

Torres Rojas, Genara

From: dmorris@tectonicengineering.com
Sent: Thursday, August 07, 2014 8:52 AM
To: Duffy, Daniel; American, Heavyn-Leigh
Cc: Torres Rojas, Genara; Van Duyne, Sheree
Subject: Freedom of Information Online Request Form

Information:

First Name: David
Last Name: Morris
Company: Tectonic Engineering
Mailing Address 1: 160 Pehle Avenue, Suite 306 Mailing Address 2:
City: Saddle Brook
State: NJ
Zip Code: 07663
Email Address: dmorris@tectonicengineering.com
Phone: 2018430403
Required copies of the records: Yes

List of specific record(s):

Request for 415-05-128-46 WTC1 Soil Disposal Oversight contract with ATC Associates, Inc. on 10172007
Reference 4900003480.

THE PORT AUTHORITY OF NY & NJ

FOI Administrator

October 15, 2014

Mr. David Morris
Tectonic Engineering
160 Pehle Avenue, Suite 306
Saddle Brook, NJ 07663

Re: Freedom of Information Reference No. 15176

Dear Mr. Morris:

This is in response to your August 7, 2014 request, which has been processed under the Port Authority's Freedom of Information Code (the "Code", copy attached) for "415-05-128-46 WTC1 Soil Disposal Oversight contract with ATC Associates, Inc. on 10172007 Reference 4900003480."

Material responsive to your request and available under the Code can be found on the Port Authority's website at <http://www.panynj.gov/corporate-information/foi/15176-C.pdf>. Paper copies of the available records are available upon request.

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

Sincerely,



Heavyn-Leigh American
FOI Officer

Attachment



THE PORT AUTHORITY OF NY & NJ

P.A. Agreement #415-05-128

January 11, 2005

Engineering Department

ATC Group Services, Inc
dba ATC Associates, Inc.
104 East 25th Street
New York, NY 10010

Attention: Donald Beck, Regional Vice President

SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ASBESTOS DESIGN SERVICES AS REQUESTED ON A "CALL-IN" BASIS DURING 2005, 2006 AND 2007

Dear Mr. Beck:

1. The Port Authority of New York and New Jersey (hereinafter referred to as the "Authority") hereby offers to retain ATC Group Services, Inc. dba ATC Associates, Inc. (hereinafter referred to as "the Consultant" or "you") to provide expert professional services in connection with the performance of preliminary design and/or preparation of contract drawings, specifications and construction estimates as requested on a "call-in" basis during 2005, 2006 and 2007 as more fully set forth in Attachment A, which is attached hereto and made a part hereof.

The Authority does not guarantee the ordering of any services under this Agreement and specifically reserves the right, in its sole discretion, to use any person or firm to perform the type of services required hereunder.

As used herein "Chief Engineer" shall mean the Chief Engineer, or the Deputy Chief Engineer acting either personally or through their duly authorized representatives acting within the scope of the particular authority vested in them unless specifically stated to mean acting personally.

For the purpose of administering this Agreement, I have designated Mr. Marvin Kirshner, Chief Environmental Engineer, to act as my duly authorized representative. The Project Manager for this project is Mr. Robert Pruno, at (973) 565-7620, or e-mail address rpruno@panynj.gov.

2. Your services shall be performed as expeditiously as possible and at the time or times required by the Chief Engineer. Time is of the essence in the performance of all your services under this Agreement.

3. In response to a request for specific services hereunder and prior to the performance of any such services, you shall submit in writing to the Chief Engineer for approval an estimated cost and staffing analysis of such services to the Authority. Approval of such cost and direction from the Chief Engineer in writing to proceed shall effectuate the performance of services under this Agreement. After the point at which your expenditures for such services reach such approved estimated cost, you shall not continue to render any such services unless you are specifically authorized in writing to so continue by the Chief Engineer and you shall submit to him for approval a revised written estimated cost of such services. If no such authorization is



issued, the performance of the specifically requested services under this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed. It is understood however, that this limitation shall not be construed to entitle you to an amount equal to the approved estimated cost. Preparation of the cost estimate and staffing analysis mentioned in the first sentence of this paragraph shall not be a compensable service hereunder.

4. You shall not continue to render services under this Agreement after the point at which the total amount to be paid to you hereunder including reimbursable expenses reaches the combined total of each of the approved estimated costs unless you are specifically authorized in writing to so continue by the Chief Engineer. If no such authorization is issued, this Agreement shall be terminated without further obligation by either of the parties as to services not yet performed, but you shall be compensated as hereinafter provided for services already completed.

5. When services to be performed by the Consultant include the preparation of contract documents, or the performance of post award services, the Consultant shall submit his specific Quality Control/Assurance Program to the Engineer prior to the performance of said services. When the Consultant has completed preparation of any contract documents required hereunder he shall submit a letter to the Engineer certifying the Consultant's conformance with the aforementioned Quality Control/Assurance Program.

When the services to be performed by the Consultant include the preparation of computer aided design and drafting (CADD) documents, said documents must be prepared using the latest available revision of Autodesk's "AUTOCAD" software or Integraph's "Microstation" software or as directed by the Engineer prior to the performance of specific services and shall be submitted to the Authority on compact discs, 3.5" floppy diskettes, or as otherwise required.

When the services to be performed by the Consultant include the preparation of Architectural Graphics and said graphics are to be prepared using a computer systems said systems shall be a Macintosh and Autodesk's "AUTOCAD". The graphics shall be prepared using the latest revision of the following software packages, as required: "Adobe Illustrator", "Quark Xpress", "Microsoft Word" and shall be submitted to the Authority on compact discs, 3.5 inch diskettes and as otherwise required.

6. The Consultant shall meet and consult with Authority staff as requested by the Chief Engineer in connection with the services to be performed herein. Any Contract Drawings and Technical Specifications and other items to be submitted or prepared by the Consultant hereunder shall be subject to the review of the Chief Engineer. The Chief Engineer may disapprove, if in his sole opinion the said items are not in accordance with the requirements of this Agreement, sound engineering principles, or are impractical, uneconomical or unsuited in any way for the purpose for which the contemplated construction is intended. If any of the said items or any portion thereof are so disapproved, the Consultant shall forthwith revise them until they meet the approval of the Chief Engineer, but the Consultant shall not be compensated under any provision of this Agreement for performance of such revisions. No approval or disapproval or omission to approve or disapprove, however, shall relieve the Consultant of his responsibility under this Agreement to furnish in accordance with an agreed upon schedule, a complete, practical,



economical design and Contract Drawings and Technical Specifications, and corrections and changes therein which are best suited for the contemplated construction, are done in accordance with sound engineering principles and are signed and sealed by a licensed Professional Engineer.

7. In order to effectuate the policy of the Authority, the designs and the concepts in any Contract Drawings and Technical Specifications and all changes therein formulated by the Consultant shall comply with all provisions of Federal, State, municipal, local and departmental laws, ordinances, rules, regulations, and orders which would affect or control said designs and concepts if the construction were being performed for a private corporation, unless the Authority standard is more stringent, in which case the Authority standard shall be followed, or unless the Consultant shall receive a written notification to the contrary signed by the Chief Engineer personally, in which case the requirements of said notification shall apply.

8. As full compensation for all your services and obligations in connection with this Agreement, the Authority will pay you the total of the amounts computed under subparagraphs A, B, C and D below, subject to the limits on compensation and provisions set forth in paragraphs 3 and 4 above. Subject to the terms and conditions below, travel time is not reimbursable under subparagraphs A, B, and C hereunder.

A. An amount equal to **2.7664** times the actual salaries paid by you to architects, engineers, designers, drafters or other professional and technical personnel but not partners, principals or temporary employees, for time actually spent by them in the performance of services hereunder, plus an amount equal to the number of hours actually spent by partners and principals in the performance of services hereunder times the billing rate (no multiplier applied) described below but in each case excluding premium payments for overtime work or night work or for performing hazardous duty. Attached hereto is a schedule of actual salaries and titles of architects, engineers, designers, drafters or other permanent professional and technical personnel employed by you, as well as rates customarily billed for partners and principals on projects such as this. For compensation purposes under this Agreement, no said salary or amount shall exceed the salary or amount received by said personnel or rate customarily billed for a partner or principal as of the effective date of this Agreement unless the Chief Engineer has been notified in advance, in writing, of the increased salary, rate or amount and approves the increase. When requesting salary adjustments for one or more of its personnel, the Consultant shall submit his/her name, title, current direct hourly rate, proposed new direct hourly rate, resulting percentage increase, effective date and reason for the requested change. The Authority reserves the right of approval of all personnel, amounts and salaries of said personnel performing services under this Agreement. For adjustments submitted after the effective date of this Agreement approval will not be withheld if the Consultant demonstrates that increases in salary, or partner's or principal's rate or amount are in accordance with the program of periodic merit and cost of living increases normally administered by it. For the purposes of this agreement, the multiplier set forth in the first line of this sub-paragraph shall be fixed and not subject to increase for the performance of all contemplated services hereunder.



Notwithstanding the above, the multiplier set forth in the first line of this subparagraph shall be applied only in the case of personnel other than partners or principals who are permanent employees.

B. An amount equal to the premium payments for overtime work or night work or for performing hazardous duty, actually paid to partners, principals, architects, engineers, designers, drafters, or other professional and technical employees for time actually spent by them in the performance of services hereunder when such overtime or other premium payments have been demonstrated to be in accordance with the Consultant's normal business practice and have been authorized in advance by the Chief Engineer in writing. The Project Manager for the Authority shall have the right to authorize and approve premium payments up to a total amount of \$1,000 per occasion. Payments above said total amount shall be subject to the prior written authorization of the Chief Engineer. Such premium payments to supervisory employees, who do not receive such payments in the Consultant's normal business practice shall not be given under this Agreement.

C. An amount equal to the amounts actually paid to subconsultants hereunder who have been retained after the written approval by the Chief Engineer of the subconsultant and the compensation to be paid the subconsultant. The Consultant shall submit a copy of the terms and conditions of the subconsultant's compensation (including multiplier, if applicable), as well as an estimate of the number of hours required by the subconsultant to perform his services, as part of any request for approval of the subconsultant.

D. An amount equal to the out-of-pocket expenses, approved in advance by the Chief Engineer, necessarily and reasonably incurred and actually paid by you in the performance of your services hereunder. Out-of-pocket expenses are expenses that are unique to the performance of your services under this Agreement and generally contemplate the purchase of outside ancillary services, except that for the purpose of this Agreement, out-of-pocket expenses do include amounts for mailing and delivery charges for submittal of drawings, specifications and reports; long distance telephone calls; rentals of equipment; travel and local transportation; and meals and lodging on overnight trips.

Notwithstanding the above the Authority will pay an amount approved in advance by the Chief Engineer and computed as follows for the reproduction of submittal drawings, specifications and reports:

- 1) If the Consultant uses its own facilities to reproduce such documents, an amount computed in accordance with the billing rates the Consultant customarily charges for reproduction of such documents on agreements such as this, or
- 2) If the Consultant uses an outside vendor for the reproduction of such documents, the actual, necessary and reasonable amounts for the reproduction of such documents.

The expenses do not include expenses that are usually and customarily included as part of the Consultant's overhead. For the purposes of this Agreement out-of-pocket expenses do not



include amounts for typing, utilization of computer systems, computer aided design and drafting (CADD), cameras, recording or measuring devices, flashlights and other small, portable equipment, safety supplies, phones, telephone calls, electronic messaging including FAX, Telex and telegrams, or expendable office supplies. Unless otherwise indicated, required insurance is not a reimbursable expense.

You shall obtain the Chief Engineer's written approval prior to making expenditures for out-of-pocket expenses in excess of \$1,000 per specific expenditure and for all overnight trips which are reimbursable expenditures as set forth above. You shall substantiate all billings for out-of-pocket expenses in excess of \$25 with receipted bills and provide said receipts with the appropriate billing.

"Salaries paid to employees" or words of similar import shall mean salaries and amounts actually paid (excluding payments or factors for holidays, vacations, sick time, bonuses, profit participations and other similar payments) to architects, engineers, designers, drafters or other professional and technical employees of the Consultant, for time actually spent directly in the performance of technical services hereunder and recorded on daily time records which have been approved by the employee's immediate supervisor, excluding the time of any employee of the Consultant to the extent that the time of such employee of the Consultant is devoted to typing/word processing, stenographic, clerical or administrative functions. Such functions shall be deemed to be included in the multiplier referred to in subparagraph A above.

9. You shall keep, and shall cause any subconsultants under this Agreement to keep, daily records of the time spent in the performance of services hereunder by all persons whose salaries or amounts paid thereto will be the basis for compensation under this Agreement as well as records of the amounts of such salaries and amounts actually paid for the performance of such services and records and receipts of reimbursable expenditures hereunder, and, notwithstanding any other provisions of this Agreement, failure to do so shall be a conclusive waiver of any right to compensation for such services or expenses as are otherwise compensable hereunder. The Authority shall have the right to audit all such records.

The Authority shall have the right to inspect your records, and those of your subconsultants, pertaining to any compensation to be paid hereunder, such records to be maintained by you and your subconsultants for a period of three (3) years after completion of services to be performed under this Agreement.

10. On or about the fifteenth day of each month, you shall render a bill for services performed and reimbursable out-of-pocket expenses incurred in the prior month, accompanied by such records and receipts as required, to the Project Manager. Each invoice shall bear your taxpayer number and the purchase order number(s) provided by the Engineer. Upon receipt of the foregoing, the Chief Engineer will estimate and certify to the Authority the approximate amount of compensation earned by you up to that time. As an aid to you the Authority shall, within fifteen days after receipt of such certification by the Chief Engineer, advance to you by check the sum certified minus all prior payments to you for your account.



11. The Authority may at any time for cause terminate this Agreement as to any services not yet rendered, and may terminate this Agreement in whole or in part without cause upon three (3) days notice to you. You shall have no right of termination as to any services under this Agreement without just cause. Termination by either party shall be by certified letter addressed to the other at its address hereinbefore set forth. Should this Agreement be terminated in whole or in part by either party as above provided, you shall receive no compensation for any services not yet performed, but if termination is without fault on your part, the Authority shall pay you as the full compensation to which you shall be entitled in connection with this Agreement the amounts computed as above set forth for services completed to the satisfaction of the Chief Engineer through the date of termination, minus all prior payments to you.
12. You shall not issue or permit to be issued any press release, advertisement, or literature of any kind, which refers to the Authority or the services performed in connection with this Agreement, unless you first obtain the written approval of the Chief Engineer. Such approval may be withheld if for any reason the Chief Engineer believes that the publication of such information would be harmful to the public interest or is in any way undesirable.
13. Under no circumstances shall you or your subconsultants communicate in any way with any contractor, department, board, agency, commission or other organization or any person whether governmental or private in connection with the services to be performed hereunder except upon prior written approval and instructions of the Chief Engineer, provided, however that data from manufacturers and suppliers of material shall be obtained by you when you find such data necessary unless otherwise instructed by the Chief Engineer.
14. Any services performed for the benefit of the Authority at any time by you or on your behalf, even though in addition to those described herein, even if expressly and duly authorized by the Authority, shall be deemed to be rendered under and subject to this Agreement (unless referable to another express written, duly executed agreement by the same parties), whether such additional services are performed prior to, during or subsequent to the services described herein, and no rights or obligations shall arise out of such additional services.
15. No certificate, payment (final or otherwise), acceptance of any work nor any other act or omission of the Authority or the Chief Engineer shall operate to release you from any obligations under or upon this Agreement, or to estop the Authority from showing at any time that such certificate, payment, acceptance, act or omission was incorrect or to preclude the Authority from recovering any money paid in excess of that lawfully due, whether under mistake of law or fact or to prevent the recovery of any damages sustained by the Authority.
16. Mylars of the contract drawings, originals of technical specifications, estimates, reports, records, data, charts, documents, renderings, computations, computer tapes or disks, and other papers of any type whatsoever, whether in the form of writing, figures or delineations, which are prepared or compiled in connection with this Agreement, shall become the property of the Authority, and the Authority shall have the right to use or permit the use of them and any ideas or methods represented by them for any purpose and at any time without other compensation than that specifically provided herein. The Consultant hereby warrants and represents that the Authority will have at all times the ownership and rights provided for in the immediately



preceding sentence free and clear of all claims of third persons whether presently existing or arising in the future and whether presently known to either of the parties of this Agreement or not. This Agreement shall not be construed, however, to require the Consultant to obtain for the Authority the right to use any idea, design, method, material, equipment or other matter which is the subject of a valid patent, unless such patent be owned by the Consultant or one of his employees, or his subconsultant or the subconsultant's employees, in which case such right shall be obtained without additional compensation. Whether or not your Proposal is accepted by the Authority, it is agreed that all information of any nature whatsoever which is in any way connected with the services performed in connection with this Agreement, regardless of the form of which has been or may be given by you or on your behalf, whether prior or subsequent to the execution of this Agreement, to the Authority, its Commissioners, officers, agents or employees, is not given in confidence and may be used or disclosed by or on behalf of the Authority without liability of any kind, except as may arise under valid existing or pending patents, if any.

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

18. Without the express written approval of the Chief Engineer, you shall keep confidential, and shall require your subconsultants and your employees to keep confidential a) all information disclosed by the Port Authority or its consultants to you or b) developed by you or your subconsultants in the performance of services hereunder. Disclosure of any such information shall constitute a material breach of the Agreement.

19. You shall promptly and fully inform the Chief Engineer in writing of any patents or patent disputes, whether existing or potential, of which you have knowledge, relating to any idea, design, method, material, equipment or other matter related to the subject matter of this Agreement or coming to your attention in connection with this Agreement.

20. This Agreement being based upon your special qualifications for the services herein contemplated, any assignment, subletting or other transfer of this Agreement or any part hereof or of any moneys due or to become due hereunder without the express consent in writing of the Authority shall be void and of no effect as to the Authority, provided, however, that you may



sublet services to subconsultants with the express consent in writing of the Chief Engineer. All persons to whom you sublet services, however, shall be deemed to be your agents and no subletting or approval thereof shall be deemed to release you from your obligations under this Agreement or to impose any obligation on the Authority to such subconsultant or give the subconsultant any rights against the Authority.

21. The Authority has a long-standing practice of encouraging Minority Business Enterprises (MBEs) and Women Business Enterprises (WBEs) to seek business opportunities with it, either directly or as subconsultants or subcontractors. "Minority-owned business" or "MBE" means a business entity which is at least 51 percent owned by one or more members of one or more minority groups, or, in the case of a publicly held corporation, at least 51 percent of the stock of which is owned by one or more members of one or more minority groups; and whose management and daily business operations are controlled by one or more such individuals who are citizens or permanent resident aliens. "Women-owned business" or "WBE" means a business which is at least 51 percent owned by one or more women; or, in the case of a publicly held corporation, 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more women who are citizens or permanent resident aliens.

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

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

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

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

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

The Chief Engineer has set a goal of 12 percent participation by qualified and certified MBEs and 5 percent to qualified and certified WBEs on consultant projects.

To be "certified" a firm must be certified by the Authority's Office of Business and Job Opportunity.

In order to facilitate the meeting of this goal, the Consultant shall use every good faith effort to utilize subconsultants who are certified MBEs or WBEs to the maximum extent feasible.

The Authority has a list of certified MBE/WBE service firms, which is available to you at your request. The Consultant will be required to submit to the Authority's Office of Business and Job Opportunity for certification the names of MBE/WBE firms he proposes to use who are not on the list of certified MBE/WBE firms.



22. NOTIFICATION OF SECURITY REQUIREMENTS

The Port Authority of New York & New Jersey has facilities, systems, and projects where terrorism or other criminal acts may have a significant impact on life safety and key infrastructures. The Authority reserves the right to impose multiple layers of security requirements on the Consultant, its staff and subconsultants and their staffs depending upon the level of security required, as determined by the Authority. These security requirements may include but are not limited to the following:

- Consultant/subconsultant 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;
- Issuance of Photo Identification cards;
- Access control, inspection, and monitoring by security guards.

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

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

Compensation for compliance with security requirements not anticipated, as part of the original scope of services shall be subject to the terms of the Agreement relating to compensation as determined by the Authority.

23. With regard to work performed on Authority premises, the Consultant will indemnify and hold harmless the Port Authority against claims, loss and damage, for bodily injury, death or damage to personal property arising out of the Consultant's negligence.

