

# **INVITATION FOR BIDS**

Berths 8, 9 and 10 Electrical and Mechanical Restoration FEMA PW-4272 (Berths 8, 8A and 8B), PW-4582 (Berths 9 and 9A), PW-4583 (Berths 10 and 10A)

#### **Contact Information:**

Stephen Pirrelli Project Manager bid@bnydc.org

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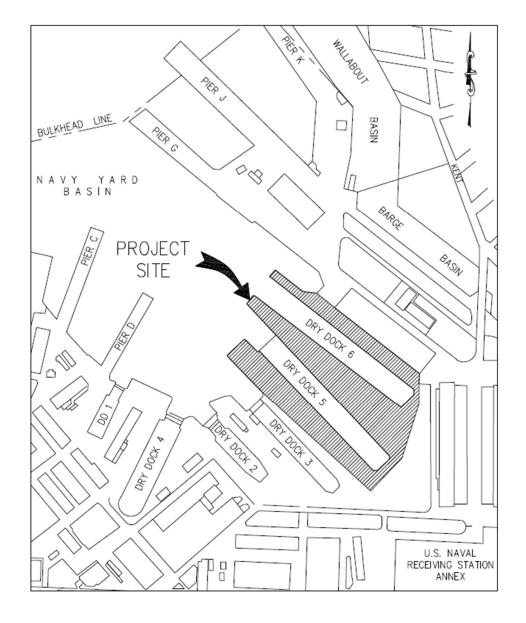


# A. PROJECT INFORMATION

The Brooklyn Navy Yard Development Corporation ("BNYDC") is issuing this Invitation for Bids ("IFB") to seek bids ("Bids" and each, a "Bid") from entities ("Bidders" and each, a "Bidder") interested in performing the Berths 8, 9 and 10 Electrical and Mechanical Restoration Project (the "Project").

# 1. PROJECT SITE(S):

Brooklyn Navy Yard - Berths 8, 9 and 10 Brooklyn, NY 11205





#### 2. DESCRIPTION OF PROJECT:

Following Hurricane Sandy in 2012, many waterfront structures and systems throughout the Brooklyn Navy Yard sustained critical damage due to floodwater inundation. This flooding impacted dry docks, piers, buildings, and electrical and mechanical systems across the site. To address some of the damage, the Brooklyn Navy Yard Development Corporation (BNYDC) secured funding through three FEMA Public Assistance (PA) Project Worksheets (PW 4272, PW 4582, and PW 4583) which specifically target repairs to the electrical and mechanical systems at Berths 8/8A, 9/9A, 10/10A and the perimeter of Dry Docks 5 and 6. The project consists of installing a new electrical distribution system and new equipment for Dry Docks 5 and 6. The work to be performed under this contract includes but is not limited to the following:

- a. Mobilization and demobilization including the setup and breakdown of the job site as required. This includes the moving in and removal of equipment, materials, and crews to ensure smooth transitions and minimal delays.
- b. Installation of construction facilities and site security fencing/gates as required during construction, and its removal upon completion of construction.
- c. Demolition, removal, and disposal including but not limited to the following:
  - i. Demolition, removal, and proper disposal of existing pipes in tunnels and duct banks, as indicated on the drawings and/or as required to complete the work. This includes remediation of hazardous materials as detailed in the Hazardous Materials Survey Report attached as <u>Exhibit M.4</u>.
  - ii. Demolition, removal, and proper disposal of existing conduits and cabling as indicated on the drawings and/or as required to complete the work. Note, existing kiosks and load centers are to remain operational until new equipment is commissioned.
  - iii. Demolition, removal and proper disposal of existing capstans, kiosks, and load centers. Note, demolition of legacy electrical equipment (existing kiosks and load centers) must occur after successful commissioning and switchover to the new energized systems.
- d. Contractor shall exercise care in the removal of the excavated soil, proper disposal of excavated soil not meeting the test requirements, and stockpiling of excavated soil for use as backfill or fill as required to perform the work indicated on the drawings.
- e. Installation of approved backfill and fill, including handling and compaction in accordance with this specification as required to complete the work and repaving to match existing pavement.
- f. Furnishing and installation of new capstans as indicated in the Project Specification Documents.
- g. Furnishing and installation of new load centers as indicated in the Project Specification Documents.
- h. Furnishing and installation of new kiosks as indicated in the Project Specification Documents.



- i. Core drilling through deck slab to route feeders up to new equipment on deck.
- j. Core drilling through existing manhole walls where passage through existing ducts is not possible.
- k. Installation of underground duct banks where required. Any excavation or handling of existing fill shall be in accordance with the Excavation Work Plan attached as <a href="Exhibit J">Exhibit J</a> and the Site Management Plan attached as Exhibit K.
- I. Furnishing and installation of electrical conduits, wires, manhole, and miscellaneous items as shown on the drawings including connecting to the substation.
- m. Testing of new electrical systems as shown on the Project Specification Documents. Note, final commissioning of the electrical and mechanical systems under this contract, specifically the kiosk, load center, feeder, and capstan systems cannot occur until Substation G is energized and functional.
- n. Note that a Third Party Independent Special Inspection & Testing Agency will be paid for directly by the Owner to perform all NYCSBS Required Inspections as listed in the Project Specification Documents. A TR-1 form identifying these Required Inspections must be filed by the Contractor along with his Worker's Comprehensive Insurance and other documents to obtain the SBS Building Permit prior to commencement of construction. Non-NYC SBS Required Inspections will be paid for by the Contractor from the inspection and testing allowance. The Contractor is required to provide coordination of all Inspections (refer to section 01400 Quality Control). Special Inspection Reports shall be submitted on a regular basis; any non-conforming items shall be reported to the Engineer immediately for resolution.

