association of victims.
  - iii. Erect any table, chair, mechanical device or other structure unless:
    - (A) It is used for the actual distribution or display of expressive material such as leaflets.
    - (B) It does not interfere with:
      - (1) Pedestrian or vehicular traffic flow.
      - (2) Use of any doorway, entrance or exit; stairway or, entrance or exit landing thereof; sidewalk cut or crosswalk; elevator or entrance or exit

thereof; escalator or landing, entrance or exit thereof; bus passenger waiting, loading or unloading area; taxicab passenger waiting, loading or unloading area; a barrier marking or surrounding an area containing reclamation, construction or maintenance equipment or activity.

(3) Entry to or exit from any vehicle.

(4) The formation of any line of persons waiting to enter or use any thing, place or service described in 2 or 3.

(5) Any reclamation, construction or maintenance activity.

iv. Sell or offer for sale, or exchange or offer for exchange, any item in return for payment at the WTC Site by soliciting and receiving cash or checks, by engaging in or offering to engage in a credit or debit card transaction, or by any other means, at any location other than the location described at Section 21 b ii.

v. Engage in any conduct not specifically addressed in this section that is prohibited in other sections.

f. Permit application procedures and restrictions:

i. A permit application shall be submitted in writing no later than thirty-six (36) hours preceding the commencement of the activities for which the permit is sought and no earlier than seven (7) days preceding the commencement of the activities for which the permit is sought.

ii. Permit applications shall be submitted in person to the

WTC Site Manager, or the designee thereof, during the hours of 10:00 AM to 12:00 Noon and 1:00 PM to 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

were new applications. All locations will be assigned on a first-come, first-served basis, without regard to renewal status. The use of space previously used pursuant to a permit is not guaranteed by acceptance of a renewal application.

- vi. Permits will be granted on a first-come, first serve basis. An application will be denied only if the area requested is unavailable, the application is incomplete, or the application discloses that the activities to be performed thereunder will violate these rules.
- vii. A permit will be issued, or the application denied, by the WTC Site Manager, or a designee thereof, no later than 5:00 PM of the day following submission of the application, excluding Saturdays, Sundays and holidays. The reason for the denial of an application shall be set forth in writing.
- viii. Upon denial of an application for a permit, or the failure to issue a permit by 5:00 PM of the day following submission of an application, excluding Saturdays, Sundays and holidays, a person may submit a written appeal to the General Manager, WTC Site, or a designee thereof, setting forth the reasons why the application should not have been denied. An appeal shall be submitted in person to the WTC Site Manager, or a designee thereof, during the hours of 9:00 AM to 5:00 PM, Monday through Friday, excluding holidays. An appeal of a denial of an application for permit to engage in activity occurring on a Saturday, Sunday, or holiday shall be submitted before 12:00 Noon of the preceding business day. The WTC Site Manager, or designee thereof, shall cause the appeal to be delivered to the General Manager, WTC Site, or a designee thereof.

- ix. A written decision denying the appeal, or issuing a permit, shall be made no later than 5:00 PM of the day following submission of the appeal, excluding Saturdays, Sundays and holidays. If no decision is issued by 5:00 PM of the day following submission of the appeal, excluding Saturdays, Sundays and holidays, the appeal shall be deemed to be denied on the basis of the original decision denying the application.
- x. Any person whose application for a permit has been denied may seek review of such denial in a proceeding commenced pursuant to Article 78 of the Civil Practice Laws and Rules of the State of New York.
- xi. Upon the issuance of any permit, a badge indicating the area and time period in which the activity will take place will be issued for each area. Such badge must be worn on the upper left breast of the outermost garment and be clearly visible at all times during which the area is used. A person who obtains permission to use an area or areas on behalf of a group may obtain the badges for the members of the group for use by such persons actually engaged in expressive activity; however, the number of badges issued will not exceed the maximum number of persons who may engage in expressive activity at one time in the area or areas.
- xii. Each time a person or group ceases use of a designated area for expressive activity, such action shall be reported to the WTC Site Manager or a designee thereof, and the badge or badges described herein must be returned so the availability of the area for use by another may be recorded.

xiii. For the purposes of this regulation, "holidays" refers to the following:

New Year's Day	January 1
Martin Luther King, Jr. Day	3rd Monday in January
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.

**6. Care of WTC IDs and Vehicle Passes.**

- a. Care shall be used to secure and protect a WTC ID or WTC Vehicle Pass at all times, and to maintain a WTC ID or Vehicle Pass in the condition in which it was issued.
- b. A WTC ID or Vehicle Pass shall not be damaged or altered.
- c. A WTC ID or Vehicle Pass shall not be used by any person other than the person to whom it is issued.
- d. Any person who has knowledge that a WTC ID or Vehicle Pass has been lost, damaged or altered, or used by any person other than the person to whom it is issued, shall, without unreasonable delay, report such information to PAPD and/or WTC Site Security, and, submit the document in question, if in his or her possession, to PAPD or WTC Site Security.

**7. Breaches of Security and Other Suspicious Activity.**

- a. Any person who has knowledge of a breach of security shall immediately report such information to the PAPD.
- b. Any person who has knowledge of suspicious activity, a suspicious item or suspicious object, such as a vehicle, piece of equipment, container, or package, or an item located in a suspicious location shall immediately report such information to the PAPD.

**8. Escort Privileges.**

- a. An Escort Privilege may be issued to a person (an "Escorter") permitting the person to escort a person or persons without WTC ID to enter certain closed and restricted areas, as identified by the WTC Site Manager or his or her designee.