24. COMMERCIAL LIABILITY INSURANCE AND WORKERS' COMPENSATION INSURANCE

A. Commercial Liability Insurance:

1) The Consultant shall take out and maintain at his own expense Commercial General Liability Insurance including but not limited to Premises-Operations, Completed Operations and Independent Contractor coverages in limits of not less than \$2,000,000 combined single limit per occurrence for Bodily Injury Liability and Property Damage Liability. And if vehicles are to be used to carry out the performance of this contract, then the Consultant shall also take out, maintain and pay the premiums on Automobile Liability Insurance covering all owned, non-owned and hired autos in not less than \$2,000,000 combined



single limit per accident for bodily injury and property damage. In addition, the policy shall include the Authority as an additional insured and shall contain a provision that the policy may not be canceled, terminated or modified without thirty days written advance notice to the Project Manager as noted below. Moreover, the Commercial General Liability policy shall not contain any provisions (other than a Professional Liability exclusion, if any) for exclusions from liability other than provisions or exclusions from liability forming part of the most up to date ISO form or its equivalent unendorsed Commercial General Liability Policy. The liability policy (ies) and certificate of insurance shall contain cross-liability language providing severability of interests so that coverage will respond as if separate policies were in force for each insured.

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

2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- (a) Endorsement to eliminate any exclusions applying to the underground property, explosion and collapse hazards.
- (b) Endorsement to eliminate any exclusions on account of ownership, maintenance, operation, use, loading or unloading of watercraft.
- (c) Coverage for work within 50 feet of railroad

B. Workers' Compensation Insurance:

1) The Consultant shall take out and maintain Workers' Compensation Insurance in accordance with the requirements of law and Employer's Liability Insurance with limits of not less than \$1,000,000 each accident

2) Additional Coverages: The Consultant shall have the policy endorsed when required by the Engineer for specific services hereunder and include the additional premium cost thereof as an out-of-pocket expense:

- a) United States Longshoremen's and Harbor Workers' Compensation Act Endorsement.
- b) Coverage B Endorsement - Maritime (Masters or Members of the Crew of Vessels), in limits of not less than \$1,000,000 per occurrence.
- c) Amendments to Coverage B, Federal Employers' Liability Act in limits of not less than \$1,000,000 per occurrence.



C. Compliance:

Prior to commencement of work at the site, the Consultant shall deliver a certificate from its insurer evidencing policies of the above insurance stating the title of this Agreement, the P. A. Agreement number and containing a separate express statement of compliance with each of the requirements above set forth, via e-mail, to the Project Manager.

1) Upon request of the Manager, Risk Management/Treasury, the Consultant shall furnish to the Authority a certified copy of each policy itself, including the provisions establishing premiums.

2) The requirements for insurance procured by the Consultant shall not in any way be construed as a limitation on the nature or extent of the contractual obligations assumed by the Consultant under this contract. The insurance requirements are not a representation by the Authority as to the adequacy of the insurance to protect the Consultant against the obligations imposed on them by law or by this or any other Contract.

25. CERTIFICATION OF NO INVESTIGATION (CRIMINAL OR CIVIL ANTI-TRUST), INDICTMENT, CONVICTION, DEBARMENT, SUSPENSION, DISQUALIFICATION AND DISCLOSURE OF OTHER INFORMATION

By signing this Agreement, the Consultant and each person signing on behalf of the Consultant certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, that the Consultant and each parent and/or affiliate of the Consultant has not:

- A. been indicted or convicted in any jurisdiction;
- B. been suspended, debarred, found not responsible or otherwise disqualified from entering into any agreement with any governmental agency or been denied a government agreement for failure to meet standards related to the integrity of the Consultant;
- C. had an agreement terminated by any governmental agency for breach of agreement or for any cause based in whole or in part on an indictment or conviction;
- D. ever used a name, trade name or abbreviated name, or an Employer Identification Number different from those inserted in the Proposal;
- E. had any business or professional license suspended or revoked or, within the five years prior to proposal opening, had any sanction imposed in excess of \$50,000 as a result of any judicial or administrative proceeding with respect to any license held or with respect to any violation of a federal, state or local environmental law, rule or regulation;
- F. had any sanction imposed as a result of a judicial or administrative proceeding related to fraud, extortion, bribery, proposal rigging, embezzlement, misrepresentation or anti-trust regardless of the dollar amount of the sanctions or the date of their imposition; and
- G. 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.



26. **NON-COLLUSIVE PROPOSING, AND CODE OF ETHICS CERTIFICATION, CERTIFICATION OF NO SOLICITATION BASED ON COMMISSION, PERCENTAGE, BROKERAGE, CONTINGENT OR OTHER FEES**

By proposing on this Agreement, each Consultant and each person signing on behalf of any Consultant certifies, and in the case of a joint proposal, each party thereto certifies as to its own organization, that:

A. the prices in its proposal have been arrived at independently without collusion, consultation, communication or agreement for the purpose of restricting competition, as to any matter relating to such prices with any other consultant or with any competitor;

B. the prices quoted in its proposal have not been and will not be knowingly disclosed directly or indirectly by the Consultant prior to the official opening of such proposal to any other consultant or to any competitor;

C. no attempt has been made and none will be made by the Consultant to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition;

D. this organization has not made any offers or agreements or 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 dated April 11, 1996 (a copy of which is available upon request to the individual named in the clause hereof entitled "Consultant's Questions"), nor does this organization have any knowledge of any act on the part of an Authority employee or former Authority employee relating either directly or indirectly to this organization which constitutes a breach of the ethical standards set forth in said Code; and

E. no person or selling agency other than a bona fide employee or bona fide established commercial or selling agency maintained by the Consultant for the purpose of securing business, has been employed or retained by the Consultant to solicit or secure this Agreement on the understanding that a commission, percentage, brokerage, contingent, or other fee would be paid to such person or selling agency.

F. the Consultant has not offered, promised or given, demanded or accepted, any undue advantage, directly or indirectly, to or form 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 Agreement.

The foregoing certifications shall be deemed, to be made by the Consultant as follows:

* if the Consultant is a corporation, such certification shall be deemed to have been made not only with respect to the Consultant itself, but also with respect to each parent, affiliate, director, and officer of the Consultant, as well as, to the best of the certifier's knowledge and belief, each stockholder of the Consultant with an ownership interest in excess of 10%;



* if the Consultant is a partnership, such certification shall be deemed to have been made not only with respect to the Consultant itself, but also with respect to each partner.

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

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

Notwithstanding that the Consultant may be able to make the foregoing certifications at the time the proposal is submitted, the Consultant shall immediately notify the Authority in writing during the period of irrevocability of proposals on this Agreement or any extension of such period of any change of circumstances which might under this clause make it unable to make the foregoing certifications or require disclosure. The foregoing certifications or signed statement shall be deemed to have been made by the Consultant with full knowledge that they would become a part of the records of the Authority and that the Authority will rely on their truth and accuracy in awarding this Agreement. In the event that the Authority should determine at any time prior or subsequent to the award of this Agreement that the Consultant has falsely certified as to any material item in the foregoing certifications 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 certifications required to be disclosed, the Authority may determine that the Consultant is not a responsible Consultant with respect to its proposal on the Agreement or with respect to future proposals on Authority agreements and may exercise such other remedies as are provided to it by the Agreement with respect to these matters. In addition, Consultants 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.). Consultants are also advised that the inability to make such certification will not in and of itself disqualify a Consultant, and that in each instance the Authority will evaluate the reasons therefor provided by the Consultant.

**27. CONSULTANT ELIGIBILITY FOR AWARD OF AGREEMENTS –
DETERMINATION BY AN AGENCY OF THE STATE OF NEW YORK OR NEW
JERSEY CONCERNING ELIGIBILITY TO RECEIVE PUBLIC AGREEMENTS**

The Consultant is advised that the Authority has adopted a policy to the effect that in awarding its agreements it will honor any determination by an agency of the State of New York or New Jersey that a consultant is not eligible to propose on or be awarded public agreements because the consultant has been determined to have engaged in illegal or dishonest conduct or to have violated prevailing rate of wage legislation.



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

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

28. NO GIFTS, GRATUITIES, OFFERS OF EMPLOYMENT, ETC.

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

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 Agreement or any other Port Authority agreement), etc. which might tend to obligate the Port Authority employee to the Consultant, 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 Agreement or any other Port Authority agreement. Where used herein, the term "Port Authority" shall be deemed to include all subsidiaries of the Port Authority.

The Consultant shall insure that no gratuities of any kind or nature whatsoever shall be solicited or accepted by it and by its personnel for any reason whatsoever from the passengers, tenants, customers or other persons using the Facility and shall so instruct its personnel.

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

The Consultant shall include the provisions of this clause in each subagreement entered into under this Agreement.



29. CONFLICT OF INTEREST

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

30. DEFINITIONS

As used in sections 25 to 29 above, the following terms shall mean:

Affiliate - Two or more firms are affiliates if a parent owns more than fifty percent of the voting stock of each of the firms, or a common shareholder or group of shareholders owns more than



fifty percent of the voting stock of each of the firms, or if the firms have a common proprietor or general partner.

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

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

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

Parent - An individual, partnership, joint venture or corporation, which owns more than 50% of the voting stock of the consultant.

31. The entire agreement between the parties is contained herein and no change in or modification, termination or discharge of this Agreement in any form whatsoever shall be valid or enforceable unless it is in writing and signed by the party to be charged therewith, or his duly authorized representative, provided, however, that termination in the manner hereinbefore expressly provided shall be effective as so provided.

32. No Commissioner, officer, agent or employee of the Authority shall be charged personally by you with any liability or held liable to you under any term or provision of this Agreement, or because of its execution or attempted execution or because of any breach hereof.



ATC GROUP SERVICES, INC.
DBA ATC ASSOCIATES, INC.

- PAGE 17 -

THE PORT AUTHORITY OF NY & NJ
JANUARY 11, 2005

33. If the foregoing meets with your approval, please indicate your acceptance by signing the original and the additional enclosed copy in the lower left-hand corner and returning them to the Authority.

Very truly yours,

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

By: 
Francis J. Lombardi, P.E.
Chief Engineer

Date: 1/28/05

ACCEPTED:
ATC Group Services, Inc. dba ATC Associates, Inc.

By: 

Title: Senior VP

Date: 1-17-05

ATTACHMENT A

PERFORMANCE OF EXPERT PROFESSIONAL ASBESTOS DESIGN SERVICES AS REQUESTED ON A "CALL-IN" BASIS DURING 2005, 2006 AND 2007

I. SCOPE OF WORK

The services of the Consultant shall consist generally of completing field investigations, bulk sampling, preparing sampling reports and developing contract documents including design drawings and technical specifications, cost estimates for the abatement of the following materials:

1. Pipe insulation
2. Boiler insulation/Mechanical System Insulation
3. Roofing
4. Fireproofing on structural members
5. Fireproofing on Ducts and Plumbing fixtures
6. Acoustical treatments on ceilings and walls
7. Panels and tiles
8. Lead Based Paint
9. Mold

II. DESCRIPTION OF CONSULTANT'S TASKS

Tasks to be performed by the Consultant may include, but shall not be limited to the following:

- Project Scoping
- Field Inspections
- Asbestos and Lead Based Material Collection and Analysis
- Determination of Asbestos and Lead Based Material Quantities
- Identification of Asbestos and Lead Based Materials Conditions
- Prioritization of Areas for Asbestos and Lead Abatement
- Recommendations and Cost Estimation of Mitigative Measures
- Preparation of Contract Documents (i.e. detailed abatement drawing and technical specifications)

When services to be performed by the Consultant include the preparation of contract documents, or the performance of post award services, the Consultant shall submit his specific Quality Control/Assurance Program to the Engineer prior to the performance of said services. When the Consultant has completed preparation of any contract documents, he shall submit a letter to the Engineer certifying the Consultant's conformance with the aforementioned Quality Control/Assurance Program.

Except as otherwise noted herein, all designs and preparation of Contract Documents shall conform to Authority Standards, and those codes and regulations which would be applicable if the Authority were a private corporation and, in case of a conflict, the more stringent requirement shall apply.

III. CONDITIONS AND PRECAUTIONS

A. General

The Consultant shall immediately inform the Authority of any unsafe condition discovered at any time during the course of this work.

Vehicular and/or pedestrian traffic shall have priority over any and all to the Consultant's operations.

B. Work Areas

The Consultant shall limit his work to the area necessary for the performance of such work and shall not interfere with the operation of the facility without first obtaining specific approval from the Chief Engineer.

The Consultant shall not permit any objects or pieces of equipment to lie unattended on sidewalks, roadways or structures at any time.

C. Work Hours

The Consultant shall coordinate his work at the site(s) with the Project Manager.

In any case, no work shall be performed at the site on a legal holiday of either the State of New Jersey or the State of New York.



10th Floor
New York, NY 10010
212.353.8280 T
212.353.8306 F

**PERFORMANCE OF EXPERT PROFESSIONAL ASBESTOS DESIGN SERVICES AS REQUESTED ON A
"CALL-IN" BASIS DURING 2005, 2006 AND 2007
(P.A. AGREEMENT #415-05-128)**

Approved 1/25/05
[Signature]

MULTIPLIER: 2.7664

PRINCIPAL STAFF

Donald Beck	Regional Vice President	\$200.00
Kevin Hamilton	NYC Branch Manager	\$175.00
Gilbert Gedeon, P.E.	Operations Manager/Project Manager	\$150.00

ASBESTOS PERSONNEL

Ben Sallemi	Manager - NYC Investigator/NYS Inspector/Monitor/Designer	\$36.06
David Chang	Manager - NYC Investigator/NYS Inspector/Monitor/Designer	\$36.06
Francis Pierre	Manager - NYC Investigator/NYS Inspector/Monitor/Designer	\$36.41
Prasad Doddapeneni	Manager - NYC Investigator/NYS Inspector/Monitor/Designer	\$36.06
Roney Rivero	Manager - NYC Investigator/NYS Inspector/Monitor/Designer	\$35.36
Dan Finckley	Technician - NYS Inspector/Monitor	\$17.37
Jay Dupay	Technician - NYS Inspector/Monitor	\$27.26
Kevin Fitzpatrick	Technician - NYS Inspector/Monitor	\$17.82
Krzysztof Dolinski	Technician - NYC Investigator/NYS Inspector/Monitor	\$22.86
Marcus Hyman	Technician - NYS Inspector/Monitor	\$15.57
Mohammad Karim	Technician - NYS Inspector/Monitor	\$16.81
Roman Fishman	Technician - NYC Investigator/NYS Inspector/Monitor	\$17.46
Zbigniew Kowalski	Technician - NYS Inspector/Monitor/Designer	\$19.20

LEAD PERSONNEL

Eric Luchs	Manager - Lead Inspector/Risk Assessor	\$26.44
Pavel Mashenko	Manager - Lead Inspector/Risk Assessor	\$35.65
Richard Edwards	Manager - Lead Inspector/Risk Assessor	\$22.00
Carmelo Altomonte	Technician - Lead Inspector/Risk Assessor	\$24.00
Harry Lee	Technician - C-5 Supervisor	\$24.00
James Restaino	Technician - Lead Inspector/Risk Assessor	\$15.00



Jude Imohi	Technician – C-3 Supervisor	\$25.86
Kevin Lighty	Technician – C-5 Supervisor	\$19.80
Mariana Medinets	Technician - Lead Inspector/Risk Assessor	\$22.01
Ramon Rivera	Technician – C-5 Supervisor	\$21.85

MOLD PERSONNEL

Jim Cohn	Manager - Certified Industrial Hygienist	\$32.90
Michael Donovan	Manager - Certified Industrial Hygienist	\$39.42
Chuck Johnson	Technician - Industrial Hygienist	\$18.43
Deycer Giraldo	Technician - Industrial Hygienist	\$16.00
Robert Harrington	Technician - Industrial Hygienist	\$16.00
Tenzin Namgyal	Technician - Industrial Hygienist	\$22.03
Wagdi Abdelshahid	Technician - Industrial Hygienist	\$25.01

CADD PERSONNEL

Marina Sverdel	CADD Operator	\$22.00
Galina Aki'lov	CADD Operator	\$22.00



THE PORT AUTHORITY OF NY & NJ

January 31, 2005

ATC Group Services, Inc
dba ATC Associates, Inc.
104 East 25th Street
New York, NY 10010

Attention: Donald Beck, Regional Vice President

SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ASBESTOS DESIGN SERVICES AS REQUESTED ON A "CALL-IN" BASIS DURING 2005, 2006 AND 2007 (P.A. AGREEMENT #415-05-128)

Dear Mr. Beck:

Transmitted herewith is a copy of the subject Agreement, as executed by the Authority, for your files.

Sincerely,

fr. Tim Volonakis
Manager
Professional, Technical & Advisory Services Division
Procurement Department

Enclosure

One Madison Avenue
New York, NY 10010
T: 212 435 7000



THE PORT AUTHORITY OF NY & NJ

Engineering Department

December 11, 2006

ATC Group Services, Inc
dba ATC Associates, Inc.
104 East 25th Street
New York, NY 10010

Attention: Donald Beck, Regional Vice President

**SUBJECT: PERFORMANCE OF EXPERT PROFESSIONAL ASBESTOS
DESIGN SERVICES AS REQUESTED ON A "CALL-IN" BASIS DURING 2005,
2006 AND 2007 (P.A. Agreement #415-05-128)**

Dear Mr. Beck:

The Port Authority hereby offers to amend the subject Agreement (dated November 17, 2003 and any subsequent amendments) with regard to services to be performed at the World Trade Center Site.

Since services to be performed at the World Trade Center Site may be partially funded by the Federal Transit Administration (FTA), certain additional FTA terms and conditions are required to be incorporated in the subject agreement to be applicable solely for the performance of such services.

Therefore, "The Port Authority of New York and New Jersey – Federal Transit Administration Requirements Services Attachment", is attached hereto and incorporated by reference. Contractors must comply with all Federal Transit Administration (FTA) regulations, policies, procedures and directives, including, but not limited to those set forth in the "Master Agreement for Lower Manhattan Recovery Grants", dated May 16, 2003, and any subsequent amendments thereto, which is attached hereto and incorporated by reference.

Please complete and return the "Certification regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" and the "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352", (and the disclosure form entitled "Disclosure of Lobbying activities pursuant to U.S.C. 1352, if applicable) which are appended to the "The Port Authority of New York and New Jersey – Federal Transit Administration Requirements Services Attachment".



Please note that Section VII, of "The Port Authority of New York and New Jersey – Federal Transit Administration Requirements Services Attachment" entitled "Access to Records and Reports" has modified requirements for records retention.

After Section 22, entitled "Notification of Security Requirements", of the Standard Agreement, add the following as Section 22.A.:

"22.A. PROTECTION OF SECURITY INFORMATION

- A. 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 the Authority; and SSI as defined in 49 CFR Parts 15 and 1520. Port Authority 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 Port Authority 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 (November 1, 2004) and the 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 may 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.

- B. 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.



- C. The SIM shall prepare an Authorized Personnel Contract 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 the Authority 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.

- D. 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.”

Add the following as Section 30A:

“30A. INTEGRITY MONITOR

In the event that the Port Authority hires an Integrity Monitor in connection with the World Trade Center Site, the Consultant and/or subconsultants will cooperate fully with the Monitor and the Port Authority, including but not limited to providing complete access to all personnel and records related to the performance of this Agreement. Failure to cooperate may result in the termination of this Agreement.”

The compensation for the services to be performed under the subject agreement at the World Trade Center Site is expected but not guaranteed to be in the range of Ten Thousand Dollars (\$10,000.00) up to, and not to exceed, an amount of One Hundred and Fifty Thousand Dollars (\$150,000.00).



THE PORT AUTHORITY OF NY & NJ

The subject agreement shall remain in full force and effect, except as amended above. If you are in agreement with the foregoing changes, please indicate your acceptance by signing both original copies of this letter and returning one original to Patricia Cose, Manager, World Trade Center Site Procurements, 1 Madison Avenue, 7th Floor, New York, NY 10010.

Sincerely yours,

THE PORT AUTHORITY OF
NEW YORK AND NEW JERSEY

Francis J. Lombardi, P.E.
Chief Engineer

ACCEPTED:

ATC Group Services, Inc.
d/b/a ATC Associates, Inc.