# 3. PROJECT SPECIFICATION DOCUMENTS:

The project specification documents are comprised of <a href="Exhibits M.1">Exhibits M.1</a>, <a href="M.2">M.2</a>, <a href="M.2">M.2</a

4. M/WBE PARTICIPATION GOAL: 8%

# B. PERTINENT DATES AND CONDITIONS PRECEDENT FOR BNYDC TO CONSIDER A BID

1. MANDATORY PRE-BID MEETING. A mandatory pre-bid submission conference will be held at 10 am on Tuesday, October 7, 2025 at BNYDC's offices, 141 Flushing Avenue, Building 77, 8<sup>th</sup> Floor, Suite 801, Brooklyn, NY 11205. All Bidders who plan to attend should contact Stephen Pirrelli via email bid@bnydc.org to provide names of attendees and email addresses so that attendees can receive details for attending the site walk-through. Please indicate the name of the project in the subject line of your email when requesting attendance at the walk-through. The meeting will be immediately followed by a site walkthrough. All attendees must bring and wear their own PPE including a hard-hat and safety reflective vest.



2. <u>INQUIRIES</u>. Any explanation desired by Bidders regarding the meaning or interpretation of this IFB must be emailed and received by BNYDC no later than 1:00 pm on Tuesday, October 21, 2025. BNYDC will evaluate the need to respond to inquiries received. No verbal responses will be provided, and any information given to a prospective Bidder will be furnished to all prospective Bidders as an addendum to this IFB (an "Addendum"). Except as provided below, all questions must be directed only to Stephen Pirrelli, Brooklyn Navy Yard Development Corporation, at <a href="mailto:bid@bnydc.org">bid@bnydc.org</a> AND Laura Hammerer, Arcadis, lhammerer@arcadis.com.

**BID SUBMISSION DEADLINE.** Written sealed Bids must be received at BNYDC's office on or no later than **1 pm on Friday, November 7, 2025**. If Bidder is submitting a request for a full or partial waiver of the M/WBE Participation Goal set forth in Section D hereof, they shall submit such waiver request no later than **1 pm on Friday, October 31, 2025**, which is 7 calendar days prior to the Bid Submission Deadline. Bids should be addressed to:

Brooklyn Navy Yard Development Corp Attn: Stephen Pirrelli Building 77, Suite 801 141 Flushing Ave Brooklyn, NY 11205

- 3. <u>BID SECURITY</u>. Bidder must submit with the Bid either a bid deposit by certified check or a bid bond in the form attached hereto as <u>Exhibit B</u> in an amount of (10%) of the Bid. Note that Bid Security is not required for any Bid submitted for an amount under Two Hundred Fifty-Thousand Dollars (\$250,000).
- 4. <u>PASSPORT COMPLIANCE</u>. Bidders are required to be registered and up-to-date in PASSPort prior to submitting a Bid to this IFB. Each Bidder must include its PASSPort identification number on the Confirmation of PASSPort Compliance form attached hereto as Exhibit E.
- 5. PROJECT SCHEDULE. Below are the following pertinent dates:
  - a. Anticipated selection of Bid by and notification from BNYDC to winning Bidder on or about December 2025;
  - b. Upon selection, the selected Bidder must execute a Contract substantially in the form attached hereto as <u>Exhibit H</u>. Please note that, if any Bidder desires any change(s) to the Contract form attached as <u>Exhibit H</u>, it must include any such proposed change(s) as part of its Bid. BNYDC does not agree to necessarily accept any such proposed Contract changes, but BNYDC will not consider any Contract changes that are not provided as part of a Bid. The contents of the selected Bid, together with this IFB and any formal questions and answers provided during the bid process may be incorporated into any final Contract at BNYDC's discretion;
  - c. Commence work on Project immediately following the Notice to Proceed to be issued by BNYDC for this Project (the "NTP").

- d. Substantial completion of the Project (as defined in the Contract attached as <u>Exhibit H</u> hereto) no later than Section C.1 Time Of Completion.
- e. Complete all inspections and sign-offs no later than 33 months after contract award.