- b. No person without a WTC ID may enter any closed or restricted area unless accompanied by an Escorter and:

- i. such person presents to WTC Site Security for inspection one or more pieces of valid government-issued photo identification as directed by WTC Site Security, and
- ii. the accompanying Escorter follows the current procedures, as instructed by WTC Site Security, for identifying persons who have been issued Escorter's privileges.

- c. An Escorter shall at all times accompany and supervise any escorted person in a manner sufficient to insure that the escorted person does not engage in activity other than the activity for which the associated Escort Privilege is granted.

- d. An Escorter shall not allow any escorted person to circumvent or disable a fall protection system or any other safety device or interfere with any safety procedure.

- e. Only one person may escort each group, and only one group may be escorted by each Escorter.

- f. A group of five or more persons shall not be escorted into a closed or restricted area of the World Trade Center Site by any person, including an Escorter, unless the entry by escort of that group into such closed or restricted area of the World Trade Center Site has been approved in advance by the WTC Site Manager.

- g. An Escorter shall instruct any person under escort to wear personal protective equipment required by these Rules and Regulations or by the WTC Site Manager or his or her designee, and shall notify WTC Site Security in the event of refusal to follow such instructions by any person under escort.

**9. Vehicle Pass Requirements and Procedures.**

- a. No vehicle may enter any closed or restricted area of the WTC Site unless the driver presents a valid vehicle operator's license for the respective class of vehicle, vehicle registration, and proof of insurance document for the vehicle.
- b. No vehicle may enter any closed or restricted area of the WTC Site unless the driver and each occupant displays a valid WTC Site ID Badge.
- c. Drivers must observe all signals, signs, markings, and other traffic devices found within the closed and restricted areas of the WTC Site.
- d. Speed limits within the closed and restricted areas of the WTC Site are established by the WTC Site Manager and communicated by signage and in the Traffic Management Plan.
- e. Parking is prohibited within the closed and restricted areas of the WTC Site in areas designated as no parking areas by signs, pavement marking or striping.
- f. Obstruction of roadways, vehicles, equipment, walkways, ramps, doors, or gates is prohibited.

**10. Deliveries.**

- a. No delivery may be made to any closed or restricted area of the WTC Site unless such delivery has been arranged in advance and written notice of such deliveries has been given to WTC Site Security by the recipient of such delivery.
- b. No person may make a delivery to any closed or restricted area of the WTC Site unless the delivery satisfies the requirements of Part B, 3, 4, 9, and 10 a.

- c. No person may make a delivery to any closed or restricted area of the WTC Site unless the delivery person or persons, any delivery vehicle and any occupant thereof, is accompanied by the delivery recipient, or a person acting on behalf of the delivery recipient, who possesses a valid WTC ID, and who has been granted Escort Privileges for deliveries. Such Escorter shall accompany the delivery person or persons, any delivery vehicle and any occupant thereof, from the entrance to the respective closed or restricted area of the WTC Site, during delivery, and, upon the completion of the delivery, to the exit from the respective closed or restricted area of the WTC Site.

## **PART C. WTC Site Safety.**

### **1. General.**

- a. Tenants, contractors, subcontractors, and all others performing work at the WTC Site shall prepare and implement the programs, plans, and procedures required by the Port Authority to protect worker health and safety, and shall conform with federal, state, and local codes, rules, regulations, and ordinances, including those established by The Port Authority of New York and New Jersey with respect to worker and public safety.
- b. Individuals who do not follow the programs, plans, and procedures so set forth in Part C. Section 1. a. shall be subject to immediate removal from the Site and suspension or revocation of privileges to enter closed and restricted areas.

### **2. Personal Protective Equipment.**

- a. Personal protective equipment appropriate to the hazard of the respective worksites shall be worn at all times in closed or restricted areas of the WTC Site, and shall at a minimum include but not be limited to:
  - i. hard hat
  - ii. reflective safety vest
  - iii. work shoe or boot
  - iv. safety glasses or goggles (when required or directed)
  - v. hearing protection (when required or directed)
  - vi. respirator (when required or directed)
- b. Additional personal protective equipment, as noted on signage around specific areas, or as required by each

employer to conform with federal, state, and local codes, rules, regulations, and ordinances, and to comply with programs, plans and procedures required by The Port Authority of New York and New Jersey, shall also be worn at all times by individuals in designated areas.

### **3. Traffic Management Plan.**

- a. The WTC Site Manager shall establish a Traffic Management Plan for pedestrian and vehicular movement within closed and restricted areas of the WTC Site.
- b. Each occupant of closed and restricted areas of the WTC Site shall obtain and/or retain a copy of the current Traffic Management Plan provided in the WTC Security Office, and adhere to the current plan.

### **4. Hazardous Material/Chemical Management.**

#### **a. Materials Allowed**

The following hazardous materials, as identified in 49 CFR Subchapter C, Part 172, shall be allowed onto the WTC Site if Part B, Section 10 has been met, and the driver presents shipping papers and a delivery receipt indicating the name of the contractor requesting the products, the quantity and type of material being delivered, and all of the information provided herein is verifiable by WTC Site Security upon delivery. In addition, prior to delivery, the contractor's safety manager shall be in possession of the appropriate Material Safety Data Sheet for the materials.