By: RTJ

Title: Vice President

Date: 12/19/2006

**THE PORT AUTHORITY OF NEW YORK AND NEW JERSEY
FEDERAL TRANSIT ADMINISTRATION REQUIREMENTS SERVICES
ATTACHMENT**

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I. ORGANIZATIONAL CONFLICT OF INTEREST

- A. This Contract may give rise to a potential for an organizational conflict of interest. An organizational conflict of interest exists when the nature of the work to be performed under the contract may, without some form of restriction on future activities; result in an unfair competitive advantage to the Contractor.
1. The Contractor shall have access to confidential and/or sensitive Authority information in the course of contract performance. Additionally, the Contractor may be provided access to proprietary information obtained from other contracted entities during contract performance. The Contractor agrees to protect all such information from disclosure unless so authorized, in writing, by the Authority and to refrain from using such information for any purpose other than that for which it was furnished.
 2. To the extent that the Contractor either (a) uses confidential and/or sensitive Authority information or proprietary information obtained from other Authority contractors to develop any form of document, report, or plan that is determined by the Authority to be the basis, in whole or in part, of any subsequent solicitation issued by the Authority or (b) develops written specifications that are used in any subsequent solicitation issued by the Authority, the Contractor agrees that it shall not be eligible to compete for such subsequent solicitation(s) as a prime or principal contractor or as part of any teaming arrangement unless the Authority provides, in writing, a specific waiver of this restriction. The duration of any restriction imposed under this subparagraph shall not exceed the length of the initial performance period of any subsequently awarded contract for which the Contractor was ineligible to compete.
- B. The Contractor, by submitting its bid or proposal, agrees to the above stated conditions and terms and further agrees to perform all duties under the contract and, in doing so, not to enter into contractual agreements with Authority prime contractors and first-tier subcontractors in such a way as to create an organizational conflict of interest.
- C. If the Authority determines that the Contractor has violated any term of this numbered clause, the Authority may take any appropriate action available under the law or regulations to obtain redress to include, but not be limited to, requiring the Contractor to terminate any affiliation or contractual arrangement with an Authority prime contractor or first-tier subcontractor at no cost to the Authority; determining the Contractor ineligible to compete for or be awarded any subsequent or "follow-on" contracts that may be based upon the Contractor's actions under this Contract or violations of this numbered clause, or terminating this Contract, in whole or in part.

II. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION TERMS

This Agreement is anticipated to be partially funded by the Federal Transit Administration, pursuant to the Agreement entitled, "United States of America Department of Transportation Federal Transit Administration – Master Agreement for Lower Manhattan Recovery Grants", dated May 16, 2003, ("Master Agreement") which is attached hereto and incorporated herein by reference.

All contractual provisions required by DOT, as set forth in FTA Circular 4220.1E as modified by LMRO Third Party Contracting Requirements, dated August 21, 2003, are

attached hereto and incorporated herein by reference. Anything to the contrary herein notwithstanding, all FTA-mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any Authority requests which would cause the Authority to be in violation of the FTA terms and conditions.

Each and every provision required by the FTA 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 herein. If any provision of this Contract shall be such as to effect non-compliance with any FTA requirement, such provision shall not be deemed to form part hereof, but the balance of this Contract shall remain in full force and effect.

III. FEDERAL CHANGES

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement, as they may be amended or promulgated from time to time during the term of this Contract. Contractor's failure to so comply shall constitute a material breach of this Contract. The most recent Federal laws, regulations, policies, and administrative practices apply to this Contract at any particular time, unless FTA issues a written determination otherwise. All standards or limits within the Master Agreement are minimum requirements, unless modified by the FTA.

IV. NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

The Authority and the Contractor acknowledge and agree that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to the Authority, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

The Contractor agrees to include the above clause in each subcontract financed in whole or in part with Federal Assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

V. CERTIFICATION - DEBARMENT AND SUSPENSION

This Contract is a covered transaction for purposes of 49 CFR Part 29. As such, the Contractor is required to verify that none of the Contractor, its principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945.

The Contractor is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into.

By signing and submitting its bid or proposal, the proposer certifies as follows:
The certification in this clause is a material representation of fact relied upon by the Port Authority of New York and New Jersey. If it is later determined that the proposer knowingly rendered an erroneous certification, in addition to remedies available to the Port Authority of New York and New Jersey, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment. The proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this

offer is valid and throughout the period of any contract that may arise from this offer. The proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

- A. FTA requires that each potential Contractor, for major third party contracts, complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility, and Voluntary Exclusion" for itself and its principals and requires each Subcontractor or Supplier [for Subcontracts and Supplier agreements expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 253(g) (currently \$25,000)] to complete a certification entitled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion – Lower Tiered Covered Transactions" for itself and its principals. Copies of the required Certification forms and accompanying instructions are set forth in the Appendix to this Attachment.
- B. In the event that the Contractor has certified prior to award that it is not proposed for debarment, debarred, suspended, or voluntarily excluded from covered transactions by any Federal Department or agency and such certification is found to be false, this Contract may be canceled, terminated or suspended by the Authority and the Contractor will be liable for any and all damages incurred by the Authority because of such cancellation, termination or suspension because of such false certification.
- C. The Contractor shall obtain certifications from all known potential Subcontractors and Suppliers [for which payments are expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 253(g) (currently \$25,000)] and submit such certifications to the address set forth in E below.
- D. Prior to the award of any Subcontracts or Supplier agreements expected to equal or exceed the Federal procurement small purchase threshold fixed at 10 U.S.C. 253(g) (currently \$25,000), regardless of tier, any prospective Subcontractor or Supplier who has not previously submitted a certification for this Contract must execute and submit to the Contractor a certification in the form annexed in the Appendix to this Attachment which will be deemed a part of the resulting Subcontract and Supplier agreement.
- E. The originals of any Certifications or correspondence relating hereto shall be sent by the Contractor to the Director of Procurement, One Madison Avenue, 7th Floor, New York, NY 10010.
- F. The Contractor shall not knowingly enter into any Subcontracts or Supplier agreements with a person that is proposed for debarment, debarred, suspended, declared ineligible or voluntarily excluded from covered transactions.
- G. As required by FTA, the Contractor and its Subcontractors or Suppliers required to file the certification have a continuing duty to disclose, and shall provide immediate written notice to the Authority if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

VI. CERTIFICATION - LOBBYING RESTRICTIONS -CONTRACTS EXCEEDING \$100,000

- A. Definitions as used in this Clause:

"Agency," as defined in 5 U.S.C. 552(f), includes Federal executive departments and agencies as well as independent regulatory commissions and Government corporations, as defined in 31 U.S.C. 9101(1). As used in the Certification set forth in the Appendix to this Attachment, it also includes any other public agency.

"Covered Federal action" means any of the following Federal actions:

1. The awarding of any Federal contract;
2. The making of any Federal grant;
3. The making of any Federal loan;
4. The entering into of any cooperative agreement; and
5. The extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. As used in the above referenced Certification, it includes the award of the contract with which it is associated.

"Indian tribe" and "tribal organization" have the meaning provided in Section 4 of the Indian Self Determination and Education Assistance Act (25 U.S.C. 450B). Alaskan natives are included under the definitions of Indian tribes in that Act.

"Influencing or attempting to influence" means making, with the intent to influence, any communication to or appearance before an officer or employees of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any covered Federal action.

"Local government" means a unit of government in a State and, if chartered, established, or otherwise recognized by a State for the performance of a governmental duty, including a local public authority, a special district, an intrastate district, a council of governments, a sponsor group representative organization, and any other instrumentality of a local government. It also includes a bi-state agency.

"Officer or employee of an agency" includes the following individuals who are employed by an agency:

1. An individual who is appointed to a position in the Government under title 5, United States Code, including a position under a temporary appointment;
2. A member of the uniformed services as defined in section 101(3), title 37, United States Code;
3. A special government employee as defined in Section 202, title 18, United States Code;
4. An individual who is a member of a Federal advisory committee, as defined by the Federal Advisory Committee Act, Title 5, United States Code Appendix 2; and
5. An employee of a bi-state agency.

"Person" means an individual, corporation, company, association, authority, firm, partnership, society, State, and local government, regardless of whether such entity is operated for profit or not for profit. This term excludes an Indian tribe, tribal organization, or any other Indian Organization with respect to expenditures specifically permitted by other Federal law.

"Reasonable Compensation" means, with respect to a regularly employed officer or employee of any person, compensation that is consistent with the normal

compensation for such officer or employee for work that is not furnished to, not funded by, or not furnished in cooperation with the Federal Government.

"Reasonable Payment" means, with respect to professional and other technical services, a payment in an amount that is consistent with the amount normally paid for such services in the private sector.

"Recipient" includes all contractors and subcontractors at any tier in connection with a Federal Contract. The term excludes an Indian Tribe, tribal organization, or any other Indian organization with respect to expenditures specifically permitted by other Federal law.

"Regularly Employed" means, with respect to an officer or employee of a person requesting or receiving a Federal Contract, an officer or employee who is employed by such person for at least one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person for receipt of such contract. An officer or employee who is employed by such person for less than one hundred and thirty (130) working days within one (1) year immediately preceding the date of the submission that initiates agency consideration of such person shall be considered to be regularly employed as soon as he or she is employed by such person for one hundred and thirty (130) working days.

"State" means a State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, a territory or possession of the United States, an agency or instrumentality of a State, and a multi-state, regional, or interstate entity having governmental duties and powers.

B. Prohibition

1. Section 1352 of title 31, United States Code provides in part that no appropriated funds may be expended by the recipient of a Federal contract, grant, loan, or cooperative agreement to pay any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with any of the following covered Federal actions: the awarding of any Federal contract; the making of any Federal grant; the making of any Federal loan; the entering into of any cooperative agreement; and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement. For the purposes of the Certification included in the Appendix to this Attachment, it includes the award of the associated contract.
2. The prohibition does not apply as follows:
 - a. Agency and legislative liaison by own employees.
 - (i) The prohibition on the use of appropriated funds, in subparagraph B.1.) of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or the contract associated with the certification if the payment is for agency and legislative liaison activities not directly related to a covered Federal Action.

- (ii) For purposes of subparagraph B. 2.) a.(i) of this Section, providing any information specifically requested by an agency or Congress is allowable at any time.
 - (iii) For purposes of subparagraph B. 2.) a.(i) of this Section, the following agency and legislative liaison activities are allowable at any time only where they are not related to specific solicitation for any covered Federal action.
 - (a) Discussing with an agency (including individual demonstrations) the qualities and characteristics of the person's products or services, conditions or terms of sales and service capabilities; and,
 - (b) Technical discussions and other activities regarding the application or adaptation of the person's products or services for an agency's use.
 - (iv) For purposes of paragraph B. 2)a.(i) of this Section, the following agency and legislative liaison activities are allowable only where they are prior to formal solicitation of any covered Federal action:
 - (a) Providing any information not specifically requested but necessary for an agency to make an informed decision about initiation of a covered Federal action;
 - (b) Technical discussions regarding the preparation of an unsolicited proposal prior to its official submission; and
 - (c) Capability presentations by persons seeking awards from an agency pursuant to the provisions of the Small Business Act, as amended by Public Law 95-507 and other subsequent amendments.
 - (v) Only those activities expressly authorized by subparagraph B. 2)a. of this Section are allowable under subparagraph B. 2)a.
- b. Professional and Technical Services by Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. of this Section, does not apply in the case of a payment of reasonable compensation made to an officer or employee of a person requesting or receiving a Federal contract or an extension, continuation, renewal, amendment, or modification of a Federal contract or the contract associated with the certification if payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that contract.
 - (ii) For purposes of subparagraph B. 2.) b. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical discipline. For example, drafting of a legal document

accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
 - (iv) Only those services expressly authorized by subparagraph B. 2.) b. this Section are allowable under subparagraph B. 2.) b.
- c. Reporting for Own Employees.
- No reporting is required with respect to payments of reasonable compensation made to regularly employed officers or employees of a person.
- d. Professional and Technical Services by Other than Own Employees.
- (i) The prohibition on the use of appropriated funds, in subparagraph B. 1.) of this Section, does not apply in the case of any reasonable payment to a person, other than an officer or employee of a person requesting or receiving a covered Federal action, if the payment is for professional or technical services rendered directly in the preparation, submission, or negotiation of any bid, proposal, or application for that Federal contract or for meeting requirements imposed by or pursuant to law as a condition for receiving that Federal contract.
 - (ii) For purposes of subparagraph B. 2.) d. (i) of this Section, "professional and technical services" shall be limited to advice and analysis directly applying any professional or technical

discipline. For example, drafting of a legal document accompanying a bid or proposal by a lawyer is allowable. Similarly, technical advice provided by an engineer on the performance or operational capability of a piece of equipment rendered directly in the negotiation of a contract is allowable. However, communications with the intent to influence made by a professional (such as a licensed lawyer) or a technical person (such as a licensed accountant) are not allowable under this Section unless they provided advice and analysis directly applying their professional or technical expertise and unless the advice or analysis is rendered directly and solely in the preparation, submission or negotiation of a covered Federal action. Thus, for example, communications with the intent to influence made by a lawyer that do not provide legal advice or analysis directly and solely related to the legal aspects of his or her client's proposal, but generally advocate one proposal over another are not allowable under this Section because the lawyer is not providing professional legal services. Similarly, communications with the intent to influence made by an engineer providing an engineering analysis prior to the preparation or submission of a bid or proposal are not allowable under this Section since the engineer is providing technical services but not directly in the preparation, submission or negotiation of a covered Federal action.

- (iii) Requirements imposed by or pursuant to law as a condition for receiving a covered Federal award include those required by law or regulation, or reasonably expected to be required by law or regulation, and any other requirements in the actual award documents.
- (iv) Persons other than officers or employees of a person requesting or receiving a covered Federal action include consultants and trade associations.
- (v) Only those services expressly authorized by subparagraph B. 2.) d. of this Section are allowable under subparagraph B. 2.) d.

C. Disclosure

1. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a certification entitled "Certification Regarding Lobbying Pursuant to 31 U.S.C. 1352," as set forth in the Appendix to this Attachment that the person has not made, and will not make, any payment prohibited by subparagraph B. of this Clause.
2. Each person who requests or receives from the Authority a Contract with Federal assistance shall file with the Authority a disclosure form entitled "Disclosure of Lobbying Activities Pursuant to 31 U.S.C. 1352" (Standard Form-LLL), as set forth in the Appendix to this Attachment, if such person has made or has agreed to make any payment using non-appropriated funds (to include profits from any covered Federal action), which would be prohibited under subparagraph B. of this Clause if paid for with appropriated funds.

3. Each person shall file a disclosure form at the end of each calendar quarter in which there occurs any event that requires disclosure or that materially affects the accuracy of the information contained in any disclosure form previously filed by such person under subparagraph C.2) of this Section. An event that materially affects the accuracy of the information reported includes:
 - a. A cumulative increase of \$25,000 or more in the amount paid or expected to be paid for influencing or attempting to influence a covered Federal action; or
 - b. A change in the person(s) or individual(s) influencing or attempting to influence a covered Federal action; or
 - c. A change in the officer(s), employee(s), or Member(s) contacted to influence or attempt to influence a covered Federal action.
4. Any person who requests or receives from a person referred to in subparagraph C.1) of this Section a subcontract exceeding \$100,000 at any tier under a Federal contract shall file a certification, and a disclosure form, if required, to the next tier above.
5. All disclosure forms, but not certifications, shall be forwarded from tier to tier until received by the person referred to in subparagraph C.1) of this Section. That person shall forward all disclosure forms to the Authority.

D. Agreement

In accepting any contract resulting from this solicitation, the person submitting the offer agrees not to make any payment prohibited by this Clause.

E. Penalties

1. Any person who makes an expenditure prohibited under subparagraph A of this Clause shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure.
2. Any person who fails to file or amend the disclosure form to be filed or amended if required by the Clause, shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
3. Contractors may rely without liability on the representations made by their Subcontractors in the certification and disclosure form.

F. Cost Allowability

Nothing in this Clause is to be interpreted to make allowable or reasonable any costs which would be unallowable or unreasonable in accordance with Part 31 of the Federal Acquisition Regulation. Conversely, costs made specifically unallowable by the requirements in this Clause will not be made allowable under any of the provisions of Part 31 of the Federal Acquisition Regulation.

VII. ACCESS TO RECORDS AND REPORTS

The Contractor agrees to provide the Authority, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions. The Contractor also agrees, pursuant to 49 CFR 633.15 to provide the FTA Administrator or his authorized representatives including any PMO Contractor access to the Contractor's records and construction sites pertaining to the project.

The Contractor agrees to provide the Authority, FTA Administrator, the Comptroller General of the United States or any of their duly authorized representatives with access to any books, documents, papers and record of the Contractor which are directly pertinent to this Contract for the purposes of making audits, examinations, excerpts and transcriptions.

The Contractor shall make available records related to the contract to the Authority, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

The Contractor agrees to permit any of the foregoing parties to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed.

The Contractor agrees to maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after final payment is made by the Authority and all other pending matters are closed, except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case the Contractor agrees to maintain same until the Authority, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

This requirement is independent of the Authority's requirements for record retention contained elsewhere in the contract documents.

VIII. CIVIL RIGHTS

- A. Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, and section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.
- B. Equal Employment Opportunity - The following equal employment opportunity requirements apply to the underlying contract:
 1. Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 2. Age - In accordance with section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § 623, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
 3. Disabilities - In accordance with section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.
- C. The Contractor also agrees to include these requirements in each subcontract related to this project, modified only if necessary to identify the affected parties.

IX. CARGO PREFERENCE - USE OF UNITED STATES FLAG VESSELS

If this Contract involves equipment, materials, or commodities which may be transported by ocean vessels, the Contractor herein agrees:

- A. To utilize privately owned United States-flag commercial vessels to ship at least fifty percent (50%) of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to this Contract, to the extent such vessels are available at fair and reasonable rates for United States-flag commercial vessels.
- B. To furnish within twenty (20) days following the date of loading for shipments originating within the United States or within thirty (30) working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of-lading in English for each shipment of cargo described in paragraph (1) above to the FTA Administrator and grantee (through the prime contractor in the case of subcontractor bills-of-lading) and to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20230.
- C. To include these requirements in all subcontracts issued pursuant to this Contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

X. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS – CONTRACTS EXCEEDING \$2000

The Davis-Bacon and Copeland Acts are codified at 40 USC 3141, *et seq.* and 18 USC 874. The Acts apply to grantee construction contracts and subcontracts that "at least partly are financed by a loan or grant from the Federal Government." 40 USC 3145(a), 29 CFR 5.2(h), 49 CFR 18.36(i)(5). The Acts apply to any construction contract over \$2,000. 40 USC 3142(a), 29 CFR 5.5(a). 'Construction,' for purposes of the Acts, includes "actual construction, alteration and/or repair, including painting and decorating." 29 CFR 5.5(a). The requirements of both Acts are incorporated into a single clause (*see* 29 CFR 3.11) enumerated at 29 CFR 5.5(a) and reproduced below and are applicable if this Contract is a construction contract (as delineated above) over \$2000.

A. Minimum Wages

- 1. All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the Secretary of Labor which, if applicable, is attached hereto and made a part hereof (the attachment is the most current determination), regardless of any contractual relationship which may be alleged to exist between the Contractor and such laborers and mechanics. Determinations may change during the term of the Contract, and the wages and fringe benefits required

by the most recent determination of the Secretary of Labor are those to be used.

Contributions made or costs reasonably anticipated for bona fide fringe benefits under section 1(b)(2) of the Davis-Bacon Act on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of paragraph (A)(4) of this Section; also, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in 29 CFR Part 5.5(a)(4). Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein: Provided, That the employer's payroll records accurately set forth the time spent in each classification in which work is performed. The wage determination (including any additional classifications and wage rates conformed under paragraph (A)(2) of this Section) and the Davis-Bacon poster (WH-1321) shall be posted at all times by the Contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers.

2. a. The contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:
 - (i) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry;
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and
 - (iv) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.
- b. If the contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify,

or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
 - d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii) (b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.
3. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the Contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.
 4. If the Contractor does not make payments to a trustee or other third person, the Contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.
 5. a. The contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:
 - (i) The work to be performed by the classification requested is not performed by a classification in the wage determination;
 - (ii) The classification is utilized in the area by the construction industry; and
 - (iii) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

- b. If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- c. In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.
- d. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs A (2)(ii)(b) or (c) of this Section, shall be paid to all workers performing work in the classification under this Contract from the first day on which work is performed in the classification.