#### C. CONTRACT PARTICULARS

- 1. <u>TIME OF COMPLETION</u>. 33 months from the issuance of the NTP to Substantial Completion.
- 2. <u>LIQUIDATED DAMAGES</u>. \$1,000 for each calendar day beyond Substantial Completion Date. Failure to comply with the M/WBE requirements described in this IFB may also result in liquidated damages, as described further in Exhibit N.
- 3. <u>RETAINAGE</u>. As provided in the Contract attached hereto as <u>Exhibit H</u>.
- 4. <u>CONTRACT LENGTH</u>. The anticipated Contract length is 33 months.
- 5. <u>CONSTRUCTION MANAGER</u>: Arcadis of New York, Inc. will be performing Construction Management and Program Management responsibilities for this FEMA funded project.

# D. MINORITY AND WOMEN-OWNED BUSINESS ENTERPRISE PARTICIPATION

The specific requirements of minority-owned business enterprises ("MBEs") and women-owned business enterprises ("WBEs") participation for this Contract are detailed below. Additional provisions regarding this IFB's requirements relating to M/WBEs can be found in <a href="Exhibit N">Exhibit N</a> (Additional M/WBE Provisions) attached hereto.

#### Bidders must comply with all applicable MBE and WBE requirements for this Contract.

1. M/WBE PROGRAM. Section 6-129 of the Administrative Code of the City of New York ("Section 6-129") establishes the program for participation in City procurement ("M/WBE Program") by "MBEs and WBEs, certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. BNYDC endorses these goals and has adopted an M/WBE Program to further participation by MBEs and WBEs for its projects. All Bidders shall comply with all requirements of BNYDC's M/WBE Program applicable to this IFB.

#### 2. M/WBE PARTICIPATION GOAL:

a. The percentage goal for M/WBE participation (the "Participation Goal") for the Contract is eight percent (8%) of the total dollar value of the Contract. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS or DMWBD (each as defined below) as MBEs or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in



- Section D.2.d and Section D.2.e below, unless the goals have been waived or modified by BNYDC in accordance with Exhibit N, Section A.
- b. M/WBE firms must be certified by either (i) the NYC Department of Small Business Services ("DSBS"), or (ii) Empire State Development's Division of Minority and Women's Business Development ("DMWBD") to credit such firms' participation toward attainment of the Participation Goal. Such certification must occur prior to the firms' commencement of work. A list of M/WBE firms may be obtained (i) from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William Street, New York, New York, 10038, 7th Floor, and (ii) from the ESD website at www.ny.newnycontracts.com. Eligible firms that have not yet been certified may contact DSBS or DMWBD for additional information on how to get certified. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20).
- c. The Participation Goal is a material term of the Contract and the selected Bidder shall be subject to the BNYDC approved Participation Goal, unless the goals have been waived or modified by BNYDC in accordance with Exhibit N, Section A.
- d. An M/WBE Bidder shall be permitted to count its own participation toward fulfillment of the Participation Goal. The value of an M/WBE Bidder's participation shall be determined by subtracting from the total value of the Contract any amounts that the Bidder will pay to direct Subcontractors. A Bidder that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both. If a Bidder is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DSBS or DMWBD as MBEs or WBEs.
- e. A Bidder that is a Qualified Joint Venture (as defined in Section 6-129) shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of Bidder's participation shall be determined by subtracting from the total value of the Contract any amounts that Bidder pays to direct Subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

#### 3. M/WBE PROPOSAL SUBMISSION FORMS.

- a. Bidders shall be required to submit with its bid a completed M/WBE Utilization Plan in the form attached as <u>Exhibit O</u> indicating:
  - i. whether the Bidder is an MBE or WBE, or Qualified Joint Venture;
  - ii. the percentage of work it intends to award to direct Subcontractors;
  - iii. in cases where the Bidder intends to award direct subcontracts, a description

of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and copies of DSBS or DMWBD certifications for each proposed MBE or WBE subcontractor listed in its M/WBE Utilization;

- iv. the Bidder's required certification and affirmations, as attached as <a href="Exhibit O">Exhibit O</a> to this IFB. In the event that this M/WBE Utilization Plan indicates that the bidder does not intend to meet the Participation Goal, the bid shall be deemed non-responsive, unless the goals have been waived or modified by BNYDC in accordance with <a href="Exhibit N">Exhibit N</a>, Section A.
- b. THE BIDDER MUST COMPLETE AN M/WBE UTILIZATION PLAN IN THE FORM ATTACHED HERETO AS EXHIBIT O. AN M/WBE UTILIZATION PLAN SUBMITTED BY THE BIDDER WHICH DOES NOT INCLUDE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE PARTICIPATION GOAL IS GRANTED IN ACCORDANCE WITH EXHIBIT N, SECTION A. IN THE EVENT THAT BNYDC DETERMINES THAT THE BIDDER HAS SUBMITTED AN M/WBE UTILIZATION PLAN WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE M/WBE UTILIZATION PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE BIDDER WILL BE NOTIFIED BY BNYDC AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED M/WBE UTILIZATION PLAN TO BNYDC. FAILURE TO DO SO WILL RESULT IN A DETERMINATION THAT THE BID IS NON- RESPONSIVE. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED (IF THE BIDDER HAS PROVIDED AN E-MAIL ADDRESS), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.
- c. The successful Bidder (each Bidder who is awarded a Contract, a "Contractor") shall, within 30 days of issuance by BNYDC of a NTP, submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. In the case of multi-year contracts, such list shall also be submitted every year thereafter. BNYDC may also require the Contractor to report periodically about the contracts awarded by its direct Subcontractors to indirect subcontractors (as defined in Section 6- 129(c)(22)). In the event that the Contractor's selection of a Subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.
- 4. STATEMENTS SUBMITTED WITH REQUESTS FOR PAYMENT.