Class 2 – Oxygen, Flammable Gas, Non-Flammable Gas

Class 3 – Flammables, Gasoline, Combustibles, Fuel Oil

Class 9 – Miscellaneous

b. Materials Prohibited

- i. The following hazardous materials, as identified in 49 CFR Subchapter C, Part 172, and vehicles carrying the following hazardous materials, shall not enter the WTC Site without prior approval of the WTC Site Safety Manager and compliance with the procedures set forth herein.
  - Class 1 – Explosives, Blasting Agents
  - Class 2 – Inhalation Hazard
  - Class 4 – Flammable Solids, Spontaneously Combustibles, Dangerous When Wet
  - Class 5 – Oxidizers, Organic Peroxide
  - Class 6 – Inhalation Hazards, Poisons, Harmful/Stow Away from Food Stuffs
  - Class 7 – Radioactive
  - Class 8 – Corrosives

Dangerous Cargo
- ii. Vehicles with the placards indicating carriage of materials within the foregoing classes shall be detained at the entrance to the WTC Site until completion of the procedures set forth below.
- iii. The World Trade Center Site Safety Manager shall be notified of the arrival of such vehicles.
- iv. Upon notice to the World Trade Center Site Safety Manager of the arrival of such material for delivery to such contractor, the contractor's safety manager shall meet with World Trade Center Site Safety Manager to review the procedures to be followed for delivery, the contractor's safety manager shall bring with him the appropriate Material Safety Data Sheet for the materials to the meeting, and the contractor

shall follow those procedures to effect delivery as directed by the World Trade Center Site Safety Manager at the meeting.

c. Storage Guidelines

Consistent with the requirements in U.S. OSHA 29 CFR 1910, Subpart Z: Hazard Communication, 29 CFR 1926 Subpart F: Fire Protection and Prevention, Subpart J: Welding and Cutting, and U.S. DOT 49 CFR, Subpart E, Part 172: Labeling, each contractor shall at a minimum comply with the following:

- i. Establish and maintain a secure hazardous chemicals storage location adequately sized, designed, and constructed for the type and quantity of materials to be stored. All chemicals shall be stored in appropriate containers compatible with their hazard class.
- ii. Confine the storage of hazardous chemicals to the area assigned or work location. Hazardous chemicals cannot be stored in common areas, roadways, or established entry/egress routes.
- iii. Each storage location shall be framed, sheathed, and roofed with approved fire-retardant treated lumber; fenced and roofed; caged; or otherwise securely enclosed. The entrance door shall be constructed in such a manner as to allow for the visual identification of the stored contents. The entrance door shall be lockable and remain locked at all times when not occupied, with keys provided to the WTC Site Manager, WTC Site Safety Manager, Port Authority Resident Engineer, and PAPD.
- iv. The wall to floor seam of each storage location shall

be bermed with an appropriate and compatible absorbent material to capture any liquid in the event of a release.

- v. Warning signs consistent with the labeling requirements of U.S. DOT 49 CFR: Part 172 shall be conspicuously posted at all entrances into the storage location. Smoking shall be prohibited within all chemical storage locations, and shall be signed accordingly.
- vi. The contractor shall maintain on-site an adequate supply of spill response equipment, materials, and personnel protective equipment appropriate and compatible for the type and quantity of the chemical products in storage.
- vii. The contractor shall maintain on-site a material safety data sheet (MSDS) for each chemical product stored. The contractor shall also ensure that workers are trained in the hazards and use of the product.
- viii. The contractor shall select, issue, and train workers in the maintenance, use and storage of the personal protective equipment required when using the chemical products.
- ix. The contractor shall provide worker training in the proper methods to respond to spills and releases from the storage area.
- x. Compressed gas cylinders, flammable and combustible liquids, and all chemical products shall be stored and signed/labeled in accordance with their hazard class. The co-mingling of different hazard classes in storage is prohibited.
- xi. When required, storage areas shall be protected from

vehicular impact by the use of "jersey barriers" or a similar impact resistant material.

- xii. Enclosed storage facilities (i.e. trailers) used for the storage of flammable gases and liquids shall be properly ventilated by either mechanical or natural means based upon the characteristic of the chemical product being stored. If lighting is installed, explosion proof, intrinsically safe wiring is required.
- xiii. The contractor shall select and provide the appropriate type, size, and number of fire extinguishers suitable for the fire hazards presented by the stored chemicals.

#### d. Storage Requirements

- i. If stored in drums, all drums shall be raised off the ground.
- ii. Flammable and combustible liquids, such as gasoline, kerosene, diesel, and mixed fuels shall be stored in either Type I or II approved metal safety storage cans with flashback protection.
- iii. All fuel containers (drums, gas cans, etc.) shall be appropriately color-coded and permanently labeled as "Gasoline", "Kerosene", "Diesel", or "Mixed-Fuel".
- iv. Flammable and combustible liquid cans shall be stored in approved fire cabinets with a quantity limited to 60-gals of flammable and 120-gals of combustible liquid per cabinet. No more than three storage cabinets shall be stored in one area.
- v. A properly charged and maintained portable fire extinguisher with a rating of not less than 4-A:60B:C

shall be permanently mounted in a conspicuous location readily accessible within 50 feet of the storage location.

- vi. Compressed gas cylinders (CGC) shall be stored with their valve protection caps secured on the cylinder.
- vii. CGC shall only be stored vertically with 3-point contact maintained at all times.
- viii. Flammable gases and oxygen must be stored separately at least 20 feet apart, or together with a 5 foot high, 30 minute fire-rated wall separating them.

e. Incident Response

- i. Anyone with knowledge that a hazardous material and/or chemical release has occurred shall immediately contact PAPD at the WTC Command and provide the following information:
  - (A) Incident location.
  - (B) Description of incident.
  - (C) Description of personal injury.
  - (D) Description of fire condition.
- ii. Each contractor shall employ a call-in hazmat contractor and provide to the PA Resident Engineer, WTC Site Manager, and WTC Site Safety Manager, the name and contact information of such call-in hazmat contractor.