B. Withholding

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this Contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), all or part of the wages required by the contract, the Authority may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

C. Payrolls and Basic Records

- 1. Payrolls and basic records relating thereto shall be maintained by the Contractor during the course of the work and preserved for a period of three years thereafter for all laborers and mechanics working at the site of the

work (or under the United States Housing Act of 1937, or under the Housing Act of 1949, in the construction or development of the project). Such records shall contain the name, address, and social security number of each such worker, his or her correct classification, hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalents thereof of the types described in section 1(b)(2)(B) of the Davis-Bacon Act), daily and weekly number of hours worked, deductions made and actual wages paid. Whenever the Secretary of Labor has found under 29 CFR 5.5(a)(1)(iv) that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in section 1(b)(2)(B) of the Davis-Bacon Act, the Contractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, and that the plan or program has been communicated in writing to the laborers or mechanics affected, and records which show the costs anticipated or the actual cost incurred in providing such benefits. Contractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprenticeship programs and certification of trainee programs, the registration of the apprentices and trainees, and the ratios and wage rates prescribed in the applicable programs.

2. a. The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the Authority for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.
- b. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
 - (i) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;
 - (ii) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;
 - (iii) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for

the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

- c. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph C(2)(b) of this Section.
 - d. The falsification of any of the above certifications may subject the Contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.
3. The Contractor or subcontractor shall make the records required under paragraph C(1) of this Section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the Contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

D. Apprentices and Trainees

1. Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate

specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

2. Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the Contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.
3. Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR part 30.

E. Compliance with Copeland Act Requirements

The Contractor shall comply with the requirements of 29 CFR part 3, which are incorporated by reference in this Contract.

F. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses contained in 29 CFR 5.5(a)(1) through (10) and such other clauses as the Federal Transit Administration may by appropriate instructions require, and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor with all the contract clauses in 29 CFR 5.5.

G. Contract Termination: Debarment

A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a contractor and a subcontractor as provided in 29 CFR 5.12.

H. Compliance with Davis-Bacon and Related Act Requirements

All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this Contract.

I. Disputes Concerning Labor Standards

Disputes arising out of the labor standards provisions of this Contract shall not be subject to the general disputes clause of this Contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR parts 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

J. Certification of Eligibility -

1. By entering into this Contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
2. No part of this Contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).
3. The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

**XI. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT -
CONTRACTS EXCEEDING \$100,000**

The Contract Work Hours and Safety Standards Act applies to grantee contracts and subcontracts under 40 USC 3701(b)(1)(B)(iii) and (b)(2), 29 CFR 5.2(h), 49 CFR 18.36(i)(6) for contracts for construction, and non-construction projects that employ "laborers or mechanics on a public work, where the contract amount is greater than \$100,000.

A. Overtime Requirements

No Contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers or mechanics shall

require or permit any such laborer or mechanic in any workweek in which he or she is employed on such work to work in excess of forty hours in such workweek unless such laborer or mechanic receives compensation at a rate not less than one and one-half times the basic rate of pay for all hours worked in excess of forty hours in such workweek.

B. Violation; liability for unpaid wages; liquidated damages

In the event of any violation of the clause set forth in paragraph A of this Section the Contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen and guards, employed in violation of the clause set forth in paragraph A of this Section, in the sum of \$10 for each calendar day on which such individual was required or permitted to work in excess of the standard workweek of forty hours without payment of the overtime wages required by the clause set forth in paragraph A of this Section.

C. Withholding for unpaid wages and liquidated damages

The Authority shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld, from any moneys payable on account of work performed by the Contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph B of this Section.

D. Subcontracts

The Contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs A through D of this Section and also a clause requiring the subcontractors to include these clauses in any lower tier subcontracts. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with the clauses set forth in paragraphs A through D of this Section.

XII. SEISMIC SAFETY

If this is a contract for the construction of new buildings or additions to existing buildings, the Contractor agrees that any new building or addition to an existing building will be constructed in accordance with standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a subcontractor is in compliance with the standards required by the Seismic Safety Regulations and the certification of compliance. The completed certification of compliance is to be submitted to the Engineer. The seismic safety standards applicable to this Contract are contained in Section 2312 ICBO Uniform Building Code (UBC), as modified by the Appendix to Title 27, Chapter 1 (Volume 7), of the Administrative Code and Charter of the City of New York at RS 9-6 Earthquake Loads.

XIII. ENERGY CONSERVATION

The Contractor agrees to comply with the mandatory energy efficiency standards and

policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and Conservation Act, 42 U.S.C. §6321 et seq. The Contractor also agrees to ensure that all work performed under this Contract including work performed by a Subcontractor is in compliance with the requirements of this Section.

XIV. CLEAN WATER REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 USC §1251 et seq.
- B. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- C. The Contractor also agrees to include the requirements of this Article in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

XV. CLEAN AIR REQUIREMENTS – CONTRACTS EXCEEDING \$100,000

- A. The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 USC §7401 et seq. The Contractor agrees to report each violation to the Authority and understands and agrees that the Authority will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
- B. The Contractor also agrees to include the requirements of this Clause in all subcontracts exceeding \$100,000 issued pursuant to this Contract.

XVI. FLY AMERICA

The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

XVII. CONTRACTS INVOLVING FEDERAL PRIVACY ACT REQUIREMENTS

The following requirements apply to the Contractor and its employees that administer any system of records on behalf of the Federal Government under any contract:

- A. The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.
- B. The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

XVIII. PREFERENCE FOR RECYCLED PRODUCTS

The Contractor agrees to comply with all the requirements of Section 6002 of the Resource Conservation and Recover Act (RCRA), as amended (42.U.S.C. 6962), including but not limited to the regulatory provisions of 40 CFR Part 247, and Executive Order 12873, as they apply to the procurement of the items designated in Subpart B of 40 CFR Part 247.

XVIX. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS OR RELATED ACTS

- A. The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Project. The Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the contract or project. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.
- B. The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under this Contract, financed in whole or in part with Federal assistance, the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

The Contractor agrees to include the above two clauses in each subcontract related to this Contract. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

XX. TRANSIT EMPLOYEE PROTECTIVE REQUIREMENTS

To the extent that FTA determines that transit operations are involved, the Contractor agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this Contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. DOL guidelines at 29 C.F.R. Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the U.S. DOL to FTA applicable to the FTA Recipient's project from which Federal assistance is provided to support work on the underlying contract. The Contractor agrees to carry out that work in compliance with the conditions stated in that U.S. DOL letter. The requirements of this subsection (1), however, do not apply to any contract financed with Federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for nonurbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (b) and (c) of this clause.

APPENDIX

CERTIFICATION REGARDING LOBBYING PURSUANT TO 31 U.S.C. 1352

The undersigned

(name of authorized officer)

certifies, to the best of my knowledge and belief, that:

1. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any public agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement or the award of the contract associated with this certification.

2. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any public agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, or the contract associated with this certification, the undersigned shall complete and submit Standard Form LLL, "Disclosure of Lobbying, Activities" in accordance with its instructions.

3. The undersigned shall require that the language of this certification be included in the award documents for all subawards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all subrecipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by, 31, U.S. C. § 1352 (as amended by the Lobbying Disclosure Act of 1995). Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

Note: Pursuant to 31 U.S.C § 1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a required certification or disclosure form shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such expenditure or failure.

The Contractor certifies or affirms the truthfulness and accuracy of each statement of its certification and disclosure, if any. In addition, the Contractor understands and agrees that the provisions of 31 U.S.C. § 3801, et seq., apply to this certification and disclosure, if any.

Executed this day 8th of January, 2007.

By: [Signature] Signature of Authorized Official

Kevin T Hamilton Vice President Official Name and Title of Authorized Official

STANDARD FORM LLL - DISCLOSURE OF LOBBYING ACTIVITIES PURSUANT TO 31 U.S.C. 1352

- 1. Type of Federal Action:
 a. contract
b. grant
c. cooperative agreement
d. loan
e. loan guarantee
f. loan insurance
- 2. Status of Federal Action:
 a. bid//offer/application
b. Initial award
c. post-award
- 3. Report Type:
 a. initial filing
b. material change
For Material Change Only:
year quarter
_____ date of last report

- 4. Name and Address of Reporting Entity:

Tier ____, if known:
Congressional District, if known:

- 5. If Reporting Entity in No.4 is a Subawardee, Enter Name and Address of Subawardee:

Congressional District, if known:

- 6. Federal Department/Agency:

- 7. Federal Program Name/Description:
_____ CFDA Number, if applicable:

- 8. Federal Action Number, if known:

- 9. Award Amount, if known:
\$ _____

- 10. a. Name and Address of Lobbying Registrant (if individual, last name, first name, MI):

- b. Individuals Performing Services (including address if different from No.10a):

(last name, first name, MI):

11. Information requested through this form is authorized by Title 31 U.S.C. Section 1352. This disclosure of lobbying activities is a material representation of fact upon which reliance was placed by the tier above when this transaction was made or entered into. This disclosure is required pursuant to 31 U.S.C. 1352. This information will be reported to the Congress semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for such failure.

Signature 
Print Name Kevin T Hamilton
Title Vice President
Telephone No. (212) 353-8280 Date: 1/8/07

INSTRUCTIONS FOR COMPLETION OF DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime Federal recipient, at the initiation or receipt of a covered Federal action, or a material change to a previous filing, pursuant to title 31 U.S.C. section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with a covered Federal action. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.
2. Identify the status of the covered Federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.
4. Enter the full name, address, city, State and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.
5. If the organization filing the report in item 4 checks "Subawardee," then enter the full name, address, city, State and zip code of the prime Federal recipient. Include Congressional District, if known.
6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.
7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g., Request for Proposal (RFP) number; Invitation for Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the Federal agency). Include prefixes, e.g., "RFP-DE-90-001."
9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.
10. (a) Enter the full name, address, city, State and zip code of the lobbying registrant under the Lobbying Disclosure Act of 1995 engaged by the reporting entity identified in item 4 to influence the covered Federal action.
(b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).
11. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

According to the Paperwork Reduction Act, as amended no persons are required to respond to a collection of information unless it displays a valid OMB Control Number. The valid OMB control number for this information collection is OMB No. 0348-0046. Public reporting burden for this collection of information is estimated to average 10 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, DC 20503.

**CERTIFICATION REGARDING DEBARMENT, SUSPENSION,
INELIGIBILITY AND VOLUNTARY EXCLUSION - LOWER TIER COVERED
TRANSACTIONS**

1. The prospective lower tier participant,

_____, certifies that,
as of January 11, 2005 date of award of PA Agreement # 415-05-128, that neither it nor
its principals are presently debarred, suspended, proposed for debarment, declared
ineligible, or voluntarily excluded from participation in this transaction by any Federal
department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements
in this certification, such prospective participant shall attach an explanation to this
proposal.

3. The prospective lower tier participant shall provide immediate written notice to the
Authority (and the Contractor, if applicable) if at any time the prospective lower tier
participant learns that its certification was erroneous when submitted or has become
erroneous by reason of changed circumstances.

Executed this day 8th of January, 2007.

Kevin T Hamilton

BY SIGNATURE OF AUTHORIZED OFFICIAL

Kevin T Hamilton Vice President

NAME AND TITLE OF AUTHORIZED OFFICIAL

**INSTRUCTIONS FOR COMPLETION OF CERTIFICATION REGARDING
DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION -
LOWER TIER COVERED TRANSACTIONS**

1. By signing and submitting this Proposal, the prospective lower tier participant is providing the signed certification set out on the previous page.
2. This certification is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the Authority may pursue available remedies, including suspension and/or debarment.
3. The prospective lower tier participant shall provide immediate written notice to the Authority if at any time the prospective lower tier participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.
4. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "persons," "lower tier covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549 [49 CFR Part 29]. The Proposer may contact the Procurement Representative for assistance in obtaining a copy of those regulations.
5. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized in writing by the Authority.
6. The prospective lower tier participant further agrees by submitting this proposal that it will include the "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion - Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.
7. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that it is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List issued by U.S. General Service Administration.
8. Nothing contained in the foregoing shall be construed to require establishment of system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.
9. Except for transactions authorized under sub-paragraph 5 of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to all remedies available to the Federal Government, the Authority may pursue available remedies including suspension and/or debarment.

ATTACHMENT

**UNITED STATES OF AMERICA
DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION**

MASTER AGREEMENT FOR "LOWER MANHATTAN RECOVERY GRANTS"

**For Federal Transit Administration Agreements authorized by
the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to
Terrorist Attacks on the United States, Public Law 107-38;
the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107; the
Fiscal Year 2002 Department of Defense Appropriations Act, Public Law 107-117; the
Fiscal Year 2002 Department of Transportation and Related Agencies Appropriations Act,
Public Law 107-206; the Consolidated Appropriations Resolution, 2003, Public Law 208-7;
the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288,
42 U.S.C. § 5121-5206; and/or other Federal enabling legislation**

**LMRO Master Agreement
May 16, 2003**

N.B. This Agreement is based on the standard FTA Master Agreement which is incorporated by reference in all FTA grants and cooperative agreements. Inapplicable provisions of that agreement are marked "Not Applicable" in this Agreement and left in place for the benefit of Recipients who also receive funds authorized under the Federal Transit Laws who are familiar with the section numbers.

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UNITED STATES DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION

LOWER MANHATTAN RECOVERY MASTER AGREEMENT

The following terms and conditions apply to the Federal assistance authorized by the 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States, Public Law 107-38; the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107; the Fiscal Year 2002 Department of Defense Appropriations Act, Public Law 107-117; the Fiscal Year 2002 Department of Transportation and Related Agencies Appropriations Act, Public Law 107-206; the Consolidated Appropriations Resolution, 2003, Public Law 208-7; the Consolidated Appropriations Resolution, 2003, Public Law 208-7; the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act), Public Law 93-288; and/or other Federal enabling legislation administered by FTA.

This Agreement includes a comprehensive listing of requirements applicable to the various Projects that will be funded under the authorities listed above. Not every provision of this Agreement will apply to every Project for which FTA provides Federal financial assistance through a Grant Agreement. The type of Project, the federal statute authorizing financial assistance for the Project, and the legal status of the Recipient as a "State" or "local government" will determine which requirements apply. Requirements that do not apply will not be enforced. The provisions of this Agreement will continue to apply to the Project unless or until modified or superseded by subsequent Federal requirements or Agreements.

Thus, in consideration of the mutual covenants, promises, and representations herein, FTA and the Recipient agree as follows:

Section 1. Definitions.

- a. Application means the electronically signed and dated request for Federal financial assistance, including any amendment thereto, with all explanatory, supporting, and supplementary documents filed with and accepted or approved by the FTA by or on behalf of the Recipient.
- b. Approval, Authorization, Concurrence, Waiver means a written statement (transmitted electronically or in hard copy) by a Federal Government official authorized to permit the Recipient to perform or omit an action required by this Grant Agreement, which action may not be performed or omitted without such permission. Unless stated otherwise, an approval, authorization, concurrence, or waiver permitting the performance or omission of a specific action does not constitute permission to perform or omit other similar actions. **Oral permissions or interpretations have no legal force or effect.**
- c. Approved Project Budget means the most recent statement, approved by the FTA, of the costs of the Project, the maximum amount of Federal assistance for which the Recipient is currently eligible, the specific tasks (including specified contingencies) covered, and the estimated cost of each task. As used in the "Approved Project Budget," the term "Scopes" means categories and the term "Scope Level Codes" means category codes. Although "Scopes" and "Scope Level Codes" generally indicate the type of activities encompassed by the Project, the data listed under "Scopes" and "Scope Level Codes" (for example), do not necessarily reflect, and are not intended to be treated as, prima facie evidence of the precise limits or boundaries of a Project, unless stated otherwise. Consequently, the data listed under "Scopes" and "Scope Level Codes" will not always constitute the precise parameters of the scope of the Project. FTA reserves the right to consider other information in determining the "Scope of the Project" when that term is used for legal purposes.
- d. Environmental Protection Agency (EPA) is the Federal agency with primary authority to promulgate and enforce legislation to protect the environment.
- e. Federal Government means the United States of America, including any executive department or agency thereof.
- f. Federal Transit Administration (FTA) is the Federal agency designated to award funds and oversee implementation of the project. Any reference to the Urban Mass Transportation Administration is deemed a reference to the Federal Transit Administration.
- g. Federal Transit Administrator also designates the former Urban Mass Transportation Administrator. Any reference in law, map, regulation, document, paper, or other record of the United States to the Urban Mass Transportation Administrator is deemed a reference to the Federal Transit Administrator.
- h. "FEMA" is the Federal entity with primary authority to provide federal assistance following a Presidentially-declared major disaster or emergency. It is part of the Emergency Preparedness and Response Directorate of the Department of Homeland Security.

- i. FHWA is the acronym for the Federal Highway Administration, an operating administration of the U.S. Department of Transportation (U.S.DOT).
- j. FTA is the acronym for the Federal Transit Administration, an operating administration of the U.S. Department of Transportation (U.S. DOT).
- k. Grant Agreement means the instrument by which FTA awards Federal assistance to a specific Recipient to support a particular Project in which FTA does not take an active role or retain substantial control, in accordance with the requirements of 31 U.S.C. § 6304. The Grant Agreement consists of the FTA Award establishing the specific parameters of the Project, an Execution statement signed by the Recipient, and may include other Special Conditions or Requirements. This Master Agreement is incorporated by reference and made part of the Grant Agreement.
- l. Local Government includes a public transit authority, as well as a county, municipality, city, town, township, special district, council of governments (whether or not incorporated as a private nonprofit organization under State law), regional or interstate government entity, or any agency or instrumentality thereof. For purposes of the New York Recovery funding program, the Port Authority of New York and New Jersey, the New York Mass Transit Administration, and the City of New York are considered local governments.
- m. Lower Manhattan Recovery Office (LMRO) is an FTA office with responsibility for carrying out the Lower Manhattan Recovery projects.
- n. Project means the activity or activities (task or tasks) listed in Project Description, the Approved Project Budget, and any modifications stated in the Conditions to the Grant Agreement applicable to the Project
- o. Recipient means the entity that receives Federal assistance directly from FTA to support the Project. The term "Recipient" includes each FTA "Grantee." Except as FTA permits otherwise, the Recipient is the entire legal entity even if only a single organization within that entity is designated as the Recipient in the Grant Agreement. Unless expressly stated otherwise, in the case of a Recipient that is a consortium, partnership, or similar multi-party entity, each participant in, member of, or party to that consortium, partnership, or multi-party entity is treated as a "Recipient" for purposes of compliance with applicable requirements of this Grant Agreement.
- p. Secretary means the U.S. DOT Secretary, including his or her duly authorized designee.
- q. Subagreement means an agreement through which a Recipient awards financial assistance derived from FTA to the subrecipient as defined below. The term "subagreement" also includes the term "subgrant," but does not include the term "third party subcontract."
- r. Subrecipient means any entity that receives Federal assistance awarded by a FTA Recipient, rather than FTA directly. The term "subrecipient" also includes the term "subgrantee," but does not include "third party contractor" or "third party subcontractor."

- s. Third Party Contract means a contract or purchase order awarded by the Recipient or subrecipient to a vendor or contractor, financed in whole or in part with Federal assistance awarded by FTA.
- t. Third Party Subcontract means a subcontract at any tier entered into by the third party contractor or third party subcontractor, financed in whole or in part with Federal assistance originally derived from FTA.
- u. Transit means transportation by a conveyance, either publicly or privately owned, that provides regular and continuing general or special public transportation to the public, but does not include school bus, charter, or sightseeing transportation. The term "transit" also includes "mass transportation" and "public transportation."

Section 2. Project Implementation.

a. General Requirements.

(1) Project Description. The Recipient shall perform the work described in its Application which is incorporated by reference in the approved Grant.

(2) Effective Date. The effective date of this Agreement is the date on which the FTA Authorized Official signs it.

(3) Recipient's Capacity. The Recipient will maintain or acquire sufficient legal, financial, technical, and managerial capacity to plan, manage, and complete the Project, and provide for the use of Project facilities and equipment, to comply with the terms of the Grant Agreement, the Approved Project Budget, the Project schedules, the Recipient's annual certifications and assurances to FTA, and all applicable Federal laws, executive orders, regulations, directives, and published policies governing this Project.

(4) Completion Dates. The Recipient agrees to complete the Project in a timely manner. Milestone dates and other Project completion dates for the Project are to be treated as good faith estimates rather than precise obligations, except where otherwise provided.

b. U.S. DOT Administrative Requirements. The Recipient acknowledges that Federal administrative requirements differ based on the type of entity receiving Federal assistance: A Recipient that is a State or a local government will comply with U.S. DOT regulations, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," 49 C.F.R. Part 18.

c. Application of Federal, State, and Local Laws and Regulations.