- a. The Contractor shall, with each voucher for payment, and/or periodically as BNYDC may require, submit statements, certified under penalty of perjury, which shall include, but not be limited, to:
  - i. the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors;
  - ii. the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and
  - iii. the dates and amounts paid to each MBE or WBE.
- b. The Contractor shall also submit, along with its voucher for final payment:
  - i. the total amount it paid to subcontractors, and, where applicable pursuant to Section 6- 129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and
  - ii. a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.
- c. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's M/WBE Utilization Form, BNYDC shall take appropriate action, in accordance with the enforcement provisions described in the Contract and in <a href="Exhibit N">Exhibit N</a>, Section G, unless the goals have been waived or modified by BNYDC in accordance with Exhibit N, Section A.
- 5. MODIFICATIONS BASED ON CHANGE ORDERS. Where an M/WBE Utilization Plan has been submitted, and the Bidder requests a change order the value of which exceeds the greater of 10 percent of the Contract, as applicable, or \$500,000, BNYDC shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the Participation Goals should be modified.
- 6. OTHER M/WBE REQUIREMENTS. The Contract and Exhibit N contain additional provisions related to the M/WBE requirements applicable to this IFB regarding, without limitation, waivers, modifications, substitutions, indefinite quantity contracts, progress reviews, evaluations and assessments, and enforcement. PLEASE BE SURE THAT YOU REVIEW AND UNDERSTAND ALL OF THE REQUIREMENTS APPLICABLE TO THIS IFB AND THE CONTRACT PRIOR TO SUBMITTING YOUR PROPOSAL.

#### E. SPECIAL REQUIREMENTS

- 1. MISCELLANEOUS CONDITIONS
  - a. <u>NON-BINDING ACCEPTANCE OF QUALIFICATIONS</u>. This IFB does not commit BNYDC to award a contract for any work or services described herein.

- b. <u>MODIFICATIONS</u>. Bidders may be asked to make such revisions, additions or deletions to their Bids as may be required by BNYDC.
- c. <u>RESERVED RIGHTS</u>. All Bid material submitted becomes the property of BNYDC and BNYDC reserves the right at its sole discretion to:
  - i. Reject any and all Bids received in response to this IFB at any time prior to signing of a contract with respect to the Project;
  - ii. Award a contract to other than the lowest Bidder;
  - iii. Waive, modify or correct any irregularities in Bids received, after notification to the Bidder;
  - iv. Change the structure of the proposed Bid, if such is in the interest of BNYDC;
  - v. Negotiate the final scope, staff participation, and Bid before entering into contract with successful Bidder;
  - vi. Revise the Bid as BNYDC may require subsequent to receipt of a competitively bid proposal for the Project;
  - vii. Extend the time for submission of all Bids after notification to all prospective Bidders;
  - viii. Terminate negotiations with a selected Bidder and select the next most responsive Bidder, or take such other action as deemed appropriate if negotiations fail to result in a signed contract within a reasonable amount of time from the commencement of negotiations;
    - ix. Terminate or modify the IFB process at any time and reissue the IFB;
    - x. Approve or reject any sub-contractor proposed by the Bidder; and
  - xi. Request a change of any sub-contractor at any time in the contract process.

#### 2. CONTRACT REQUIREMENTS.

- a. Any Bidder awarded a contract as a result of this IFB process will be required to sign a contract substantially in the form as attached hereto as <a href="Exhibit H">Exhibit H</a> (the "Contract"). If a Bidder desires any material or substantive change(s) to the Contract, it must include any such proposed change(s) in its response to this IFB. The contents of the selected Bid, together with this IFB and any formal questions and answers provided during the Bid processes, may be incorporated into any final Contract at BNYDC's discretion. The anticipated Contract length is 33 months.
- b. Any information which may have been released verbally or in writing prior to the issuance of the IFB shall be deemed preliminary in nature and bind neither BNYDC nor the Bidder.
- c. Any Bidder awarded a contract as a result of this IFB will be required to obtain clearance through the City's Procurement and Sourcing Solutions Portal ("PASSPort"). PASSPort moves the VENDEX process online, eliminating paper submissions. Since



PASSPort clearance is a pre-requisite to BNYDC's award of a contract, Bidders are required to be registered and up-to-date in PASSPort prior to submitting their response to this IFB and to include their PASSPort identification number with submission of their Bid. Non-compliance with these submission requirements shall result in the disqualification of the Bid and/or the Bidder and/or the cancellation of any contract after its award.

d. Notice to Bidders: Pursuant to Local Law 34 of 2007, amending the City's Campaign Finance Law, the City is required to establish a computerized database containing the names of any "person" that has "business dealings with the city" as such terms are defined in the Local Law. In order for the City to obtain necessary information to establish the required database, vendors responding to this solicitation are required to complete the Doing Business Data Form attached as Exhibit F hereto and return it with the Bid. (If the responding vendor is a proposed joint venture, the entities that comprise the proposed joint venture must each complete a Data Form.) If the City determines that a vendor has failed to submit a Data Form or has submitted a Data Form that is not complete, the vendor will be notified by the agency and will be given four (4) calendar days from receipt of notification to cure the specified deficiencies and return a complete Data Form to the agency. Failure to do so will result in a determination that the Bid is non-responsive. Receipt of notification is defined as the day notice is e-mailed or faxed (if the vendor has provided an e-mail address or fax number), or no later than five (5) days from the date of mailing or upon delivery, if delivered.