**5. Firearms, Weapons, and Explosives.**

No person shall carry, keep, store, handle, use, dispense, or transport, into or through the WTC Site, any firearm, weapon, explosive device or or explosive material which is not a hazardous material as identified under Part C, 4, without the prior approval of the WTC Site Manager and Port Authority Police.

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**RIDER "S"**  
**WTC SITE SECURITY REQUIREMENTS**  
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**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 budging described herein shall be borne by the Authority. All other costs, including but not limited to compensation for time spent by the contractors or their employees in performing any of the activities described herein, shall be borne by the contractors.

**A) Personnel Access**

All persons accessing the site shall have been screened so as to ascertain that they satisfy the requirements set forth in the "WTC ID Process-disqualifying Crimes" document dated June 2006 which is attached hereto as Attachment A. The Authority will conduct such screening only upon written request of the contractor on behalf of the individual. The screening is contingent upon the following:

- Every individual requesting access to the site must agree to have a background check.
- Every such individual shall be required to fill out and sign a background screening application and consent form.
- Individuals must be citizens of the US, lawful Resident Aliens, or otherwise lawfully permitted to work in the US.

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

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

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

Personnel entry to and exit from the site shall be through a number of Personnel Security Portals provided, installed, maintained, and operated by the Authority. It is expected but not guaranteed that there shall be two such portals distributed around the perimeter of the site. The Authority shall operate, relocate, and if necessary reconfigure, the portals to accommodate the work to the greatest degree feasible.



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

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

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

The Temporary ID Badge will allow access to the site for a period not to exceed five (5) calendar days. Every user of a Temporary ID Badge shall be inspected, together with any packages, tools or equipment they intend to bring onto the site.

The contractor shall notify the Authority of personnel terminations or reassignments so that access credentials can be cancelled as soon as no longer needed. The Authority may, at any time for any reason, withdraw credentials allowing individuals access to the site.

**B) Equipment and Vehicle Access**

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

The Authority shall provide, install, maintain, and operate "On-Site" and "Off-Site" Equipment and Vehicle Inspection Facilities. The On-Site facilities shall be located at the points of entry to the site. There are expected, but not guaranteed, to be four such On-Site points at all times. The Off-Site facilities shall be located as follows: 1) In New Jersey, at a location yet to be determined, but no farther than fifteen (15) miles from the New Jersey entrance to the Holland Tunnel, 2) In Brooklyn, at a location yet to be determined, but no farther than two (2) miles from the entrance to the Brooklyn Battery Tunnel, 3) at or near the New Jersey entrance to the George Washington Bridge; to be used only when requested by the contractor for permitted oversize loads. The Authority shall operate, relocate, and if necessary reconfigure, the Equipment and Vehicle Inspection Facilities to accommodate the work to the greatest degree feasible.

The contractor, in coordination with the Authority, shall be responsible for scheduling inspections of all equipment and vehicles requiring access to the site, regardless of where the inspection is to take place. All inspections shall be by appointment only and shall require a minimum of 48 hours notice to the Authority. Requests for inspection shall be made by the contractor in writing, in a format to be determined by the Authority. Such request shall include, at a minimum, the following information:

- Vehicle Registration and Insurance information. (Copies to be submitted to the Authority).

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- Description of vehicle and manifest of its contents.
- Identity of driver and other accompanying personnel.
- Proposed time for arrival at site.
- Proposed point of entry to site.
- Description and duration of activity while on site.

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

The Authority shall process all such requests in the order received and shall assign to the contractor a time and place for the inspection most appropriate to the vehicle's route. The contractor shall be responsible to ensure that the item to be inspected presents itself, together with all required documentation, at the assigned location and time. Failure to do so will result in delays and may require rescheduling of appointment for inspection. If the Authority deems any particular vendor, supplier, contractor, or other entity to be consistently late for scheduled inspections it may institute any different requirements that it may deem necessary to avoid or mitigate delays.

On-Site inspections shall only be allowed upon satisfying all other requirements described herein and only for the following categories of vehicles:

- Concrete Delivery Trucks.
- Fuel and Water Tanker trucks.
- Local (originating within a 25 mile radius from site) high volume deliveries as approved by the Authority in advance.
- Empty dump trucks.
- Tractors with no load.
- Tractors with empty flat beds.
- Heavy construction equipment.
- Contractor vehicles not transporting materials onto the site.

In addition to the on-site inspection the Authority may require that concrete, fuel, water, and local delivery trucks be pre-inspected and sealed at their point of origin. In all cases, the contractor shall make request for pre-inspection and sealing sufficiently in advance as to allow the Authority adequate time to provide such service if it deems such to be necessary and appropriate.

All other vehicles must be inspected at the "Off-Site" locations.

For On-Site inspections the equipment or vehicle shall present itself at the assigned place within the allotted timeframe. Inspection shall include:

- Verification of equipment or vehicle and personnel identity and credentials.
- Physical inspection of the equipment or vehicle and its contents as deemed necessary by the Authority

Upon successful inspection the equipment or vehicle will be allowed direct entry to the site. If necessary due to personnel security requirements, an escort will be assigned.

For Off-Site inspections the vehicle shall present itself at the assigned place and time. Inspection shall include:

- Verification of submitted information.
- Physical inspection and imaging of the equipment or vehicle and its contents as deemed necessary by the Authority.

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- Verification of personnel identity and credentials.
- Sealing the load/vehicle, tagging with tracking GPS device and assignment of time and place for entry to site.