(1) Federal Laws and Regulations. Federal law or specific laws authorizing Project approval control Project implementation. Implementing regulations, policies, and related administrative practices applicable on the effective date of this Grant may be modified after the

date when the Recipient executes the Grant Agreement, and might apply to this project. New Federal laws, regulations, policies, and administrative practices may be promulgated after the date when the Recipient executes the Grant Agreement, and might apply to this project. The most recent of such Federal requirements will govern the administration of the Project at any particular time, unless FTA issues a written determination otherwise. All standards or limits within this Lower Manhattan Recovery Master Agreement are minimum requirements, unless modified by FTA.

(2) State, Territorial, and Local Law. In instances when a Federal statute or regulation pre-empts State, local, or territorial law, the Recipient must abide by the Federal statute or regulation. Otherwise, no provision of this Agreement shall require the Recipient to observe or enforce compliance with any provision, perform any other act, or do any other thing in contravention of State, territorial, or local law. If any provision herein would require the Recipient to violate State, territorial, or local law, the Recipient will notify FTA immediately in writing in order that appropriate action may be taken

d. Recipient's Primary Responsibility to Comply with Federal Requirements. Irrespective of participation by other parties in the Project, and unless notified otherwise in writing by the FTA, the Recipient is ultimately responsible for compliance with all Federal requirements applicable to this Project.

e. Recipient's Responsibility to Extend Federal Requirements to Other Entities. The Recipient is responsible for extending all applicable Federal requirements to all parties participating in the implementation of the Project.

f. No Federal Government Obligations to Third Parties. Absent the Federal Government's express written consent, the Federal Government shall not be subject to any obligations or liabilities to any subrecipient, any third party contractor, or any other person not a party to the Grant Agreement in connection with the performance of the Project. Notwithstanding that the Federal Government may have concurred in or approved any solicitation, subagreement, or third party contract, the Federal Government has no obligations or liabilities to any party, including any subrecipient or any third party contractor.

g. Changes in Project Performance (i.e., Disputes, Breaches, Defaults or Litigation). The Recipient will notify FTA immediately of any change in local law, conditions (such as its legal, financial, or technical capacity), or any other event that may significantly affect the Recipient's ability to perform the Project in accordance with the terms of the Grant Agreement. In addition, the Recipient will notify FTA immediately of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. The Recipient will inform FTA before naming the Federal Government as a party to litigation for any reason, in any forum.

Section 3. Ethics.

a. Code of Ethics. The Recipient will maintain a written code or standards of conduct that shall govern the performance of its officers, employees, board members, or agents engaged in the award or administration of third party contracts or subagreements supported by Federal assistance. This code or standards of conduct shall provide that the Recipient's officers, employees, board members, or agents may neither solicit nor accept gratuities, favors, or anything of monetary value from any present or potential contractor or subrecipient. The Recipient may set *de minimis* rules where the financial interest is not substantial, or the gift is an unsolicited item of nominal intrinsic value. This code or standards shall also prohibit the Recipient's officers, employees, board members, or agents from using their respective positions for a purpose that constitutes or presents a real or apparent personal or organizational conflict of interest or personal gain. As permitted by State or local law or regulations, the code or standards shall include penalties, sanctions, or other disciplinary actions for violations by the Recipient's officers, employees, board members, or their agents, or by contractors or subrecipients or their agents.

(1) Personal Conflicts of Interest. The Recipient's code or standards of conduct will prohibit the Recipient's employees, officers, board members, or agents from participating in the selection, award, or administration of a third party contract or subagreement supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when any of the following parties has a financial or other interest in the entity selected for award: (a) an employee, officer, board member, or agent; (b) any member of his or her immediate family; (c) his or her partner; or (d) an organization that employs, or intends to employ, any of the above.

(2) Organizational Conflicts of Interest. The Recipient's code or standards of conduct will include procedures for identifying and preventing real and apparent organizational conflicts of interest. An organizational conflict of interest exists when the nature of the work to be performed under a proposed third party contract or subagreement may, without some restrictions on future activities, result in an unfair competitive advantage to the third party contractor or subrecipient or impair its objectivity in performing the contract work.

b. Debarment and Suspension. The Recipient will itself comply, and assure the compliance of each third party contractor and subrecipient at any tier, with Executive Orders Nos. 12549 and 12689, "Debarment and Suspension," 31 U.S.C. § 6101 note, and U.S. DOT regulations, "Governmentwide Debarment and Suspension (Nonprocurement)," within 49 C.F.R. Part 29. Recipients, third party contractors and subrecipients will review the Excluded Parties Listing System at <http://epls.arnet.gov> before entering into any contracts.

c. Bonus or Commission. The Recipient affirms that it has not paid, and agrees not to pay, any bonus or commission to obtain approval of its Federal assistance application for the Project.

d. Lobbying Restrictions. The Recipient will itself comply and assures the compliance of each third party contractor at any tier and each subrecipient at any tier, with U.S. DOT regulations, "New Restrictions on Lobbying," 49 C.F.R. Part 20, modified as necessary by 31 U.S.C. § 1352.

e. Employee Political Activity. The Recipient will comply with the provisions of the Hatch Act, 5 U.S.C. §§ 1501 - 1508, 7324 - 7326, and U.S. Office of Personnel Management regulations, "Political Activity of State or Local Officers or Employees," 5 C.F.R. Part 151. Note that, in accordance with 23 U.S.C. § 142(g), the Hatch Act does not apply to a nonsupervisory employee of a transit system or of any other agency or entity performing related functions receiving FTA assistance to whom the Hatch Act would otherwise apply.

f. False or Fraudulent Statements or Claims. The Recipient certifies or affirms the truthfulness and accuracy of each statement it has made, it makes, or it may make in connection with the Project covered by the Grant Agreement pursuant to the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 *et seq.* and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31 and 18 U.S.C. § 1001.

Section 4. Federal Financial Assistance.

FTA will provide Federal financial assistance for the Project in an amount up to one hundred percent (100%) of the eligible project costs consistent with the approved Project scope and budget.

Section 5. Local Share.

If the Recipient provides a local share for the Project, the Recipient agrees as follows:

a. Restrictions on the Source of the Local Share. Except as permitted otherwise by Federal law, the Recipient agrees to provide sufficient funds that, together with the Federal financial assistance awarded, will ensure payment of the actual cost of each Project activity covered by the Grant Agreement. The Recipient agrees that no local share funds provided will be derived from receipts from the use of Project facilities or equipment, revenues of the transit system in which such facilities or equipment are used, or other Federal funds, except as permitted by law.

b. Duty to Obtain the Local Share. Unless FTA otherwise approves, the Recipient agrees to complete all proceedings necessary to provide the local share of the Project costs at or before the time those funds are needed to meet Project expenses.

c. Calculation of the Local Share. Unless FTA expressly approves otherwise in writing, the Recipient agrees that the local share will apply to each Project activity in the Grant Agreement.

d. Completion of Project with Local Funds. If the Project expenses exceed the approved Project budget, additional funds to complete the Project must be made available from non-federal sources.

Section 6. Approved Project Budget.

The Recipient will prepare a Project budget which, upon approval by FTA, is designated the

"Approved Project Budget." The Recipient will incur obligations and make disbursements of Project funds only as authorized in the latest Approved Project Budget. The latest Approved Project Budget is incorporated herein by reference and made part the Grant Agreement for the Project.

An amendment to the Approved Project Budget requires the issuance of a formal amendment to the Grant Agreement, except that re-allocation of funds among budget items or fiscal years that does not increase the total amount of the Federal financial assistance awarded may be made in accordance with applicable Federal regulations and directives. Prior FTA approval is required when funds are to be transferred from non-construction to construction categories or vice versa or when, in non-construction grants, cumulative transfers of funds between total direct cost categories exceed ten percent of the total budget.

The Recipient shall obtain prior written approval for any budget revision that would result in the need for additional funds. Award of additional Federal financial assistance requires a new Approved Project Budget.

If a Recipient estimates that it will have unobligated funds remaining after the end of the performance period, the recipient should report this to FTA at the earliest possible time and ask for disposition instructions.

Section 7. Accounting Records.

- a. Project Accounts. The Recipient will establish and maintain for the Project either a separate set of accounts, or separate accounts within the framework of an established accounting system, that can be identified with the Project, in accordance with applicable Federal regulations and other requirements that FTA may impose. The Recipient agrees that all checks, payrolls, invoices, contracts, vouchers, orders, or other accounting documents related in whole or in part to the Project shall be clearly identified, readily accessible and available to FTA upon its request, and, to the extent feasible, kept separate from documents not related to the Project.
- b. Funds Received or Made Available for the Project. The Recipient will deposit, in a financial institution, all advance Project payments it receives from the Federal Government and record in the Project Account all amounts provided by the Federal Government in support of the Project and all other funds provided for, accruing to, or otherwise received on account of the Project (Project funds) in accordance with applicable Federal regulations and other requirements FTA may impose.
- c. Documentation of Project Costs and Program Income. The Recipient will support all costs charged to the Project, including any approved services contributed by the Recipient or others, with properly executed payrolls, time records, invoices, contracts, or vouchers describing in detail the nature and propriety of the charges. The Recipient also will maintain accurate records of all program income derived from implementing the Project, except certain income determined by FTA to be exempt from the general Federal program income requirements.

d. Checks, Orders, and Vouchers. The Recipient will refrain from drawing checks, drafts, or orders for goods or services to be charged against the Project Account until it has received and filed a properly signed voucher describing in proper detail the purpose for the expenditure.

Section 8. Reporting, Record Retention, and Access.

a. Types of Reports. The Recipient will submit to FTA the reports specified in this Agreement, the Lower Manhattan Recovery Program Guidance and any other reports the Federal Government may require.

b. Format Requirements for Reports. All reports and other documents or information intended for public availability developed in the course of the Project and required to be submitted to FTA must be prepared and submitted in electronic and or hard copy formats as FTA may require. Electronic submissions must comply with the electronic accessibility requirements of Subsection 12.g, and Section 15.s of this Lower Manhattan Recovery Master Agreement. FTA may require records to be submitted in other formats.

c. Timing of Filing Reports. The Grantee shall electronically submit financial reports (Financial Status Report) and milestone reports to FTA within thirty (30) calendar days after the end of each quarter of the performance period (normally the Federal fiscal quarter). Reports are due by January 31, April 30, July 31, and December 31, unless notified otherwise in writing by FTA.

d. Record Retention. The Recipient will maintain intact and readily accessible data, documents, reports, records, contracts, and supporting materials relating to the Project as the Federal Government may require during the course of the Project and for three years thereafter from the date of transmission of the final expenditure report.

e. Access to Records of Recipients and Subrecipients. Upon request, the Recipient will permit, and require its Subrecipients to permit, the U.S. Secretary of Transportation, the Comptroller General of the United States, and, to the extent appropriate, the State, or their authorized representatives, to inspect all Project work, materials, payrolls, and other data, and to audit the books, records, and accounts of the Recipient and its Subrecipients pertaining to the Project.

f. Project Closeout. Project closeout does not alter the reporting and record retention requirements of this Section 8 of this Lower Manhattan Recovery Master Agreement.

Section 9. Payments.

a. Recipient's Request for Payment. To obtain a Federal assistance payment for the Project from FTA, the Recipient will:

- (1) Submit to FTA all financial and progress reports required to date by this Agreement, and

(2) Identify the source(s) of financial assistance provided for the Project from which the payment is to be derived.

b. Payment by FTA. FTA will make all payments through the Automated Clearing House (ACH) method of payment, regardless of the amount involved but not before execution of this Agreement.

(1) Electronic Clearing House Operation Payments. If payment is made through the FTA Electronic Clearinghouse Operation (ECHO) using an ECHO Control Number, the Recipient will comply with: FTA's ECHO requirements that implement U.S. Department of Treasury Circular 1075, Part 205, "Withdrawal of Cash from the Treasury for Advances Under Federal Grants and Other Programs;" Treasury Financial Manual, Vol. 1, Part 6, Chapter 2000; the ECHO System Operations Manual, "Guidelines for Disbursements" used for FTA Projects; and the requirements of this Subsection 9.b(1). If the Recipient fails to comply with the following requirements of this Subsection 9.b (1), the Federal Government may revoke the unexpended portion of Federal assistance awarded for the Project.

(a) The Recipient may draw down cash only when an expense is incurred and cash is needed for immediate disbursement required for Project purposes. Unless provided otherwise by Federal law or regulation, the Recipient will expend all Federal funds obtained under the Project for Project purposes no later than three (3) working days after receiving those funds. If the Recipient fails to expend those Federal assistance funds within three (3) working days of their receipt or fails to return those funds to FTA within a reasonable period, or fails to establish procedures to minimize the time elapsing between cash advances and the disbursement, the Federal Government may revoke or temporarily suspend the Recipient's ECHO Control Number and the Recipient's access to the ECHO System. In addition, a Recipient's failure to adhere to these requirements may result in other remedies or penalties authorized by Federal law or regulation.

(b) The Recipient will report its cash disbursements and balances promptly in compliance with Federal requirements.

(c) The Recipient will provide for control and accountability for all Project funds consistent with Federal requirements and procedures for use of the ECHO system.

(d) The Recipient will not draw down funds for a Project in an amount exceeding the sum obligated by the Federal Government or the current available balance for that Project.

(e) The Recipient will draw down funds only for allowable and eligible Project costs.

(f) The Recipient will refrain from drawing down Federal assistance until needed for disbursement.

(g) The Recipient will notify the LMRO when a single draw down will exceed \$50 million three days before the drawdown is anticipated.

(h) The Recipient will remit interest to the Federal Government on any Federal assistance prematurely drawn down, irrespective of whether that Federal assistance has been deposited in an interest-bearing account. A debt for any premature draw down of Federal assistance funds does not qualify as a "claim" covered by the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720. Thus, the interest provisions of this Subsection 9.b (1)(h) of this Lower Manhattan Recovery Master Agreement, rather than the interest provisions of the Debt Collection Act of 1982, as amended, will determine amount of interest due on any debt for Federal assistance prematurely drawn down. A Recipient that is a State or State instrumentality will remit interest to the Federal Government calculated as provided by U.S. Department of Treasury regulations, "Rules and Procedures for Funds Transfers," 31 C.F.R. Part 205 that implement section 5(b) of the Cash Management Improvement Act of 1990, as amended, 31 U.S.C. § 6503(b). Interest on any debt that a State or state instrumentality may incur for Federal assistance prematurely drawn down does not qualify for the interest exemption of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 and 3717.

(2) Requisition. If the requisition method of payment is used, the Recipient will:

(a) Complete and submit the "Payment Information Form - ECHO-ACH Payment System," Revised 10/92, to FTA's Accounting Division, and

(b) Complete and submit Standard Form 270, "Request for Advance or Reimbursement," to the FTA LMRO.

Upon receiving a request for payment and adequate supporting information, FTA will approve payment by direct deposit, provided that the Recipient is in compliance with the requirements of the Grant Agreement, has satisfied FTA that the Federal funds requested are needed in that requisition period, and is making adequate progress toward Project completion. After these requirements have been fulfilled, the Federal Government may reimburse the apparent allowable costs incurred (or to be incurred in the requisition period), not to exceed the maximum amount of Federal funds payable through the Federal fiscal year of that requisition, as set forth in the Approved Project Budget for the Project.

c. Costs Reimbursed. Project costs, to be eligible for Federal participation, must:

(1) Conform to the Project Description, the Approved Project Budget, and all other terms of the Grant Agreement,

(2) Be necessary in order to accomplish the Project,

(3) Be reasonable for the goods or services purchased,

(4) Be actual net costs to the Recipient (*i.e.*, the price paid minus any refunds, rebates, or other items of value received by the Recipient that have the effect of reducing the cost actually incurred, excluding program income),

(5) Be incurred for work performed after the Effective Date of the Grant Agreement, unless

the Federal Government has provided otherwise in writing,

(6) Be satisfactorily documented,

(7) Be treated consistently in accordance with accounting principles and procedures approved by the Federal Government for the Recipient, and with accounting principles and procedures approved by the Recipient for its contractors,

(8) Be eligible under Federal law, regulation, or guidelines for Federal participation,

(9) Comply with the provisions of OMB Circular A-87, Revised, "Cost Principles for State and Local Governments," and

(10) Comply with 44 CFR Subchapter D, Subparts G, H and I and implementing policies and administrative guidance if funding for the Project is authorized by the Stafford Act.

d. Bond Interest and Other Financing Costs. To the extent permitted in writing by FTA, bond interest and other similar financing costs are allowable. FTA's participation in Project interest costs will be limited to an amount that does not exceed the most favorable financing terms reasonably available for the Project at the time of borrowing. For projects funded with FEMA funds, financing costs are not an allowable cost.

e. Excluded Costs:

(1) In determining the amount of Federal assistance FTA will provide, FTA will exclude the following:

(a) Any Project cost incurred by the Recipient before the Effective Date of the Grant Agreement or Amendment thereto, unless otherwise permitted by Federal law or regulation, or unless an authorized FTA official states in writing to the contrary;

(b) Any cost that is not included in the latest Approved Project Budget;

(c) Any cost for goods or services received in connection with a third party contract or other arrangement required to be, but has not been, concurred in or approved in writing by the Federal Government;

(d) Any ordinary governmental or nonproject operating cost;

(e) Any cost ineligible for FTA participation as required by Federal law, regulation, or guidelines for Federal participation.

(2) The Federal Government will not make a final determination about the eligibility of any cost until an audit of the Project has been completed.

f. Federal Claims, Excess Payments, Disallowed Costs, including Interest.

(1) Recipient's Obligation to Pay. Upon notification to the Recipient that specific amounts are owed to the Federal Government, whether for Federal claims for funds recovered from third parties or elsewhere, for excess payments, or for disallowed costs, the Recipient will remit to the Federal Government promptly the amounts owed, including any interest due.

(2) Amount of Interest Due. The Recipient agrees that the amount of interest due depends on whether the Federal Government treats the principal portion of the debt as a Federal claim or as a debt owed to the Federal Government. Thus, Recipient will pay interest calculated as follows:

(a) Federal Claims against the Recipient. The Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720, exempts State governments and units of general local government from the obligation to pay interest on claims pursued by the Federal Government under that Act, 31 U.S.C. §§ 3701 and 3717. Interest on claims against other parties will be calculated in accordance with the interest provisions of U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(b) Excess Payments. A debt for any excess payment does not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720; Accordingly, interest on any debt for excess payments does not qualify for the interest exemption for State and local governments at 31 U.S.C. §§ 3701 and 3717. Thus, the Recipient will pay common law prejudgment interest and related charges for excess payments made by the Federal Government, as permitted by U.S. Treasury/U.S. DOJ regulations, "Standards for the Administrative Collection of Claims," at 31 C.F.R. § 901.9(i).

(c) Disallowed Costs. A debt for any disallowed cost does not qualify as a "claim" for purposes of the Debt Collection Act of 1982, as amended, 31 U.S.C. §§ 3701 through 3720; thus the interest exemption for State governments and units of general local government provided by that Act will not apply to interest on the debt for the disallowed cost. Accordingly, a Recipient that is a State government or a unit of general local government agrees that interest on any debt for a disallowed cost does not qualify for the interest exemption for State and local governments at 31 U.S.C. §§ 3701 and 3717. Thus, the Recipient will pay common law prejudgment interest and related charges for excess payments made by the Federal Government, as permitted by 31 C.F.R. § 901(i).

g. De-obligation of Funds. The Recipient agrees that the Federal Government may de-obligate unexpended Federal funds before Project closeout.

h. Duplication of Benefits. Pursuant to Section 312 of the Stafford Act, 42 U.S.C. § 5155, the Recipient is liable to the United States for the receipt of any financial assistance for the Project to the extent such assistance duplicates benefits available to the Recipient from another source, including insurance.

Section 10. Project Completion, Audit, Settlement, and Closeout.

a. Project Completion. Within ninety (90) calendar days following Project completion or termination by the Federal Government, the Recipient will submit a final Financial Status Report (either electronically or on Standard Form 269A), a certification of Project expenses, and third party audit reports, as applicable.

b. Audit Requirements.

(1) Audit of Recipients. The Recipient will have the financial and compliance audits required by the Single Audit Act Amendments of 1996, 31 U.S.C. §§ 7501 *et seq.*, performed in accordance with OMB Circular A-133, "Audits of States, Local Governments, and Non-Profit Organizations," and the OMB A-133 Compliance Supplement provisions for the Department of Transportation, March, 2002, and any further revision or supplement thereto. Project closeout will not alter the Recipient's audit responsibilities. Audits will be conducted in accordance with U.S. General Accounting Office, "Government Auditing Standards."