#### 3. SPECIAL REQUIREMENTS

a. Each Bidder (or the "Prime Contractor") must specialize in General Construction Work and is responsible for project management of entire project.

# F. BID SUBMISSION DOCUMENTS ("BSDs")

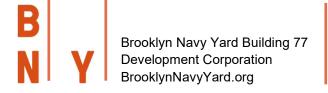
BNYDC <u>requires</u> that all BSDs listed below be completed and submitted as instructed in this IFB. Failure to submit the below forms, or submitting them improperly, may result in BNYDC's rejection of the Bid.

<u>Bid Form</u> : Properly executed and sealed in the form attached as <u>Exhibit A</u> .
Bid Security: If required per Section B.3 of this IFB, completed form attached as Exhibit B.
Experience Questionnaire: Completed form attached as Exhibit C.
<u>Declaration of Understanding</u> : Completed and executed declaration attached as <u>Exhibit D</u> .
<u>Confirmation of PASSPort Compliance</u> : Completed confirmation attached as <u>Exhibit E</u> .
<u>Doing Business Data Form</u> : Completed form attached as <u>Exhibit F</u> .
M/WBE Information Form: Completed form attached as Exhibit G.



M/WBE Utilization Plan: Completed form attached as Exhibit O.
<u>Addenda</u> : Acknowledged receipt of any Addendum to this IFB by attaching a signed copy of the Addendum to Bidder's Bid.
<u>Contract Revisions</u> : If a Bidder desires any material or substantive change(s) to the Contract Bidder must include any such proposed change(s) in its response to this IFB.
<u>Environmental Certification Form</u> : Completed form attached as <u>Exhibit I</u> =_certifying that they have reviewed the Site Management Plan <u>Exhibit K</u> and Excavation Work Plan <u>Exhibit J</u> and that all work will be completed in accordance with such documents.

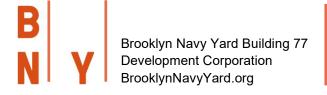
BNYDC appreciates your interest in this IFB and looks forward to receiving your Bid.



# **EXHIBIT A**

# BID FORM BROOKLYN NAVY YARD DEVELOPMENT CORPORATION BID FOR FURNISHING ALL LABOR AND MATERIAL FOR:

PROJECT: [PROJECT NAME]				
CONTRACT #:				
Name of Bidder:				
Bidder is a(n): Individual ☐ Partnership [ (Check	$\square$ Corporation $\square$ LLC $\square$ one, whichever applies)			
Federal Tax Identification Number:				
Home Address (If Individual):				
<u>If Bidder is a Partnersh</u>	nip or an LLC, fill in the following blanks:			
Name of Partners/Member  1.	Home Address of Partner/Member			
2				
2				



# If Bidder is a Corporation, fill in the following blanks:

Organized under the laws of the State of:
Admitted to do business in New York on:
Name and Home Address of President:
Name and Home Address of Secretary:
Name and Home Address of Treasurer:
Other Interested Parties, Persons, or Companies (State None if None.)
Name:
Address:
Name:
Address:

#### Bidder certifies, under penalty of perjury (New York State Penal Law §210.45), that:

- a) Bidder, if an individual or a partner in a partnership, is of lawful age and the only one interested in this bid; and no other person, firm partnership LLC or corporation other Bidder has any interest in this bid, or in the Contract if awarded; and
- b) The prices in this Bid have been arrived at independently without collusion, consultation, communication or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other bidder or with any competitor; and
- Unless otherwise required by law, the prices quoted in this bid have not been disclosed by the bidder and will not be disclosed by the bidder prior to bid opening, directly or indirectly, to any other bidder or to any competitor; and
- d) No attempt has been made or will be made by the Bidder to induce any other person, partnership, LLC or corporation to submit or not to submit a bid for the purpose of restricting competition; and