The vehicle shall then proceed to the site. Upon arrival at the assigned entry point it shall be re-inspected as follows:

- Verification of equipment or vehicle and personnel identity.
- Verification that arrival time and routing, as determined by the tracking information, matches expected parameters.
- Verification of seals.
- Physical inspection of the equipment or vehicle as deemed necessary by the Authority  
Upon successful inspection the tags, seals, and tracking devices will be removed and it will be allowed direct entry to the site. If necessary due to personnel security requirements, an escort will be assigned.

**C) Implementation**

The preceding requirements are anticipated to be implemented as follows:

- Personnel Security Portals including turnstiles are expected to be operational in or around June 2007. At that time the ID badges will be used without biometric data.
- Personnel biometric data for site access is expected to be operational in or around the 4th quarter of 2007.
- Off-Site Equipment and Vehicle Inspection Facilities are expected to be operational in or around the 4th quarter of 2007.

**D) Attachments**

**A WTC ID Process-disqualifying Crimes dated June 2006**

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**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).

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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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**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-

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- (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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**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-

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- (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 "T"**  
**MILESTONE DATES AND LIQUIDATED DAMAGES**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

February 8, 2007

**TRADE: CONCRETE (BELOW GRADE)**

The following criteria defines the Liquidated Damages and the corresponding Milestone Durations included in the Lump Sum Trade Contract;

- A. **Completion of the Below Grade Concrete work is **June 14, 2008**, provided that the Contractor has commenced work on site by March 1, 2007. In the event that the Contractor has not completed the work as defined in the Contract Documents, liquidated damages in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) per day shall be credit from the Lump Sum Amount.**
- B. **Completion of the East / West Corridor work, defined as between column lines G and J, from the liner wall to column line 12, up to Level B3, is **June 7, 2007**, provided that the Contractor has commenced work on site by March 1, 2007 and that the following activities are completed as follows;**
- Slab-on-grade at the Fuel Tank Room is completed by others on March 1, 2007.
  - The associated footings (as defined in item "B", above) are completed by others on April 15, 2007.
  - The foundation of the Liner Wall (as defined in item "B", above) is completed by others on May 1, 2007.

In the event that the Contractor has not completed the work as defined in the Contract Documents, liquidated damages in the amount of One Thousand Dollars (\$1,000.00) per day shall be credit from the Lump Sum Amount.

- C. In the event that Add Alternate #5, pertaining to the Tower Concrete work is exercised, the completion of the Tower Concrete work is one hundred ten (110) weeks from the commencement of concrete work above the First Floor Lobby slab, provided that the concrete operations continue uninterrupted from the completion of the Below Grade work. In the event that the Contractor has not completed the work as defined in the Contract Documents, liquidated damages in the amount of Two Thousand Five Hundred Dollars (\$2,500.00) per day shall be credit from the Lump Sum Amount.

A circular stamp with the text "INITIAL HERE" around the perimeter. Inside the circle, there is a handwritten signature or initials.

**RIDER "U"**  
**ADDITIONAL PROVISIONS**  
**WORLD TRADE CENTER – TOWER ONE**  
**NEW YORK, NEW YORK**

February 23, 2007

**TRADE: CONCRETE (BELOW-GRADE)**

The Lump Sum Contract includes the following provisions:

A. The terms and conditions of the fully executed Performance Guarantee Agreement: Company document, undated, is an attachment to Rider "U"

B. The terms and conditions of the fully executed Performance Guarantee Agreement: Individual document, undated, is an attachment to Rider "U"

C. All revenue derived by Contractor from this Project ("Total Revenue") shall be deposited in accounts ("Accounts") set up by Contractor at a local bank. Until "Final Completion" as defined below, Contractor shall not withdraw any funds from the Account except to make payments for third party and labor costs directly related to procurement of the Work under this Contract, e.g. costs for subcontractors, material, labor (including labor burden), overhead, rent, professional fees and taxes related to the Work [collectively, "Direct Costs"],. All of Contractor's "Profit" from the Project (with "Profit as used herein meaning Total Revenue less Direct Costs) shall be maintained in the Account for the duration of all of Contractor's Work in connection with the Project (below grade work and Tower if applicable) and until Construction Manager has approved in writing the withdrawal of Profit by Contractor.

D. In the event that this Contractor is unable to procure the High Strength Concrete Mix to meet or exceed the requirements of the Contract Documents, this Contractor shall procure the High Strength Concrete Mix from Quadrozzi Concrete Corp., Arverne, N.Y. (Phone: 718-474-4333), at no additional cost or time extension to the Lump Sum Contract. Quadrozzi has agreed to provide the necessary Mix to this Contractor as noted in the attached Quadrozzi letter of January 12, 2007.



**PERFORMANCE GUARANTEE AGREEMENT: COMPANY**

1. For value received, and in consideration of, and in order to induce 1 World Trade Center, LLC ("1WTC") to enter into Contract WTC-XXX.XXX (Contract dated, \_\_\_\_\_, by and between 1WTC and Collavino Construction Company Limited, a corporation formed under the laws of the Province of Ontario ("Contractor"), the undersigned, Collavino Construction Company Inc., a Delaware corporation; Collavino Incorporated, a corporation formed under the laws of the Province of Ontario; PRAAM Investments Inc., a corporation formed under the laws of the Province of Ontario; 1256458 Ontario Ltd., a corporation formed under the laws of the Province of Ontario; Mario & Maria Collavino Holdings Inc., a corporation formed under the laws of the Province of Ontario; and Collavino Properties Incorporated a Michigan corporation; (collectively, "Guarantors"), hereby jointly and severally, and unconditionally guaranty to 1WTC (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to 1WTC under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to 1WTC, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantors further agrees to indemnify 1WTC against any losses 1WTC may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by 1WTC of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by 1WTC of any of its rights against Guarantors hereunder.