(2) Audit Costs. Audit costs for Project administration and management are allowable to the extent authorized by OMB Circular A-87, Revised, OMB Circular A-21, Revised, OMB Circular A-122, Revised, or 48 C.F.R. Chapter I, Subpart 31.2, whichever is applicable.

c. Funds Due the Federal Government. The Recipient will remit to the Federal Government any excess payments made to the Recipient, any costs disallowed by the Federal Government, and any amounts recovered by the Recipient from third parties or from other sources, as well as any interest required by Subsection 9.f (2)(b) of this Agreement.

d. Project Closeout. Project closeout occurs when FTA notifies the Recipient that FTA has closed out the Project, and then either forwards the final Federal assistance payment or acknowledges that the Recipient has remitted the proper refund. Project closeout by FTA does not invalidate any continuing obligations imposed on the Recipient by the Grant Agreement or by the Federal Government's final notification or acknowledgment.

Section 11. Right of the Federal Government to Terminate.

Upon written notice, the Federal Government may suspend or terminate all or part of the Federal financial assistance provided herein if the Recipient has violated the terms of the Grant Agreement, or if the Federal Government determines that the purposes of the statute authorizing the Project would not be adequately served by the continuation of Federal financial assistance for the Project. Any failure to make reasonable progress on the Project or other violation of the Grant Agreement that endangers substantial performance of the Project shall provide sufficient grounds for the Federal Government to terminate the Grant Agreement. Termination of any Federal financial assistance for the Project will not invalidate obligations properly incurred by the Recipient before the termination date, to the extent those obligations cannot be canceled. If, however, the Federal Government determines that the Recipient has willfully misused Federal assistance funds by failing to make adequate progress, failing to make reasonable and

appropriate use of the Project real property, facilities, or equipment, or has failed to comply with the terms of the Grant Agreement, the Federal Government reserves the right to require the Recipient to refund the entire amount of Federal funds provided for the Project or any lesser amount as the Federal Government may determine. Expiration of any Project time period established for the Project does not, by itself, constitute an expiration or termination of the Grant Agreement.

Section 12. Civil Rights.

The Recipient will comply with all applicable civil rights statutes and implementing regulations including, but not limited to, the following:

a. Nondiscrimination in General. The Recipient will comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier under the Project with 42 U.S.C. §5151, which requires the distribution of supplies, the processing of applications, and other relief and assistance activities in an equitable and impartial manner, without discrimination on the grounds of race, color, religion, nationality, sex, age, or economic status, and with 49 U.S.C. §5332, which prohibits discrimination on the basis of race, color, creed, national origin, sex, or age, and prohibits discrimination in employment or business opportunity.

b. Nondiscrimination -- Title VI of the Civil Rights Act. The Recipient will comply, and assures the compliance of each third party contractor and each subrecipient at any tier under the Project, with all requirements prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d *et seq.*, and U.S. DOT regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation--Effectuation of Title VI of the Civil Rights Act," 49 C.F.R. Part 21.

c. Equal Employment Opportunity. (1) The Recipient will comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier, with all requirements of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000e. Accordingly, the Recipient agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, sex, disability, age, or national origin. The Recipient will take affirmative action to ensure that applicants are employed and that employees are treated during employment without regard to their race, color, creed, sex, disability, age, or national origin. Such action shall include, but not be limited to, employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship.

(2) Equal Employment Opportunity Requirements for Construction Activities. With respect to activities deemed by the U.S. Department of Labor (U.S. DOL) to qualify as "construction," the Recipient will comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier, with all applicable EEO requirements of U.S. DOL regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 *et seq.*, (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive

Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000(e) note,) and any Federal statutes, executive orders, regulations, and Federal policies affecting construction undertaken as part of the Project.

d. Contracting with Small and Minority Firms, Women's Business Enterprise and Labor Surplus Area Firms. Pursuant to Executive Order 12432 as implemented by 49 CFR § 18.36(e), Recipient and its subrecipients will take all necessary affirmative steps to assure that minority firms, women's business enterprises, and labor surplus area firms are used when possible.

e. Nondiscrimination on the Basis of Sex. The Recipient will comply with all applicable requirements of Title IX of the Education Amendments of 1972, as amended, 20 U.S.C. §§ 1681 *et seq.*, with U.S. DOT regulations, "Nondiscrimination on the Basis of Sex in Education Programs or Activities Receiving Federal Financial Assistance," 49 C.F.R. Part 25, and with any implementing directives that U.S. DOT or FTA may promulgate, which prohibit discrimination on the basis of sex.

f. Nondiscrimination on the Basis of Age. The Recipient will comply with all applicable requirements of the Age Discrimination Act of 1975, as amended, 42 U.S.C. §§ 6101 *et seq.*, and implementing regulations, which prohibit employment and other discrimination against individuals on the basis of age.

g. Access Requirements for Persons with Disabilities. The Recipient will comply with all applicable requirements of section 504 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794, which prohibits discrimination on the basis of handicaps, with the Americans with Disabilities Act of 1990 (ADA), as amended, 42 U.S.C. §§ 12101 *et seq.*, which requires that accessible facilities and services be made available to persons with disabilities, including any subsequent amendments to that Act, and with the Architectural Barriers Act of 1968, as amended, 42 U.S.C. §§ 4151 *et seq.*, which requires that buildings and public accommodations be accessible to persons with disabilities, including any subsequent amendments to that Act. In addition, the Recipient will comply with all applicable requirements of the following regulations and any subsequent amendments thereto:

(1) U.S. DOT regulations, "Transportation Services for Individuals with Disabilities (ADA)," 49 C.F.R. Part 37;

(2) U.S. DOT regulations, "Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting from Federal Financial Assistance," 49 C.F.R. Part 27;

h. Drug or Alcohol Abuse - Confidentiality and Other Civil Rights Protections. The Recipient will comply with confidentiality and other civil rights protections of the Drug Abuse Office and Treatment Act of 1972, as amended, 21 U.S.C. §§ 1174 *et seq.*, with the Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment and Rehabilitation Act of 1970, as amended, 42 U.S.C. §§ 4581 *et seq.*, and with the Public Health Service Act of 1912, as amended, 42 U.S.C. §§ 290dd-3 and 290ee-3, and any subsequent amendments to these acts.

i. Access to Services for Persons with Limited English Proficiency. The Recipient will comply

with guidance set forth in Executive Order No. 13166, "Improving Access to Services for Persons with Limited English Proficiency," August 11, 2000, 42 U.S.C. § 2000d-1 note, and with the requirements and provisions of U.S. DOT Notice, "DOT Guidance to Recipients on Special Language Services to Limited English Proficient (LEP) Beneficiaries," 66 Fed. Reg. 6733 *et seq.*, January 22, 2001.

j. Environmental Justice. The Recipient will comply with the policies of Executive Order No. 12898, "Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations," 42 U.S.C. § 4321 note.

k. Other Nondiscrimination Statutes. The Recipient will comply with applicable requirements of other nondiscrimination statute(s) that may apply to the Project.

Section 13. Planning and Private Enterprise.

a. Not Applicable.

b. Not Applicable.

c. Infrastructure Investment. During the implementation of the Project, the Recipient will take into consideration the recommendations of Executive Order No. 12803, "Infrastructure Privatization," 31 U.S.C. § 501 note, and Executive Order No. 12893, "Principles for Federal Infrastructure Investments," 31 U.S.C. § 501 note.

Section 14. Preference for United States Products and Services.

a. Not Applicable.

b. Not Applicable.

c. Fly America. The Federal Government will not participate in the costs of international air transportation of any persons involved in or property acquired for the Project unless that air transportation is provided by U.S.-flag air carriers to the extent service by U.S.-flag air carriers is available, in accordance with the International Air Transportation Fair Competitive Practices Act of 1974, as amended, 49 U.S.C. § 40118, and with U.S. GSA regulations, "Use of United States Flag Air Carriers," 41 C.F.R. §§ 301-10.131 through 301-10.143.

Section 15. Procurement.

a. Federal Standards. The Recipient will comply with 49 CFR § 18.36.

b. Not Applicable.

c. FTA Technical Review. The Recipient will permit FTA to review and approve the Recipient's technical specifications and requirements, to the extent FTA believes necessary to ensure proper Project administration.

d. Exclusionary or Discriminatory Specifications. The Recipient will refrain from using any

Federal assistance awarded by FTA to support procurements using exclusionary or discriminatory specifications. 49 CFR §18.36(c).

e. Not Applicable.

f. Clean Air and Clean Water. The Recipient will include in third party contracts and subgrants exceeding \$100,000 adequate provisions to ensure that Project participants report the use of facilities placed or likely to be placed on U.S. EPA's "List of Violating Facilities," refrain from using violating facilities, report violations to FTA and the Regional EPA Office, and comply with the inspection and other applicable requirements of:

(1) Section 306 of the Clean Air Act, as amended, 42 U.S.C. § 7414, and other applicable provisions of the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.*; and

(2) Section 508 of the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1368, and other provisions of the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.*

g. Preference for Recycled Products. To the extent applicable, the Recipient will comply with U.S. EPA's "Comprehensive Procurement Guidelines for Products Containing Recovered Materials," 40 C.F.R. Part 247, implementing section 6002 of the Resource Conservation and Recovery Act, as amended, 42 U.S.C. § 6962, and otherwise provide a competitive preference for products and services that conserve natural resources and protect the environment and are energy efficient.

h. Geographic Restrictions. The Recipient will refrain from using any State or local geographic preference, except those expressly mandated or encouraged by Federal statute such as in 42 U.S.C. § 5150, 44 CFR § 206.10, which allows preference to local firms "to the extent feasible and practicable."

i. Architectural, Engineering, Design, or Related Services. Recipients may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services consistent with 49 CFR §18.36(d)(3)(v).

j. Force Account. Where the total amount of force account work to be performed under the grant is greater than \$10,000,000, FTA prior review of the Recipient's force account plan and justification is required. The Recipient is directed to the section of Force Account in the LMRO Program Guidance for further guidance.

k. Award to Other than the Lowest Bidder. A Recipient may award a third party contract to a party other than the lowest bidder, when such an award furthers objectives consistent with the purposes of 49 CFR §18.36 and any implementing directives, circulars, manuals, or other guidance FTA may issue. (See 49 CFR §18.36(b)(8) and §18.36(d)(2)(E).)

l. Not Applicable.

m. Bonding. The Recipient will comply with the requirements in 49 CFR §18.36(h) as may be modified by LMRO Program Guidance issued by FTA.

n. Not Applicable.

o. Access to Third Party Contract Records. The Recipient will require its third party contractors and third party subcontractors to provide access by the FTA, FEMA and the Comptroller General of the United States, or their duly authorized representatives, any books, documents, papers, and records of the contractor which are directly pertinent to that specific contact for the purpose of making audit, examination, excerpts, and transactions, as per 49 CFR 18.36§(i)(10).

p. National Intelligent Transportation Systems Architecture and Standards. The Recipient will use its best efforts to ensure that any Intelligent Transportation System solutions used in its Project do not preclude interface with other Intelligent Transportation Systems in the Region. (See FTA Notice, "FTA National ITS Architecture Policy on Transit Projects" 66 Fed. Reg. 1455 *et seq.*, January 8, 2001 and other FTA Program Guidance that may be issued.)

q. Not Applicable.

r. Neutrality in Labor Relations. To the extent permitted by law, the Recipient will comply with Executive Order No. 13202, "Preservation of Open Competition and Government Neutrality Towards Government Contractors' Labor Relations on Federal and Federally Funded Construction Projects," Executive Order No. 13202, February 17, 2001, as amended by Executive Order No. 13208, April 6, 2001, 41 U.S.C. § 251 note, which among other things, prohibits including requirements for affiliation with a labor organization as a condition for award of any contract or subcontract for construction or construction management services.

s. Electronic and Information Technology. Electronic and information technology procured under this Project will meet the applicable accessibility standards of section 508 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. § 794d, and Architectural and Transportation Barriers Compliance Board regulations, "Electronic and Information Technology Accessibility Standards," 36 C.F.R. Part 1194.

t. Use of Local Firms and Individuals. Pursuant to 42 U.S.C. § 5150 and any implementing regulation, in the expenditure of FEMA funds for debris clearance, distribution of supplies, reconstruction, and other major disaster or emergency assistance activities which may be carried out by contract or agreement with private organizations, firms, or individuals, the Recipient will give preference, to the extent feasible and practicable, to those organizations, firms and individuals residing or doing business primarily in the area affected by a major disaster or emergency.

Section 16. Not Applicable.

Section 17. Patent Rights.

a. General. If any invention, improvement, or discovery of the Recipient or any of its third party contractors is conceived or first actually reduced to practice in the course of or under the Project, and that invention, improvement, or discovery is patentable under the laws of the United States of America or any foreign country, the Recipient will notify FTA immediately and

provide a detailed report.

b. Federal Rights. The rights and responsibilities of the Recipient, and those of each third party contractor at any tier and each subrecipient at any tier, pertaining to that invention, improvement, or discovery will be determined in accordance with applicable Federal laws, regulations, including any waiver thereof.

Section 18. Rights in Data and Copyrights.

a. Definition. The term "subject data" used in this section means recorded information, whether or not copyrighted, that is delivered or specified to be delivered under the Project. Examples include, but are not limited to: computer software, standards, specifications, engineering drawings and associated lists, process sheets, manuals, technical reports, catalog item identifications, and related information. "Subject data" does not include financial reports, cost analyses, or similar information used for Project administration.

b. General Requirement. Except for its own internal use, the Recipient may not publish or reproduce "subject data" whether in whole or in part, in any manner or form, nor may the Recipient authorize others to do so, without the prior written consent of the Federal Government, unless the Federal Government has previously released or approved the release of such data to the public.

c. – h. Requirements condensed into a. & b. above.

Section 19. Use of Real Property, Equipment, and Supplies.

a. Use of Project Property. The Recipient will use Project real property, equipment, and supplies for appropriate Project purposes (which may include joint development purposes that generate program income, both during and after the award period used to support transit activities) for the duration of the useful life of that property, as required by FTA. Should the Recipient unreasonably delay or fail to use Project property during the useful life of that property, the Recipient may be required to return the entire amount of the Federal assistance expended on that property. The Recipient further will notify FTA immediately when any Project property is withdrawn from Project use or when Project property is used in a manner substantially different from the representations the Recipient has made in its Application or the Project Description for the Grant Agreement for the Project.

b. General Federal Requirements. A Recipient that is a State or a local government will comply with property management standards of 49 C.F.R. §§ 18.31 through 18.34, including any amendments thereto, and other applicable guidelines or regulations the Federal Government may issue. In addition, the Recipient will comply with FTA's established reimbursement requirements for premature dispositions of certain Project equipment (*i.e.*, when Project equipment is withdrawn from appropriate use before the expiration of the equipment's useful life established by FTA), as explained in Subsection 19.g of this Lower Manhattan Recovery Master Agreement.

c. Maintenance. The Recipient will maintain Project real property and keep equipment in good operating order, in compliance with any guidelines, directives, or regulations FTA may issue.

d. Records. The Recipient will keep satisfactory records regarding the use of Project real property, equipment, and supplies, and submit to the FTA upon request such information as may be required to assure compliance with Section 19 of this Agreement.

e. Encumbrance of Project Property. The Recipient will maintain satisfactory continuing control of Project real property or equipment. Thus, absent written authorization by FTA permitting otherwise:

(1) Written Transactions. The Recipient will refrain from executing any transfer of title, lease, lien, pledge, mortgage, encumbrance, third party contract, grant anticipation note, alienation, or any other obligation that in any way would affect the Federal interest in any Project real property or equipment.

(2) Oral Transactions. The Recipient will refrain from obligating itself in any manner to any third party with respect to Project real property or equipment.

(3) Other Actions. The Recipient will refrain from taking any action that would either adversely affect the Federal interest or impair the Recipient's continuing control of the use of Project real property or equipment.

f. Transfer of Project Property.

(1) Federal Government Direction. The Federal Government may direct the disposition of, and even require the Recipient to transfer title to, any real property, equipment, or supplies financed with Federal assistance made available for the Grant Agreement.

(2) Leasing Project Property to Another Party. If the Recipient leases any Project asset to another party, the Recipient will retain ownership of the leased asset, and assure that the lessee will use the Project asset appropriately, either through a "Lease and Supervisory Agreement" between the Recipient and lessee, or another similar document. Upon request by FTA, the Recipient will provide a copy of any relevant documents.

g. Disposition of Project Property. With prior FTA approval, the Recipient may sell, transfer, or lease Project property and use the proceeds to reduce the gross project cost of other eligible capital transit projects. FTA may establish the useful life for Project property: The Recipient will use Project property continuously and appropriately throughout that useful life.

(1) Project Property Whose Useful Life Has Expired. When the useful life of Project Property has expired, the Recipient will comply with FTA's disposition requirements.

(2) Project Property Prematurely Withdrawn from Use. For property withdrawn from appropriate use before its useful life has expired, the Recipient agrees as follows:

(a) Notification Requirement. The Recipient will notify FTA immediately when any Project real property, equipment, or supplies are prematurely withdrawn from appropriate use, whether by planned withdrawal, misuse, or casualty loss.

(b) Calculating the Fair Market Value of Prematurely Withdrawn Project Property. The Federal Government retains a Federal interest in the fair market value of Project property prematurely withdrawn from mass transportation use. The amount of the Federal interest in the property shall be determined on the basis of the ratio of the Federal assistance awarded by the Federal Government for the property to the actual cost of the Property. The fair market value of property prematurely withdrawn from use will be calculated as follows:

1. Equipment and Supplies. Unless otherwise determined in writing by FTA, fair market value shall be calculated by straight-line depreciation of the equipment or supplies, based on the useful life of the equipment or supplies established or approved by FTA. In addition, the fair market value of equipment and supplies shall be the value immediately before the occurrence prompting the withdrawal of that property from use. In the case of equipment or supplies lost or damaged by fire, casualty, or natural disaster, the fair market value shall be calculated on the basis of the condition of that property immediately before the fire, casualty, or natural disaster, irrespective of the extent of insurance coverage. As authorized by 49 C.F.R. § 18.32(b), a State may use its own disposition procedures, provided that those procedures comply with the State's laws.

2. Real Property. The fair market value of real property shall be determined either by competent appraisal based on an appropriate date approved by the Federal Government, as provided by 49 C.F.R. Part 24, or by straight line depreciation, whichever is greater.

3. Exceptional Circumstances. The Federal Government may require the use of another method of determining the fair market value of property. In unusual circumstances, the Recipient may request that another reasonable valuation method be used including, but not limited to, accelerated depreciation, comparable sales, or established market values. In determining whether to approve such a request, the Federal Government may consider any action taken, omission made, or unfortunate occurrence suffered by the Recipient with respect to the preservation or conservation of Project property withdrawn from appropriate use.

(c) Obligations to the Federal Government. Unless otherwise approved in writing by the Federal Government, the Recipient will remit to the Federal Government the Federal interest in the fair market value of Project real property, equipment, or supplies prematurely withdrawn from appropriate use. In the case of fire, casualty, or natural disaster, the Recipient may fulfill its responsibilities with respect to the Federal interest remaining in the damaged equipment or supplies by either:

1. Investing an amount equal to the remaining Federal interest in like-kind equipment or supplies that are eligible for assistance within the scope of the Project that provided financial assistance for the damaged equipment or supplies; or

2. Returning to the Federal Government an amount equal to the remaining Federal interest in the damaged property.

h. Insurance Proceeds. If the Recipient receives insurance proceeds as a result of damage or destruction to the Project property, the Recipient will:

(1) Apply those insurance proceeds to the cost of replacing the damaged or destroyed Project property taken out of service, or

(2) Return to the Federal Government an amount equal to the remaining Federal interest in the damaged or destroyed property.

i. Transportation - Hazardous Materials. The requirements of Research and Special Programs Administration, "Shippers - General Requirements for Shipments and Packagings," 49 C.F.R. Part 173, apply to the transportation of hazardous materials.

j. Misused or Damaged Project Property. If any damage to Project real property, equipment, or supplies results from abuse or misuse of that property occurring with the Recipient's knowledge and consent, the Recipient will restore that real property or equipment to its original condition or refund the value of the Federal interest in the damaged property, as the Federal Government may require.

k. Obligations After Project Closeout Project closeout will not alter the Recipient's property management obligations of Section 19 of this Agreement and applicable Federal regulations and other FTA requirements or directives.