- e) No councilman or other officer, director or employee or person whose salary is payable in whole or in part from the Treasury of the City of New York or BNYDC is directly or indirectly interested in this bid, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof; and
- f) Bidder is not in arrears to the City of New York or BNYDC upon debt or contract or taxes, and is not a defaulter, as surety or otherwise, upon any obligation of the City of New York or BNYDC and has not been declared not responsible, or disqualified, by BNYDC or any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility of qualification of the bidder to receive public contracts except \_\_\_\_\_\_\_
- g) Bidder has paid all applicable City income, excise and other taxes for all years it has conducted business activities in New York City; and
- h) Bidder has complied with since its effective date and will continue to comply with the provisions of §6-108 of the Administrative Code of the City of New York; and
- i) Bidder has complied with since its effective date and will continue to comply with the provisions of §220, §220a and §230 of the New York State Labor Law; and
- j) Bidder has complied with since its effective date and will continue to comply with §6-109 of the Administrative Code of the City of New York; and
- k) Bidder has complied with since its effective date and will continue to comply with § 24-216 of the Administrative Code of the City of New York; and
- Bidder agrees to post notices setting forth the requirements of the aforesaid laws (items h, i, j and k above) in prominent and conspicuous places in each and every plant, factory, building and structure where employees engaged in the performance of the Contract can readily view it and will continue to keep such notices posted until the supplies, materials and equipment, or work labor and services required to be furnished or rendered by the Bidder have been finally accepted by BNYDC; and
- m) Bidder has complied with since its effective date and will continue to comply with Executive Order No. 50, dated, April 25, 1980, on Equal Employment Compliance of the Contract. The required Employment Report must be submitted as part of the bid.
- n) Bidder by submitting this bid certifies that it now has and will continue to have the financial capability to fully perform the Project required for the Contract. The award of the Contract will be made in reliance upon such certification. Therefore, upon request by BNYDC, Bidder will submit proof of financial capability, as BNYDC requires.

Bidder understands that any breach or violation of the foregoing may subject Bidder to damages, liquidated or otherwise, cancellation of the Contract, if awarded, and suspension of Bidder for a period of three years.

#### **Special Conditions**

#### **Work Scope Division by FEMA PW**

The project is funded under three separate FEMA Project Worksheets (PWs), each corresponding to a segment of the overall electrical and mechanical restoration work at Brooklyn Navy Yard:

- PW 4272 Covers Berths 8, 8A, and 8B
- PW 4582 Covers Berths 9 and 9A
- PW 4583 Covers Berths 10 and 10A

The Contractor shall price, schedule, track, and invoice work separately under each PW. All work associated with each PW must be performed and documented in a manner that enables clear allocation of costs and scope per FEMA requirements. Construction may be executed concurrently across berths; however, care must be taken to ensure financial and progress reporting aligns with each PW's funding and scope.

#### **Work Site Coordination in an Active Shipyard**

The work site is within an active shipyard operated by GMD Shipyard Corp. and includes Dry Docks 5 and 6, which will remain operational during construction. The following requirements apply:

- Coordination with Tenant: The Contractor must coordinate all work with the shipyard tenant, including access routes, work hours, and use of staging areas. Weekly coordination meetings with GMD and the Owner will be required.
- Dry Dock Crane Access: Under no circumstances may Contractor activities obstruct or impede crane operations. Contractor must verify crane movement schedules in advance and maintain unobstructed access to crane rails, and adjacent infrastructure.
- Area Access Restrictions: Contractor access will be limited to designated work areas. Any work
  requiring movement outside the delineated zones must be pre-approved by the shipyard and
  Owner.
- Staging and Laydown: Staging areas will be assigned and must be coordinated to avoid
  interfering with shipyard operations. No materials shall be stored in areas that obstruct
  dockside equipment or vessel movement.

Failure to comply with coordination requirements may result in work stoppage at the Contractor's expense.

# Substation Coordination and Commissioning Requirements

The electrical substation serving Berths 8, 9, and 10 (Substation G in Building 386) is being restored under a separate contract. This work includes the installation of new transformers, switchgear, and substation controls.

 Substation Completion Timing: The substation restoration is currently scheduled to be substantially complete by October 2028, including energization of the new transformers.

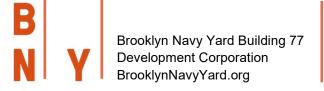
- **System Commissioning Dependencies**: Final commissioning of the electrical and mechanical systems under this contract, specifically the kiosk, load center, feeder, and capstan systems cannot occur until Substation G is energized and functional.
- Demolition of Old Equipment: Demolition of legacy electrical equipment (including existing kiosks and load centers) must occur after successful commissioning and switchover to the new energized systems.

#### **Contractor Responsibilities**

- The Contractor shall coordinate all field activities to support phased installation and deferred commissioning.
- The Contractor shall plan, staff, and price for commissioning of all three PWs (PW 4272, PW 4582, PW 4583) after October 2028.

#### **Pricing Validity**

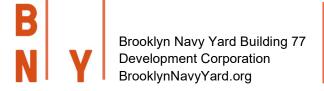
All proposals submitted in response to this RFP, including all proposed pricing, must remain firm and valid for a period of one hundred eighty (180) calendar days from the proposal submission deadline. This validity period is crucial to allow sufficient time for evaluation, negotiation, and contract finalization.