2. Guarantors have read and consent to the signing of the Contract. Guarantors further agree that Contractor shall have the full right, without any notice to or consent from Guarantors, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantors hereunder.

3. Guarantors hereby expressly waive all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agree that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantors regardless of (i) the reorganization, merger, or consolidation of Contractor into or with another entity, corporate or otherwise, or the liquidation or dissolution of Contractor, or the sale or other disposition of all or substantially all of the capital stock, business or assets of Contractor to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (iii) the assertion by 1WTC against Contractor of any of 1WTC's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in 1WTC's favor in law, equity, or bankruptcy, or (iv) the country of formation of any of the Guarantors.

4. Guarantors further agree that their liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that 1WTC shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantors affirm that 1WTC shall not be

A circular stamp with the words "INITIAL HERE" around the perimeter. Inside the circle, there is a handwritten signature or initials.

required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantors, and that Guarantors will, upon demand, pay IWTC any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantors will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

Notwithstanding the foregoing, this Performance Guarantee Agreement cannot be pursued against Guarantors until thirty (30) days after the undersigned have received written notice from IWTC of a default by Contractor under the Contract. After receipt of such notice of default, the undersigned shall have an opportunity to cure such default by Contractor within such thirty (30) day period. The undersigned's obligations hereunder shall remain fully binding although IWTC may have waived one or more defaults by Contractor or extended the time for performance by Contractor. Notwithstanding anything contained herein to the contrary, the undersigned's obligations hereunder shall be no greater or less than the obligations of Contractor under the Contract and shall terminate when Contractor's obligations under the Contract are fulfilled.

5. Guarantors agree that they shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to their interests regardless of (i) the reorganization, merger, or consolidation of Guarantors into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantors, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantors to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantors, or adjudication of Guarantors as a bankrupt.

6. Guarantors further warrant and represent to IWTC that the execution and delivery of this Performance Guarantee Agreement is not in contravention of Guarantors' Articles of Organization, Charter, by-laws, and applicable law; that the execution and delivery of this Performance Guarantee Agreement, and the performance thereof, has been duly authorized by the Guarantors' Boards of Directors, Trustees, or any other management board which is required to participate in such decisions; and that the execution, delivery, and performance of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantors are a party or by or under which they are bound.

7. No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

8. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by the Guarantors herein, and the liability of the Guarantors hereunder, are joint and several, and the references to Guarantors shall be to each entity individually and to all collectively.

9. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been validly given or served (a) by delivery of the same in person to the intended addressee, or (b) by depositing the same with Federal Express or another reputable private courier service for next Business Day delivery, or (c) by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth below:

If to Guarantors:

5255 County Road #42  
Windsor, ON N8N 2M1  
Canada  
Attention: ~~Paulo~~ Renzo Collavino

with a copy to:

Miller, Canfield, Paddock and Stone, P.L.C.  
840 West Long Lake Road, Suite 200  
Troy, MI 48098-6358  
Attention: Ronald E. Hodess, Esq.

If to 1 WTC

Milo Rivero  
Project Executive of 1 WTC  
115 Broadway 10<sup>th</sup> Floor  
New York, New York 10006

And to

Mike Mennela  
Executive Vice President  
Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. All notices, demands and requests shall be effective upon such personal delivery, or one (1) Business Day after being deposited with the private courier service, or two (2) Business Days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) Business Days' prior written notice in accordance with the provisions hereof, each party hereto shall have the right from time to time to change its address to any other address.

10. This Performance Guarantee Agreement shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantors and shall not be discharged in whole or in part by the death or dissolution of Guarantors.

**11. THIS PERFORMANCE GUARANTEE AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED UNDER THE INTERNAL LAWS (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) OF THE STATE OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

12. Any and all amounts required to be paid by Guarantors hereunder shall be paid to IWTC in United States currency at such place as IWTC may, from time to time, in writing appoint.

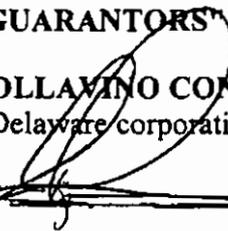
13. This Performance Guarantee Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument. Any signature page of this Performance Guarantee Agreement may be detached from any duplicate original of this Performance Guarantee Agreement without impairing the legal effect of any signatures thereon and may be attached to another duplicate original of this Performance Guarantee Agreement identical in form hereto but having attached to it one or more additional signature pages.

[SIGNATURES ON FOLLOWING PAGE]

IN WITNESS WHEREOF, Guarantors have executed this Performance Guaranty Agreement as of the day and year indicated below.