Section 20. Insurance.

a. Minimum Requirements. At a minimum, the Recipient will comply with the insurance requirements normally imposed by the laws, regulations, and ordinances imposed by its State and local governments. This includes, but is not limited to, the Recipient's obtaining all necessary environmental liability insurance.

b. Flood Hazards. To the extent applicable, the Recipient will comply with the flood insurance purchase requirements of section 102(a) of the Flood Disaster Protection Act of 1973, 42 U.S.C. § 4012a(a), with respect to any Project activity involving construction or acquisition having an insurable cost of \$10,000 or more.

c. FEMA Requirements. For assistance received pursuant to the Stafford Act, including Section 406, 42 U.S.C. § 5172, the Recipient agrees to comply with 42 U.S.C. § 5154 and 44 CFR Part 206, Subpart I, to obtain and maintain insurance reasonable and necessary to protect against future loss from the type of hazard that caused the major disaster.

Section 21. Relocation.

When relocation of individuals or businesses is required, the Recipient will comply with the following requirements:

- a. Relocation Protections. The Recipient will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24, which provide for fair and equitable treatment of persons displaced or whose property is acquired as a result of Federal and federally assisted programs. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in purchases.
- b. Nondiscrimination in Housing. The Recipient will comply with Title VIII of the Civil Rights Act of 1968, as amended, 42 U.S.C. §§ 3601 *et seq.* and Executive Order No. 12892, "Leadership and Coordination of Fair Housing in Federal Programs: Affirmatively Furthering Fair Housing," 42 U.S.C. § 3608 note, when carrying out its responsibilities to provide housing used to meet Federal relocation requirements.
- c. Prohibition Against Use of Lead-Based Paint. In undertaking construction or rehabilitation of residence structures on behalf of individuals affected by land acquisition in connection with the Project, the Recipient will refrain from using lead-based paint in accordance with Section 401(b) of the Lead-Based Paint Poisoning Prevention Act, 42 U.S.C. § 4831(b).

Section 22. Real Property.

- a. Land Acquisition. The Recipient will comply with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601 *et seq.*; and U.S. DOT regulations, "Uniform Relocation and Real Property Acquisition for Federal and Federally Assisted Programs," 49 C.F.R. Part 24. These requirements apply to all interests in real property acquired for Project purposes regardless of Federal participation in purchases.
- b. Covenant Assuring Nondiscrimination. The Recipient will include a covenant in the title of the real property acquired for the Project to assure nondiscrimination during the useful life of the Project.
- c. Recording Title to Real Property. To the extent required by FTA, the Recipient will record the Federal interest in the title of real property.
- d. FTA Approval of Changes in Real Property Ownership. The Recipient will not dispose of, modify the use of, or change the terms of the real property title, or other interest in the site and facilities without permission and instructions from FTA.

Section 23. Construction.

- a. Drafting, Review, and Approval of Construction Plans and Specifications. The Recipient will comply with FTA requests pertaining to the drafting, review, and approval of construction plans and specifications.
- b. Supervision of Construction. The Recipient will provide and maintain competent and adequate engineering supervision at the construction site to ensure that the complete work conforms to the approved plans and specifications.
- c. Construction Reports. The Recipient will provide progress reports and such other information as may be required by FTA or the State.
- d. Project Management. The FTA will manage the Project consistent with the FTA Project Management and Oversight Regulation applicable to major capital investments. (See 49 CFR Part 633.)
- e. Seismic Safety. The Recipient will comply with the Earthquake Hazards Reduction Act of 1977, as amended, 42 U.S. C. §§ 7701 *et seq.*, Executive Order No. 12699, "Seismic Safety of Federal and Federally-Assisted or Regulated New Building Construction," 42 U.S.C. § 7704 note, and implementing U.S. DOT regulations, "Seismic Safety," 49 C.F.R. Part 41, (specifically, 49 C.F.R. § 41.117).
- f. Minimum Standards for Public and Private Structures. Pursuant to the Stafford Act at 42 U.S.C. § 5176, and any implementing regulation, the Recipient will ensure that any repair or construction to be financed pursuant to this agreement will be in accordance with applicable standards of safety, decency, and sanitation and in conformity with applicable codes, specifications, and standards.

Section 24. Employee Protections.

- a. Construction Activities. The Recipient will comply, and assures the compliance of each third party contractor at any tier and each subrecipient at any tier, with the following employee protection requirements for construction employees:

- (1) Davis-Bacon Act, as amended, 40 U.S.C. §§ 276a - 276a(7), requiring compliance with the Davis-Bacon Act, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

- (2) Contract Work Hours and Safety Standards Act, as amended, particularly with the requirements of section 102 of the Act, 40 U.S.C. §§ 327 - 332; and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts

Subject to the Contract Work Hours and Safety Standards Act), 29 C.F.R. Part 5; and with section 107 of the Act, 40 U.S.C. § 333, and U.S. DOL regulations, "Safety and Health Regulations for Construction," 29 C.F.R. Part 1926; and

(3) Copeland "Anti-Kickback" Act, as amended, 18 U.S.C. § 874 and 40 U.S.C. § 276c, and U.S. DOL regulations, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in part by Loans or Grants from the United States," 29 C.F.R. Part 3.

b. Activities Not Involving Construction. The Recipient will comply, and assure the compliance of each third party contractor and each subrecipient at any tier, with any applicable employee protection requirements for nonconstruction employees of section 102 of the Contract Work Hours and Safety Standards Act, as amended, 40 U.S.C. §§ 327 - 332, and U.S. DOL regulations, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction (also Labor Standards Provisions Applicable to Nonconstruction Contracts Subject to the Contract Work Hours and Safety Standards Act)," 29 C.F.R. Part 5.

c. Activities Involving Commerce. The Recipient will comply with the provisions of the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, applies to employees performing Project work involving commerce.

d. Not Applicable.

Section 25. Environmental Requirements.

The Recipient recognizes that many Federal and State laws imposing environmental and resource conservation requirements may apply to the Project. The Recipient also recognizes that U.S. EPA, FHWA and other Federal agencies have issued, and in the future are expected to issue, regulations, guidelines, standards, orders, directives, or other requirements that may affect the Project. Thus, the Recipient will comply, and assures the compliance of each subrecipient and each third party contractor, with any such Federal requirements as the Federal Government may now or in the future promulgate. Listed below are requirements of particular concern to FTA and the Recipient.

a. Environmental Protection. Federal assistance is contingent upon the Recipient's facilitating FTA's compliance with all applicable requirements and implementing regulations of the National Environmental Policy Act of 1969, as amended, (NEPA) 42 U.S.C. §§ 4321 *et seq.* (as interpreted by 42 U.S.C. 5159); Executive Order No. 11514, as amended, "Protection and Enhancement of Environmental Quality," 42 U.S.C. § 4321 note; and Council on Environmental Quality regulations pertaining to compliance with the National Environmental Policy Act of 1969, as amended, 40 C.F.R. Part 1500 *et seq.* For purposes of NEPA, FTA is designated as Lead Agency.

b. Air Quality. The Recipient will comply with all applicable regulations, standards, or orders implementing the Clean Air Act, as amended, 42 U.S.C. §§ 7401 *et seq.* In addition:

(1) The Recipient will comply with the applicable requirements of the U.S. EPA

regulations, "Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act," 40 C.F.R. Part 51, Subpart T; and "Determining Conformity of Federal Actions to State or Federal Implementation Plans," 40 C.F.R. Part 93. To support the requisite air quality conformity finding for the Project, the Recipient will implement each air quality mitigation or control measure incorporated in the Project. The Recipient further agrees that any Project identified in an applicable State Implementation Plan (SIP) as a Transportation Control Measure will be wholly consistent with the design concept and scope of the Project described in the SIP.

(2) U.S. EPA also imposes requirements implementing the Clean Air Act, as amended, that may apply to transit operators, particularly operators of large transit bus fleets. Accordingly, the Recipient will comply with the following U.S. EPA regulations to the extent they are applicable to the Project: "Control of Air Pollution from Motor Vehicles and Motor Vehicle Engines," 40 C.F.R. Part 85; "Control of Air Pollution from New and In-Use Motor Vehicles and New and In-Use Motor Vehicle Engines: Certification and Test Procedures," 40 C.F.R. Part 86; and "Fuel Economy of Motor Vehicles," 40 C.F.R. Part 600.

(3) The Recipient will comply with the notification of violating facilities requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

c. Clean Water. The Recipient will comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. §§ 1251 *et seq.* In addition:

(1) The Recipient will protect underground sources of drinking water consistent with the provisions of the Safe Drinking Water Act of 1974, as amended, 42 U.S.C. §§ 300f *et seq.*

(2) The Recipient will comply with the notification of violating facilities requirements of Executive Order No. 11738, "Administration of the Clean Air Act and the Federal Water Pollution Control Act with Respect to Federal Contracts, Grants, or Loans," 42 U.S.C. § 7606 note.

d. Use of Public Lands. The Recipient will refrain from using publicly owned land from a park, recreation area, or wildlife or waterfowl refuge of national, State, or local significance as determined by the Federal, State, or local officials having jurisdiction thereof, or any land from a historic site of national, State, or local significance for the Project unless FTA makes the specific findings required by 49 U.S.C. § 303.

e. Wild and Scenic Rivers. The Recipient will comply with the Wild and Scenic Rivers Act of 1968, as amended, 16 U.S.C. §§ 1271 *et seq.* relating to protecting components of the national wild and scenic rivers system.

f. Coastal Zone Management. The Recipient will assure Project consistency with the approved State management program developed under the Coastal Zone Management Act of 1972, as

amended, 16 U.S.C. §§ 1451 *et seq.*

g. Wetlands. The Recipient will facilitate compliance with the protections for wetlands in accordance with Executive Order No. 11990, as amended, "Protection of Wetlands," 42 U.S.C. § 4321 note.

h. Floodplains. The Recipient will facilitate compliance with the flood hazards protections in floodplains in accordance with Executive Order No. 11988, as amended, "Floodplain Management" 42 U.S.C. § 4321 note.

i. Endangered Species. The Recipient will comply with protections for endangered species of the Endangered Species Act of 1973, as amended, 16 U.S.C. §§ 1531 *et seq.*

j. Historic Preservation. The Recipient will facilitate compliance with the Federal historic and archaeological preservation requirements of section 106 of the National Historic Preservation Act, as amended, 16 U.S.C. § 470f; of Executive Order No. 11593, "Protection and Enhancement of the Cultural Environment," 16 U.S.C. § 470 note; and of the Archaeological and Historic Preservation Act of 1974, as amended, 16 U.S.C. §§ 469a *et seq.* as follows:

(1) In accordance with U. S. Advisory Council on Historic Preservation regulations, "Protection of Historic and Cultural Properties," 36 C.F.R. Part 800, the Recipient will consult with the State Historic Preservation Officer concerning investigations to identify properties and resources included in or eligible for inclusion in the National Register of Historic Places that may be affected by the Project, and will notify FTA of any affected properties.

(2) The Recipient will comply with all Federal requirements to avoid or mitigate adverse effects on those historic properties.

l. Mitigation of Adverse Environmental Effects. Should the Proposed project cause or result in adverse environmental effects, the Recipient agrees to take all reasonable measures to minimize those adverse effects, as required by 23 C.F.R. Part 771 and 49 C.F.R. Part 622. The Recipient will comply with all environmental mitigation measures that may be identified as commitments in applicable environmental documents (*i.e.*, environmental assessments, environmental impact statements, memoranda of agreement, and documents required by 49 U.S.C. § 303) and will comply with any conditions the Federal Government might impose in a finding of no significant impact or a record of decision. Those mitigation measures are incorporated by reference and made part of this Grant Agreement. Deferred mitigation measures will be incorporated by reference and made part of the Grant Agreement as soon as agreement with the Federal Government is reached. Those mitigation measures agreed upon may not be modified or withdrawn without the express written approval of the Federal Government.

Section 26. Energy Conservation.

The Recipient will comply with the mandatory energy efficiency standards and policies within the applicable State energy conservation plans issued in compliance with the Energy Policy and

Conservation Act, 42 U.S.C. §§ 6321 *et seq.*

Sections 27. - 29 Not Applicable.

Section 30. Metric System.

The Recipient will use the metric system of measurement in its Project activities, pursuant to the Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act, 15 U.S.C. §§ 205a *et seq.*; Executive Order No. 12770, "Metric Usage in Federal Government Programs," 15 U.S.C. § 205a note; and other U.S. DOT or FTA regulations, guidelines, and policies. To the extent practicable and feasible, the Recipient will accept products and services with dimensions expressed in the metric system of measurement.

Section 31. Substance Abuse.

- a. Drug-Free Workplace. The Recipient will comply with U.S. DOT regulations, "Drug-Free Workplace Requirements (Grants)," 49 C.F.R. Part 29, Subpart F, as modified by 41 U.S.C. §§ 702 *et seq.*
- b. Not Applicable.

Section 32. Not Applicable.

Section 33. Seat Belt Use.

Pursuant to Executive Order No. 13043, "Increasing Seat Belt Use in the United States," April 16, 1997, 23 U. S. C. § 402 note, the Recipient is encouraged to adopt on-the-job seat belt use policies and programs for its employees when operating company-owned, rented, or personally-operated vehicles and include this provision in third party contracts, third party subcontracts, and subagreements entered into under this Project.

Section 34. Protection of Sensitive Security Information.

To the extent applicable, the Recipient will comply with section 101(e) of the Aviation and Transportation Security Act, 49 U.S.C. § 40119(b), and U.S. Transportation Security Administration regulations, "Protection of Sensitive Security Information," 49 C.F.R. Part 1520, and any implementing regulations, requirements or guidelines, that the Federal Government may issue.

Sections 35. 43 Not Applicable.

Section 44. Disputes, Breaches, Defaults, or Other Litigation.

FTA has a vested interest in the settlement of any dispute, breach, default, or litigation involving the Project. Accordingly:

- a. Notification to FTA. The Recipient will notify FTA of any current or prospective major dispute, breach, default, or litigation that may affect the Federal Government's interests in the Project or the Federal Government's administration or enforcement of Federal laws or regulations. If the Recipient seeks to name the Federal Government as a party to litigation for any reason, in any forum, the Recipient will inform FTA before doing so.
- b. Federal Interest in Recovery. The Federal Government retains the right to a proportionate share, based on the percentage of the Federal share awarded for the Project, of proceeds derived from any third party recovery, except that the Recipient may return any liquidated damages recovered to its Project Account in lieu of returning the Federal share to the Federal Government.
- c. Enforcement. The Recipient will pursue all legal rights provided within any third party contract.
- d. FTA Concurrence. FTA reserves the right to concur in any compromise or settlement of any claim involving the Project and the Recipient.
- e. Alternative Dispute Resolution. FTA encourages the Recipient to use alternative dispute resolution procedures, as may be appropriate.
- f. Indemnification. Pursuant to 42 U.S.C. § 5173, the Recipient will, in the case of debris or wreckage removal from private property, indemnify the Federal Government against any claim arising from such removal.

Section 45. Amendments to the Project.

A change in Project conditions causing an inconsistency with the terms of the Grant Agreement will require an amendment to the Grant Agreement signed by the original signatories. A change in the fundamental information submitted in its Application will also require an Amendment to its Application or the Grant Agreement.

Section 46. FTA's Electronic Award and Management System.

Except as otherwise permitted by FTA, the Recipient will use FTA's electronic award and management system to submit information and reports to FTA. FTA, however, reserves the right to determine the extent to which the Recipient may use FTA's electronic award and management system to execute legal documents pertaining to FTA Projects.

Section 47. Information Obtained Through Internet Links.

This Agreement may include electronic links to Federal statutes, regulations, directives, guidance, and other documents. FTA does not guarantee the accuracy of information accessed through such links. Accordingly, information obtained through any electronic link within this Master Agreement does not represent an official version of a Federal statute, regulation, requirement, guidance, or document, and might be inaccurate. Thus, information obtained through such links is neither incorporated by reference nor made part of this Agreement. The Federal Register and the Code of Federal Regulations are the official sources for regulatory information pertaining to the Federal Government.

Section 48. Severability.

If any provision of this Agreement is held invalid, the remainder of the Agreement shall not be affected, if that remainder would continue to conform to the requirements of applicable law.



ATTACHMENT

GUIDANCE

U.S. Department of
Transportation
**Federal Transit
Administration**

August 21, 2003

Subject: LMRO THIRD PARTY CONTRACTING REQUIREMENTS

1. **PURPOSE.** This document sets forth the requirements a grantee must adhere to in the solicitation, award and administration of its third party contracts funded by the FTA/FEMA grants for the Lower Manhattan Recovery projects. These requirements are based on the common grant rules, Federal statutes, Executive Orders and their implementing regulations, and FTA policy. This document is based on FTA Circular 4220.1E. Inapplicable provisions of that circular are marked "Not Applicable" in this document and are left in place for the benefit of grantees who also receive funds authorized under the Federal Transit Laws who are familiar with the section numbers.
2. **NOT APPLICABLE**
3. **REFERENCES.**
 - a. Federal Transit Laws, 49 U.S.C. Chapter 53 – definitions only.
 - b. 2001 Emergency Supplemental Appropriations Act for Recovery from and Response to Terrorist Attacks on the United States, Public Law 107-38; the National Defense Authorization Act for Fiscal Year 2002, Public Law 107-107; the Fiscal Year 2002 Department of Defense Appropriations Act, Public Law 107-117; the Fiscal Year 2002 Department of Transportation and Related Agencies Appropriations Act, Public Law 107-206; the Consolidated Appropriations Resolution, 2003, Public Law 208-7; the Robert T. Stafford Disaster Relief and Emergency Assistance Act, Public Law 93-288, 42 U.S.C. § 5121-5206.
 - c. Sections 4001 and 1555 of the Federal Acquisition Streamlining Act of 1994, 41 U.S.C. § 403(11) and 40 U.S.C. § 481(b), respectively,
 - d. 49 C.F.R. part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.
 - e. 49 C.F.R. part 19, Uniform Administrative Requirements for Grants and Agreements with Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations.
 - f. Executive Order 12612, "Federalism," dated 10-26-87.
 - g. Not Applicable.
 - h. LMRO Master Agreement.
 - i. Appendix D, Best Practices Procurement Manual.

4. **APPLICABILITY.** This guidance applies to all FTA grantees and subgrantees that contract with outside sources under the joint FTA/FEMA assistance programs for the Lower Manhattan Recovery projects. These requirements do not apply to procurements undertaken in support of capital projects completely accomplished without FTA or FEMA funds.
5. **POLICY.** FTA's role in grantee procurements is reflective of Executive Order 12612, Federalism which directs Federal agencies to refrain from substituting their judgment for that of their recipients unless the matter is primarily a Federal concern and to defer, to the maximum extent feasible, to the States to establish standards rather than setting national standards.
 - a. **Grantee Self-Certification.** Since most FTA grantees have experience with the third party contracting requirements of the "common grant rules" (49 C.F.R. parts 18 and 19), the LMRO will rely primarily on grantees' "self-certifications" that their procurement system meets FTA/FEMA requirements to support the required finding that a grantee has the technical capacity to comply with Federal procurement requirements. All grantees must "self certify" as part of the Annual Certification/Assurance Process.

The LMRO will monitor compliance with this guidance as part of its routine oversight responsibilities and if it becomes aware of circumstances that might invalidate a grantee's self-certification, the LMRO will investigate and recommend appropriate measures to correct whatever deficiency may exist.
 - b. **Review of Third Party Contracts.** The LMRO relies on the validity of each grantee's self-certification and on periodic, post-grant reviews rather than on a pre-award review of third party contracts to ensure that grantees comply with Federal requirements and standards. Grantees are still free to request FTA's pre-award review of their procurements as part of the LMRO's technical assistance program. Conversely, if the LMRO requests to review the record of a particular procurement, grantees must make their procurement documents available for the LMRO's pre-award (or post-award) review.
 - c. **Procurement System Reviews.** The LMRO will fully review and evaluate the performance of grantees in carrying out grant programs with specific reference to their compliance with statutory and administrative requirements. Accordingly, the LMRO will perform a baseline procurement system review as part of its on-going oversight responsibility and may recommend "best practices" in order to assist the grantee in improving its procurement practices. In such cases, the LMRO will identify such recommendations as "advisory."
 - d. **Procurement Technical Assistance.** The LMRO will provide procurement training and technical assistance as requested to enable the grantees to better understand and meet LMRO requirements.
 - e. **Contract Clauses and Provisions.** The LMRO Master Agreement, issued annually and incorporated into each grant, lists many but not all the FTA/FEMA and other

crosscutting Federal requirements applicable to LMRO grantees. Many of these requirements are related to grantee procurements. Further explanations and interpretations of this guidance is can be found in the footnotes of FTA Circular 4220.1E. Suggested wording for contract clauses and provisions are available in FTA's "Best Practices Procurement Manual" available on the FTA website at fta.dot.gov.

f. Not Applicable.