# **BID PRICE**

# PW 4272 - Berths 8, 8A, and 8B

1.	Mobilization and Demobilization			
A.	Price for Material Sold and Delivered	\$		
В.	Price for Labor	\$		
C.	Allowance for Miscellaneous Testing (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)	\$		
D.	Allowance for Utility Tunnel Concrete Repart (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)			
D.	Allowance for Crane Beam Repair (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)	\$		
	Sub Total 1	\$		
2.	Demolition and Restoration of Electrical and	Mechanical Equipment at Berth 8		
A.	Price for Material Sold and Delivered	\$		
В.	Price for Labor	\$		
	Sub Total 2	\$		
TOTAL PE	RICE (Add Sub Total 1 + Sub Total 2)	\$		
Indica	Indicate TOTAL PRICE in words:			



# **BID PRICE**

# PW 4582 - Berth 9 and 9A

1. N	Nobilization and Demobilization		
A.	Price for Material Sold and Delivered	\$	
В.	Price for Labor	\$	
C.	Allowance for Miscellaneous Testing (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)	\$ 50,000.00	
D.	Allowance for Utility Tunnel Concrete Repart (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)		0
D.	Allowance for Crane Beam Repair (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)	\$100,000.0	0
	Sub Total 1	\$	
2. D	emolition and Restoration of Electrical and I	lechanical Equipment	at Berth
A.	Price for Material Sold and Delivered	\$	
В.	Price for Labor	\$	
	Sub Total 2	\$	
TAL PRIC	E (Add Sub Total 1 + Sub Total 2)	\$	
Indicate	TOTAL PRICE in words:		



# **BID PRICE**

# PW 4583 - Berth 10 and 10A

1.	Мо	bilization and Demobilization		
	A.	Price for Material Sold and Delivered	\$	
	В.	Price for Labor	\$	
	C.	Allowance for Miscellaneous Testing (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)	\$_	50,000.00
	D.	Allowance for Utility Tunnel Concrete Repai (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)		200,000.00
	D.	Allowance for Crane Beam Repair (To be determined by Project Engineer, if required, as per Section 01400 of the Specifications)	\$_	100,000.00
		Sub Total 1	\$_	
2. Demolition and Restoration of Electrical and Mechanical Equipment at Bert			nanical Equipment at Berth 10	
	A.	Price for Material Sold and Delivered	\$	
	В.	Price for Labor	\$	
		Sub Total 2	\$_	
TOTAL	PRICE	(Add Sub Total 1 + Sub Total 2)	\$_	
Inc	dicate <b>T</b> o	OTAL PRICE in words:		

# **LUMP SUM BID PRICE - SUMMARY OF PRICES**

# PW 4272 - Berths 8, 8A, and 8B

Ref	Bid Item	Bid Price
4272 - 1	Mobilization & Demobilization	\$
4272 - 2	Abatement	\$
4272 - 3	Install Conduits & Cable	\$
4272 - 4	Core Drilling & Penetrations	\$
4272 - 5	Duct bank and manholes	\$
4272 - 6	Furnish and Install Kiosks	\$
4272 - 7	Furnish and Install Load Centers	\$
4272 -8	Demolish, Furnish and Install Capstans	\$
4272 -9	Commissioning	\$
4272 -10	Demolition of Kiosks and Load Centers	\$

TOTAL PRICE (Sum of Items 4272-1 to 4272-10 Above) \$				
Indicate TOTAL PRICE for PW 4272 - Berths 8, 8A, and 8B in words:				

Prices are to be complete for in-place operations and shall include all costs, incidental material and work, freight, insurance, fringes, field labor and supervision, engineering, tax, overhead, and profit.

# PW 4582 - Berth 9 and 9A

Ref	Bid Item	Bid Price
4582 - 1	Mobilization & Demobilization	\$
4582 - 2	Abatement	\$
4582 - 3	Install Conduits & Cable	\$
4582 - 4	Core Drilling & Penetrations	\$
4582 - 5	Duct bank and manholes	\$
4582 - 6	Furnish and Install Kiosks	\$
4582 - 7	Furnish and Install Load Centers	\$
4582 -8	Demolish, Furnish and Install Capstans	\$
4582 -9	Commissioning	\$
4582 -10	Demolition of Kiosks and Load Centers	\$

TOTAL PRICE (Sum of Items 4582-1 to 4582-10 Above) \$
Indicate TOTAL PRICE for PW 4582 - Berth 9 and 9A in words:

Prices are to be complete for in-place operations and shall include all costs, incidental material and work, freight, insurance, fringes, field labor and supervision, engineering, tax, overhead, and profit.

# PW 4583 - Berth 10 and 10A

Ref	Bid Item	Bid Price
4583 - 1	Mobilization & Demobilization	\$
4583 - 2	Abatement	\$
4583 - 3	Install Conduits & Cable	\$
4583 - 4	Core Drilling & Penetrations	\$
4583 - 5	Duct bank and manholes	\$
4583 - 6	Furnish and Install Kiosks	\$
4583 - 7	Furnish and Install Load Centers	\$
4583 -8	Demolish, Furnish and Install Capstans	\$
4583 -9	Commissioning	\$
4583 -10	Demolition of Kiosks and Load Centers	\$

TOTAL PRICE (Sum of Items 4583-1 to 4583-10 Above) \$
Indicate TOTAL PRICE for PW 4583 - Berth 10 and 10A in words:

Prices are to be complete for in-place operations and shall include all costs, incidental material and work, freight, insurance, fringes, field labor and supervision, engineering, tax, overhead, and profit.