**"GUARANTORS"**

**COLLAVINO CONSTRUCTION COMPANY, INC.**  
a Delaware corporation

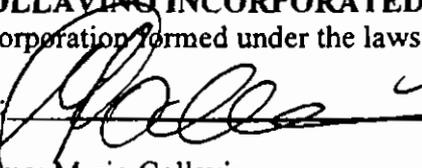
By:   
\_\_\_\_\_

Name: Renzo Collavino

Title: President

Date: APRIL 26, 2007

**COLLAVINO INCORPORATED**  
a corporation formed under the laws of the Province of Ontario

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

Name: Mario Collavino

Title: President

Date: APRIL 26, 2007

**PRAAM INVESTMENTS INC.**  
a corporation formed under the laws of the Province of Ontario

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

Name: Renzo Collavino

Title: President

Date: APRIL 26, 2007

**1256458 ONTARIO LTD.**

a corporation formed under the laws of the Province of Ontario

By: 

Name: Maria Collavino

Title: President

Date: 4/26/2007

**MARIO & MARIA COLLAVINO HOLDINGS INC.**

a corporation formed under the laws of the Province of Ontario

By: 

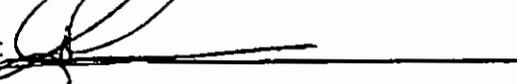
Name: Mario Collavino

Title: President

Date: 4/24/2007

**COLLAVINO PROPERTIES INCORPORATED**

a Michigan corporation

By: 

Name: Renzo Collavino

Title: President

Date: 4/26/2007

**PERFORMANCE GUARANTEE AGREEMENT: INDIVIDUAL**

1. For value received, and in consideration of, and in order to induce 1 World Trade Center, LLC ("1WTC") to enter into Contract WTC-XXX.XXX (Contract dated, ~~April 26, 07~~, by and between 1WTC and Collavino Construction Company Limited, a corporation formed under the laws of the Province of Ontario ("Contractor"), the undersigned, Paolo Collavino, Renzo Collavino and Mario Collavino (collectively, "Guarantors"), hereby jointly and severally, and unconditionally guaranty to 1WTC (a) the full and prompt payment and performance of all obligations, accrued and executory, which Contractor presently or hereafter may have to 1WTC under the Contract, and (b) the full and prompt payment and performance by Contractor of all other obligations and liabilities of Contractor to 1WTC, fixed or contingent, due or to become due, direct or indirect, now existing or hereafter and howsoever arising or incurred under the Contract, and (c) Guarantors further agree to indemnify 1WTC against any losses 1WTC may sustain and expenses it may incur as a result of the enforcement or attempted enforcement by 1WTC of any of its rights and remedies under the Contract, in the event of a default by Contractor thereunder, and/or as a result of the enforcement or attempted enforcement by 1WTC of any of its rights against Guarantors hereunder.

2. Guarantors have read and consent to the signing of the Contract. Guarantors further agrees that Contractor shall have the full right, without any notice to or consent from Guarantors, to make any and all modifications or amendments to the Contract without affecting, impairing, or discharging, in whole or in part, the liability of Guarantors hereunder.

3. Guarantors hereby expressly waive all defenses which might constitute a legal or equitable discharge of a surety or guarantor, and agree that this Performance Guarantee Agreement shall be valid and unconditionally binding upon Guarantors regardless of (i) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Contractor, or adjudication of Contractor as a bankrupt, or (ii) the assertion by 1WTC against Contractor of any of 1WTC's rights and remedies provided for under the Contract, including any modifications or amendments thereto, or under any other document(s) or instrument(s) executed by Contractor, or existing in 1WTC's favor in law, equity, or bankruptcy, or (iii) the citizenship of any of the Guarantors.

4. Guarantors further agree that their liability under this Performance Guarantee Agreement shall be continuing, absolute, primary, and direct, and that 1WTC shall not be required to pursue any right or remedy it may have against Contractor or other Guarantors under the Contract, or any modifications or amendments thereto, or any other document(s) or instrument(s) executed by Contractor, or otherwise. Guarantors affirm that 1WTC shall not be required to first commence any action or obtain any judgment against Contractor before enforcing this Performance Guarantee Agreement against Guarantors, and that Guarantors will, upon demand, pay 1WTC any amount, the payment of which is guaranteed hereunder and the payment of which by Contractor is in default under the Contract or under any other document(s) or instrument(s) executed by Contractor as aforesaid, and that Guarantors will, upon demand, perform all other obligations of Contractor, the performance of which by Contractor is guaranteed hereunder.

A handwritten signature is written over a circular stamp that contains the text "ORIGINAL HERE".

Notwithstanding the foregoing, this Performance Guarantee Agreement cannot be pursued against Guarantors until thirty (30) days after the undersigned have received written notice from 1WTC of a default by Contractor under the Contract. After receipt of such notice of default, the undersigned shall have an opportunity to cure such default by Contractor within such thirty (30) day period. The undersigned's obligations hereunder shall remain fully binding although 1WTC may have waived one or more defaults by Contractor or extended the time for performance by Contractor. Notwithstanding anything contained herein to the contrary, the undersigned's obligations hereunder shall be no greater or less than the obligations of Contractor under the Contract and shall terminate when Contractor's obligations under the Contract are fulfilled.

5. Guarantors agree that they shall cause this Performance Guarantee Agreement to be unconditionally binding upon any successor(s) to their interests regardless of (i) the reorganization, merger, or consolidation of Guarantors into or with another entity, corporate or otherwise, or the liquidation or dissolution of Guarantors, or the sale or other disposition of all or substantially all of the capital stock, business, or assets of Guarantors to any other person or party, or (ii) the institution of any bankruptcy, reorganization, insolvency, debt agreement, or receivership proceedings by or against Guarantors, or adjudication of Guarantors as a bankrupt.

6. Guarantors further warrant and represent to 1WTC that the execution and delivery of this Performance Guarantee Agreement will not result in a breach of, or constitute a default under, any loan agreement, indenture, or contract to which Guarantors are a party or by or under which they are bound.

7. No express or implied provision, warranty, representation or term of this Performance Guarantee Agreement is intended, or is to be construed, to confer upon any third person(s) any rights or remedies whatsoever, except as expressly provided in this Performance Guarantee Agreement.