6. **DEFINITIONS.** All definitions in 49 U.S.C. §5302 are applicable to this guidance. The following additional definitions are provided:

- a. "Best Value" is a selection process in which proposals contain both price and qualitative components, and award is based upon a combination of price and qualitative considerations. Qualitative considerations may include technical design, technical approach, quality of proposed personnel, and/or management plan. The award selection is based upon consideration of a combination of technical and price factors to determine {or derive} the offer deemed most advantageous and of the greatest value to the procuring agency.
- b. "Design-Bid-Build" refers to the project delivery approach where the grantee commissions an architect or engineer to prepare drawings and specifications under a design services contract, and separately contracts for at-risk construction, by engaging the services of a contractor through sealed bidding or competitive negotiations.
- c. "Design-Build" refers to a system of contracting under which one entity performs both architectural/engineering and construction under one contract.
- d. "FEMA" is the Federal entity with primary authority to provide federal assistance following a Presidentially-declared major disaster or emergency. It is part of the Emergency Preparedness and Response Directorate of the Department of Homeland Security.
- e. "FTA" refers to the Federal Transit Administration
- f. "Grantee" means the public or private entity to which a grant or cooperative agreement is awarded by the joint FTA/FEMA effort. The grantee is the entire legal entity even if only a particular component of the entity is designated in the assistance award document.

For the purposes of this circular, "grantee" also includes any subgrantee of the grantee. Furthermore, a grantee is responsible for assuring that its subgrantees comply with the requirements and standards of this guidance, and that subgrantees are aware of requirements imposed upon them by Federal statutes and regulations.

- g. Lower Manhattan Recovery Office (LMRO) refers to the FTA office with responsibility for carrying out the Lower Manhattan Recovery projects.

- h. "Piggybacking" is an assignment of existing contract rights to purchase supplies, equipment, or services.
- i. "State" means any of the several states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, any territory or possession of the United States, or any agency or instrumentality of a State exclusive of local governments. "State" does not include any public and Indian housing agency under the United States Housing Act of 1937.
- j. "Tag-on" is defined as the addition of work (supplies, equipment or services) that is beyond the scope of the original contract that amounts to a cardinal change as generally interpreted in Federal practice by the various Boards of Contract Appeals. "In scope" changes are not tag-ons.
- k. "Third party contract" refers to any purchase order or contract awarded by a grantee to a vendor or contractor using Federal financial assistance awarded by FTA.

7. **GENERAL PROCUREMENT STANDARDS APPLICABLE TO THIRD-PARTY PROCUREMENTS.**

- a. Conformance with State and Local Law. Grantees and subgrantees shall use their own procurement procedures that reflect applicable State and local laws and regulations, provided that the procurements conform to applicable Federal law, including the requirements and standards identified in this circular. If there is no State law on a particular aspect of procurement, then Federal contract law principles will apply.
- b. Contract Administration System. Grantees shall maintain a contract administration system that ensures that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- c. Written Standards of Conduct. Grantees shall maintain a written code of standards of conduct governing the performance of their employees engaged in the award and administration of contracts. No employee, officer, agent, immediate family member, or Board member of the grantee shall participate in the selection, award, or administration of a contract supported by FTA/FEMA funds if a conflict of interest, real or apparent, would be involved.

Such a conflict would arise when any of the following has a financial or other interest in the firm selected for award:

- (1) The employee, officer, agent, or Board member,
- (2) Any member of his/her immediate family,
- (3) His or her partner, or
- (4) An organization that employs, or is about to employ, any of the above.

The grantee's officers, employees, agents, or Board members will neither solicit nor accept gifts, gratuities, favors, or anything of monetary value from contractors, potential contractors, or parties to subagreements. Grantees may set minimum rules when the financial interest is not substantial or the gift is an unsolicited item of nominal intrinsic value. To the extent permitted by state or local law or regulations, such standards of conduct will provide for penalties, sanctions, or other disciplinary action for violation of such standards by the grantee's officers, employees, or agents, or by contractors or their agents.

- d. Ensuring Most Efficient and Economic Purchase. Grantee procedures shall provide for a review of proposed procurements to avoid purchase of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase.

Where appropriate, an analysis will be made of lease versus purchase alternatives and any other appropriate analysis to determine the most economical approach.

- e. Intergovernmental Procurement Agreements.

- (1) Grantees are encouraged to utilize available state and local intergovernmental agreements for procurement or use of common goods and services. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included, whether in the master intergovernmental contract or in the grantee's purchase document.
- (2) Grantees are also encouraged to jointly procure goods and services with other grantees. When obtaining goods or services in this manner, grantees must ensure all federal requirements, required clauses, and certifications are properly followed and included in the resulting joint solicitation and contract documents.
- (3) Grantees may assign contractual rights to purchase goods and services to other grantees if the original contract contains appropriate assignability provisions. Grantees who obtain these contractual rights (commonly known as 'piggybacking') may exercise them after first determining the contract price remains fair and reasonable.

- f. Use of Excess Or Surplus Federal Property. Grantees are encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property, whenever such use is feasible and reduces project costs.
- g. Use of Value Engineering in Construction Contracts. Grantees are encouraged to use value engineering clauses in contracts for construction projects.
- h. Awards to Responsible Contractors. Grantees shall make awards only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration shall be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources.

- i. Written Record of Procurement History. Grantees shall maintain records detailing the history of each procurement. At a minimum, these records shall include:
- (1) the rationale for the method of procurement,
 - (2) selection of contract type,
 - (3) reasons for contractor selection or rejection, and
 - (4) the basis for the contract price.

- j. Use of Time and Materials Type Contracts. Grantees will use time and material type contracts only:
- (1) After a determination that no other type of contract is suitable; and
 - (2) If the contract specifies a ceiling price that the contractor shall not exceed except at its own risk.

- k. Responsibility for Settlement of Contract Issues/Disputes. Grantees alone will be responsible in accordance with good administrative practice and sound business judgment for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the grantee of any contractual responsibility under its contracts.

The LMRO will not substitute its judgment for that of the grantee or subgrantee, unless the matter is primarily a Federal concern. Violations of the law will be referred to the local, State, or Federal authority having proper jurisdiction.

- l. Written Protest Procedures. Grantees shall have written protest procedures to handle and resolve disputes relating to their procurements and shall in all instances disclose information regarding protests to the LMRO. All protest decisions must be in writing. A protester must exhaust all administrative remedies with the grantee before pursuing a protest with the FTA.

Reviews of protests by FTA will be limited to:

- (1) a grantee's failure to have or follow its protest procedures, or its failure to review a complaint or protest; or
- (2) violations of Federal law or regulation.

An appeal to FTA must be received by the LMRO within five (5) working days of the date the protester learned or should have learned of an adverse decision by the grantee or other basis of appeal to the LMRO.

- m. Contract Term Limitation. Grantees are expected to be judicious in establishing and extending contract terms no longer than minimally necessary to accomplish the purpose of the contract. Additional factors to be considered include competition, pricing, fairness and public perception. Once a contract has been awarded, an

extension of the contract term length that amounts to an out of scope change will require a sole source justification

- n. Revenue Contracts. Revenue contracts are those third party contracts whose primary purpose is to either generate revenues in connection with a transit related activity, or to create business opportunities utilizing an FTA-funded asset. FTA requires these contracts to be awarded utilizing competitive selection procedures and principles. The extent of and type of competition required is within the discretionary judgment of the grantee.
- o. Tag-ons. The use of tag-ons is prohibited and applies to the original buyer as well as to others as defined in paragraph 6f.
- p. Piggybacking. Piggybacking is permissible when the solicitation document and resultant contract contain an assignability clause that provides for the assignment of all or a portion of the specified deliverables as originally advertised, competed, evaluated, and awarded. If the supplies were solicited, competed and awarded through the use of an indefinite-delivery-indefinite-quantity (IDIQ) contract, then both the solicitation and contract award must contain both a minimum and maximum quantity that represent the reasonably foreseeable needs of the party(s) to the solicitation and contract. If two or more parties jointly solicit and award an IDIQ contract, then there must be a total minimum and maximum.
- q. E-Commerce. E-Commerce is an allowable means to conduct procurements. If a grantee chooses to utilize E-Commerce, written procedures need to be developed and in place prior to solicitation and all requirements for full and open competition must be met in accordance with this circular.

8. COMPETITION.

- a. Full and Open Competition. All procurement transactions will be conducted in a manner providing full and open competition. Some situations considered to be restrictive of competition include, but are not limited to:
 - (1) Unreasonable requirements placed on firms in order for them to qualify to do business;
 - (2) Unnecessary experience and excessive bonding requirements;
 - (3) Noncompetitive pricing practices between firms or between affiliated companies;
 - (4) Noncompetitive awards to any person or firm on retainer contracts;
 - (5) Organizational conflicts of interest. An organizational conflict of interest means that because of other activities, relationships, or contracts, a contractor is unable, or potentially unable, to render impartial assistance or advice to the grantee; a contractor's objectivity in performing the contract work is or might be otherwise impaired; or a contractor has an unfair competitive advantage;

- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered without listing its’ salient characteristics.

Grantees may define the salient characteristics in language similar to the following:

- (a) ‘Original Equipment Manufacturer (OEM) part #123 or approved equal that complies with the original equipment manufacturer’s requirements or specifications and will not compromise any OEM warranties’; or
- (b) ‘Original Equipment Manufacturer part #123 or approved equal that is appropriate for use with and fits properly in [describe the bus, engine, or other component the part must be compatible with] and will not compromise any OEM warranties’; and

- (7) Any arbitrary action in the procurement process.

- b. Prohibition Against Geographic Preferences. Grantees shall conduct procurements in a manner that prohibits the use of statutorily or administratively imposed in-State or local geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. This does not preempt State licensing laws. However, geographic location may be a selection criterion in procurements for architectural and engineering (A&E) services provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- c. Written Procurement Selection Procedures. Grantees shall have written selection procedures for procurement transactions. All solicitations shall:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description shall not, in competitive procurements, contain features that unduly restrict competition. The description may include a statement of the qualitative nature of the material, product, or service to be procured and when necessary, shall set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equal” description may be used as a means to define the performance or other salient characteristics of a procurement. The specific features of the named brand which must be met by offerors shall be clearly stated.
- (2) Identify all requirements that offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- d. Prequalification Criteria. Grantees shall ensure that all lists of prequalified persons, firms, or products that are used in acquiring goods and services are current and include enough qualified sources to ensure maximum full and open competition.

Also, grantees shall not preclude potential bidders from qualifying during the solicitation period, which is from the issuance of the solicitation to its closing date.

9. **METHODS OF PROCUREMENT.** The following methods of procurement may be used as appropriate:

- a. **Procurement by Micro-Purchases.** Micro-purchases are those purchases under \$2,500. Purchases below that threshold may be made without obtaining competitive quotations. There should be equitable distribution among qualified suppliers and no splitting of procurements to avoid competition. (The Davis-Bacon Act applies to construction contracts above \$2,000.) Minimum documentation is required: A determination that the price is fair and reasonable and how this determination was derived. The other requirements of paragraph 7(i) do not apply to micro-purchases.
- b. **Procurement by Small Purchase Procedures.** Small purchase procedures are those relatively simple and informal procurement methods for securing services, supplies, or other property that cost more than \$2,500 but do not cost more than the simplified acquisition threshold fixed at 41 U.S.C. § 403(11) (currently set at \$100,000). If small purchase procedures are used, price or rate quotations shall be obtained from an adequate number of qualified sources.
- c. **Procurement By Sealed Bids/Invitation For Bid (IFB).** Bids are publicly solicited and a firm-fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price.
 - (1) In order for sealed bidding to be feasible, the following conditions should be present:
 - (a) A complete, adequate, and realistic specification or purchase description is available;
 - (b) Two or more responsible bidders are willing and able to compete effectively for the business;
 - (c) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
 - (d) No discussion with bidders is needed.
 - (2) If this procurement method is used, the following requirements apply:
 - (a) The invitation for bids will be publicly advertised and bids shall be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;

- (b) The invitation for bids, which will include any specifications and pertinent attachments, shall define the items or services sought in order for the bidder to properly respond;
- (c) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (d) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs shall be considered in determining which bid is lowest;

Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of;
and

- (e) Any or all bids may be rejected if there is a sound documented business reason.
- (3) The sealed bid method is the preferred method for procuring construction if the conditions in paragraph 9c(1) above apply.

d. Procurement by Competitive Proposal/Request for Proposals (RFP). The competitive proposal method of procurement is normally conducted with more than one source submitting an offer, i.e., proposal. Either a fixed price or cost reimbursement type contract is awarded. This method of procurement is generally used when conditions are not appropriate for the use of sealed bids. If this procurement method is used the following requirements apply:

- (1) Requests for proposals will be publicized. All evaluation factors will be identified along with their relative importance;
- (2) Proposals will be solicited from an adequate number of qualified sources;
- (3) Grantees will have a method in place for conducting technical evaluations of the proposals received and for selecting awardees;
- (4) Awards will be made to the responsible firm whose proposal is most advantageous to the grantee's program with price and other factors considered;
and
- (5) In determining which proposal is most advantageous, grantees may award (if consistent with State law) to the proposer whose proposal offers the greatest business value to the Agency based upon an analysis of a tradeoff of qualitative technical factors and price/cost to derive which proposal represents the "best value" to the Procuring Agency as defined in Section 6, Definitions. If the grantee elects to use the best value selection method as the basis for award, the solicitation must contain language which establishes that an award will be made on a "best value" basis.

- e. Procurement of Architectural and Engineering Services (A&E). Grantees may use qualifications-based competitive proposal procedures (i.e., Brooks Act procedures) when contracting for A&E services as defined in 40 U.S.C. §541 and 49 U.S.C. §5325(d). Services subject to this method of procurement are program management, construction management, feasibility studies, preliminary engineering, design, architectural, engineering, surveying, mapping, and related services.

Qualifications-based competitive proposal procedures require that:

- (1) An offeror's qualifications be evaluated;
- (2) Price be excluded as an evaluation factor;
- (3) Negotiations be conducted with only the most qualified offeror; and
- (4) Failing agreement on price, negotiations with the next most qualified offeror be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee.

These qualifications-based competitive proposal procedures should only be used for the procurement of the services listed above. This method of procurement should not be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

These requirements apply except to the extent the grantee's State adopts or has adopted by statute a formal procedure for the procurement of these services.

- f. Procurement of Design-Bid-Build. Grantees may procure design-bid-build services through means of sealed bidding or competitive negotiations. These services must be procured in a manner that conforms to applicable state and local law, the requirements of this guidance relative to the method of procurement used and all other applicable federal requirements.
- g. Procurement of Design-Build. Grantees may procure design-build services through means of qualifications-based competitive proposal procedures based on the Brooks Act as set forth in Section 9e when the preponderance of the work to be performed is considered to be for architectural and engineering (A&E) services as defined in Section 9e, Qualifications-based competitive proposal procedures should not be used to procure design-build services when the preponderance of the work to be performed is not of an A&E nature as defined in Section 9e, unless required by State law.
- h. Procurement By Noncompetitive Proposals (Sole Source). Sole Source procurements are accomplished through solicitation of a proposal from only one source, or after solicitation of a number of sources, competition is determined inadequate. A contract change that is not within the scope of the original contract is considered a sole source procurement that must comply with this subparagraph.
- (1) Procurement by noncompetitive proposals may be used only when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- (a) The item is available only from a single source;
 - (b) The public exigency or emergency for the requirement will not permit a delay resulting from competitive solicitation;
 - (c) The LMRO authorizes noncompetitive negotiations—e.g., if FTA provides a joint procurement grant or a research project grant with a particular firm or combination of firms, the grant agreement is the sole source approval;
 - (d) After solicitation of a number of sources, competition is determined inadequate; or
 - (e) **NOT APPLICABLE.**
- (2) A cost analysis, i.e., verifying the proposed cost data, the projections of the data, and the evaluation of the specific elements of costs and profit, is required.
- i. **Options.** Grantees may include options in contracts. An option is a unilateral right in a contract by which, for a specified time, a grantee may elect to purchase additional equipment, supplies, or services called for by the contract, or may elect to extend the term of the contract. If a grantee chooses to use options, the requirements below apply:
- (1) **Evaluation of Options.** The option quantities or periods contained in the contractor's bid or offer must be evaluated in order to determine contract award. When options have not been evaluated as part of the award, the exercise of such options will be considered a sole source procurement.
 - (2) **Exercise of Options.**
 - (a) A grantee must ensure that the exercise of an option is in accordance with the terms and conditions of the option stated in the initial contract awarded.
 - (b) An option may not be exercised unless the grantee has determined that the option price is better than prices available in the market or that the option is the more advantageous offer at the time the option is exercised.

10. CONTRACT COST AND PRICE ANALYSIS FOR EVERY PROCUREMENT

ACTION. Grantees must perform a cost or price analysis in connection with every procurement action, including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, grantees must make independent estimates before receiving bids or proposals.

- a. **Cost Analysis.** A cost analysis must be performed when the offeror is required to submit the elements (i.e., labor hours, overhead, materials, etc.) of the estimated cost, (e.g., under professional consulting and architectural and engineering services contracts, etc.).

A cost analysis will be necessary when adequate price competition is lacking and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalog or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation.

- b. Price Analysis. A price analysis may be used in all other instances to determine the reasonableness of the proposed contract price.
- c. Profit. Grantees will negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration will be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.
- d. Federal Cost Principles. Costs or prices based on estimated costs for contracts under grants will be allowable only to the extent that costs incurred or cost estimates included in negotiated prices are consistent with Federal cost principles. Grantees may reference their own cost principles that comply with applicable Federal cost principles.
- e. Cost Plus Percentage of Cost Prohibited. The cost plus a percentage of cost and percentage of construction cost methods of contracting shall not be used.

11. BONDING REQUIREMENTS. For those construction or facility improvement contracts or subcontracts exceeding \$100,000, the LMRO may accept the bonding policy and requirements of the grantee, provided the LMRO determined that the policy and requirements adequately protect the Federal interest. The LMRO has determined that grantee policies and requirements that meet the following minimum criteria adequately protect the Federal interest:

- a. A bid guarantee from each bidder equivalent to five (5) percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of his bid, execute such contractual documents as may be required within the time specified;
- b. A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract; and
- c. A payment bond on the part of the contractor. A payment bond is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts determined to adequately protect the federal interest are as follows:

- (1) Fifty percent of the contract price if the contract price is not more than \$1 million;
 - (2) Forty percent of the contract price if the contract price is more than \$1 million but not more than \$5 million; or
 - (3) Two and a half million dollars if the contract price is more than \$5 million.
- d. A Grantee may seek LMRO approval of its bonding policy and requirements if they do not comply with these criteria.

12. PAYMENT PROVISIONS IN THIRD PARTY CONTRACTS.

- a. Advance Payments. FTA does not authorize and will not participate in funding payments to a contractor prior to the incurrence of costs by the contractor unless prior written concurrence is obtained from FTA.
- b. Progress Payments. Grantees may use progress payments provided the following requirements are followed:
 - (1) Progress payments are only made to the contractor for costs incurred in the performance of the contract.
 - (2) The grantee must obtain adequate security for progress payments. Adequate security may include taking title, letter of credit or equivalent means to protect the grantee's interest in the progress payment.

13. LIQUIDATED DAMAGES PROVISIONS. A grantee may use liquidated damages if it may reasonably expect to suffer damages and the extent or amount of such damages would be difficult or impossible to determine.

The assessment for damages shall be at a specific rate per day for each day of overrun in contract time; and the rate must be specified in the third party contract. Any liquidated damages recovered shall be credited to the project account involved unless the LMRO permits otherwise.

14. NOT APPLICABLE.

15. CONTRACT PROVISIONS. All contracts shall include provisions to define a sound and complete agreement. In addition, contracts and subcontracts shall contain contractual provisions or conditions that allow for:

- a. Administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, including sanctions and penalties as may be appropriate. (All contracts in excess of the small purchase threshold.)
- b. Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of \$10,000.)

16. STATUTORY AND REGULATORY REQUIREMENTS. A current but not all inclusive and comprehensive list of statutory and regulatory requirements applicable to

grantee procurements (such as Davis-Bacon Act, Clean Air, etc.) is contained in the LMRO Master Agreement. Grantees are responsible for evaluating these requirements for relevance and applicability to each procurement. Further guidance concerning these requirements and suggested wording for contract clauses may be found in FTA's Best Practices Procurement Manual.

For specific guidance concerning the crosscutting requirements of other Federal agencies, grantees are advised to contact those agencies.