8. Notwithstanding anything to the contrary contained herein, the representations, warranties, covenants and agreements made by the Guarantors herein, and the liability of the Guarantors hereunder, are joint and several, and the references to Guarantors shall be to each individually and to both collectively.

9. Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder shall be in writing and shall be deemed to have been validly given or served (a) by delivery of the same in person to the intended addressee, or (b) by depositing the same with Federal Express or another reputable private courier service for next business day delivery, or (c) by depositing the same in the United States mail, postage prepaid, registered or certified mail, return receipt requested, in any event addressed to the intended addressee at its address set forth below:

If to Guarantors:

5255 County Road #42  
Windsor, ON N8N 2M1  
Canada  
Attention: ~~Paolo~~ Renzo Collavino

with a copy to:

Miller, Canfield, Paddock and Stone, P.L.C.  
840 West Long Lake Road, Suite 200  
Troy, MI 48098-6358  
Attention: Ronald E. Hodess, Esq.

If to 1 WTC

Milo Rivero  
Project Executive of 1 WTC  
115 Broadway 10<sup>th</sup> Floor  
New York, New York 10006

And to

Mike Mennela  
Executive Vice President  
Tishman Construction Corporation  
666 Fifth Avenue  
New York, New York 10103

or at such other address as the party to be served with notice may have furnished in writing to the party seeking or desiring to serve notice as a place for the service of notice. All notices, demands and requests shall be effective upon such personal delivery, or one (1) business day after being deposited with the private courier service, or two (2) business days after being deposited in the United States mail as required above. Rejection or other refusal to accept or the inability to deliver because of changed address of which no notice was given as herein required shall be deemed to be receipt of the notice, demand or request sent. By giving to the other party hereto at least fifteen (15) business days' prior written notice in accordance with the provisions hereof, each party hereto shall have the right from time to time to change its address to any other address.

10. This Performance Guarantee Agreement shall be binding upon the heirs, executors, legal and personal representatives, successors and assigns of Guarantors and shall not be discharged in whole or in part by the death or dissolution of Guarantors.

**11. THIS PERFORMANCE GUARANTEE AGREEMENT SHALL BE GOVERNED BY, CONSTRUED AND ENFORCED UNDER THE INTERNAL LAWS (WITHOUT REGARD TO PRINCIPLES OF CONFLICTS OF LAWS) OF THE STATE**

**OF NEW YORK AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA.**

12. Any and all amounts required to be paid by Guarantors hereunder shall be paid to IWTC in United States currency at such place as IWTC may, from time to time, in writing appoint.

13. This Performance Guarantee Agreement may be executed in any number of duplicate originals and each such duplicate original shall be deemed to constitute but one and the same instrument. Any signature page of this Performance Guarantee Agreement may be detached from any duplicate original of this Performance Guarantee Agreement without impairing the legal effect of any signatures thereon and may be attached to another duplicate original of this Performance Guarantee Agreement identical in form hereto but having attached to it one or more additional signature pages.

[SIGNATURES ON FOLLOWING PAGE]

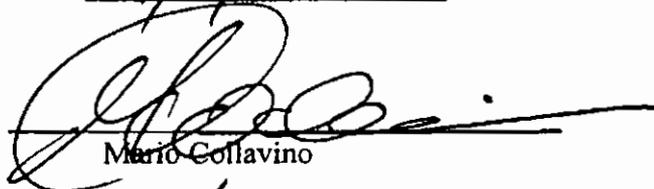
IN WITNESS WHEREOF, Guarantors have executed this Performance Guaranty Agreement as of the day and year indicated below.

**"GUARANTORS"**



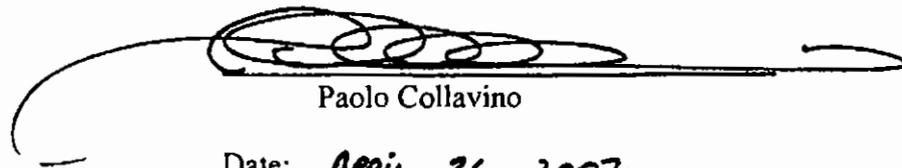
Renzo Collavino

Date: 4/26/2007



Mario Collavino

Date: 4/26/2007



Paolo Collavino

Date: APRIL 26, 2007

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P. 02/03

**Our strength grows everyday**

**Quadrozzi CONCRETE CORP.**

Mail: PO BOX 920179, ARVERNE, NY 11692  
E-mail: info@QuadrozziConcrete.com

Phone (718) 474-4333  
Fax (718) 318-2801

January 12, 2007

Tishman Construction Corporation of New York  
666 Fifth Avenue  
New York N.Y. 10103-0256

Re: World Trade Center Freedom Tower  
Supply of Ready Mix Concrete

Attn: Michael Mennella & Juan Estevez

Dear Gentlemen;

As per your request and according to the contract documents, please be advised that after extensive conversations and meetings with the owners of Collavino Construction Company: Quadrozzi Concrete Corporation has agreed in principal to supply the concrete required for the entire Freedom Tower at the World Trade Center site in Manhattan.

We at Quadrozzi Concrete would like to thank you in advance for consideration of our firm for this prestigious project. We have the plants and equipment to handle the volume of concrete as will be required over the next few years. We are excited at the prospect of participating on this World renowned structure. If you have any questions regarding this matter please feel free to contact us at any time.

Sincerely,  
Quadrozzi Concrete Corp.

Carl P Adler  
Senior Sales Executive



*[Handwritten signature]*