# PW 4272 - Berths 8, 8A, and 8B

# 1. Mobilization and Demobilization

Contractor's Mobilization and Demobilization work lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all costs associated with the Contractor's mobilization to and demobilization from the project site, including transportation of equipment, establishment and removal of temporary facilities, site access coordination with the tenant (GMD Shipyard), permits, insurance, and preparatory/closeout tasks necessary to support the full scope of work.

REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	<u>DESCRIPTION</u>			
4272 - 1.A	Mobilization of	LUMP SUM		
	Operation			
4272 - 1.B	Insurance	LUMP SUM		
4272 - 1.C	Payment and	LUMP SUM		
	Performance Bonds			
4272 - 2.D	Shop Drawings	LUMP SUM		
4272 - 2.E	AUTOCAD As-Builts	LUMP SUM		
4272 - 1.F	Demobilization	LUMP SUM		
4272 - 1.G	Construction	LUMP SUM		
	Fencing and Site			
	Access			
4272 - 1.H	Testing Allowance	LUMP SUM	50,000.00	
4272 - 1.I	Utility Tunnel	LUMP SUM	200,000.00	
	Concrete Repair			
	Allowance			
4272 - 1.J	Crane Beam	LUMP SUM	100,000.00	
	Concrete Repair			
	Allowance			
	Mobiliza	tion and Demobilizat	tion Work Total	

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#### 2. Abatement

The Abatement work shall be the lump sum total, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes all labor, materials, and equipment required for the safe removal, handling, and disposal of asbestoscontaining materials, contaminated soils, and associated hazardous materials from the utility tunnel and work area. Work must be performed by qualified personnel and in accordance with all regulatory requirements.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	<u>TOTAL</u>	
4272 - 2.A	Hazardous Material Abatement – Utility Tunnel and Manholes	LUMP SUM			
4272 -2.B	Pipe Removal - Utility Tunnel	LUMP SUM			
4272 - 2.C	Transportation & Disposal of Waste	LUMP SUM			
4272 - 2.D	Valve Removal	LUMP SUM			
	Abatement Total				

#### 3. Install Conduits & Cable

The Install Conduits and Cable shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes the complete installation of electrical conduits and cabling, including feeders, grounding, raceways, supports, and terminations. All materials, labor, and coordination to ensure a codecompliant and fully functional system are included.

REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	<b>DESCRIPTION</b>			
4272 - 3.A	Furnish and Install	LUMP SUM		
	conduit supports in			
	utility tunnel and altar			
4272 - 3.B	Furnish and install	LUMP SUM		
	conduits			
4272 - 3.C	Furnish and install Cable	LUMP SUM		
Install Conduits & Cable Total				

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# 4. Core Drilling & Penetrations

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all coring and penetrations through concrete walls, foundations, or slabs to accommodate conduit and cable routing. Includes necessary sealing, patching, protection of adjacent infrastructure, and compliance with structural and safety requirements.

REF	WORK ITEM	QUANTITY	UNIT PRICE	TOTAL
	<u>DESCRIPTION</u>			
4272 - 4.A	Utility Tunnel Wall	LUMP SUM		
4272 - 4.B	Service Altar Roof	LUMP SUM		

#### 5. Duct Bank and Manholes

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes furnishing and installing concrete-encased duct banks, associated conduits, spacers, rebar, color additives, trenching, backfill, demolishing obstructions, finding and clearing openings in crane beam, and manholes. The work shall conform to all dimensional and alignment requirements shown on the drawings.

REF	WORK	ITEM	QUANTITY	UNIT PRICE	TOTAL
	DESCRIPTION	<u> </u>			
4272 – 5.A	Concrete Duct	Bank	24 LF		
Duct Bank and Manholes Total					

#### 6. Furnish and Install Kiosks

The Furnish and Install Kiosks shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes procurement, delivery, and complete installation of electrical kiosks, including pad foundations, grounding, internal wiring, terminations, weatherproofing, labeling, and coordination with adjacent equipment.

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REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	<u>DESCRIPTION</u>			
4272 - 6.A	Furnish and Install Kiosk 5-1	LUMP SUM		
4272 - 6.B	Furnish and Install Kiosk 5-1A	LUMP SUM		
4272 - 6.C	Furnish and Install Kiosk 5-2	LUMP SUM		
4272 - 6.D	Concrete pedestal	3 EA		
Furnish and Install Kiosks Total				

#### 7. Furnish and Install Load Centers

The Furnish and Install Load Centers shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes furnishing and installing load centers, including structural base, internal components, wire terminations, labeling, grounding, and connection to upstream and downstream systems. All work must meet the specified performance and code standards.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	<u>TOTAL</u>	
4272 - 7.A	Furnish and Install Load Center 5-1	LUMP SUM			
4272 - 7.B	Furnish and Install Load Center 5-2	LUMP SUM			
4272 - 7.C	Concrete pedestal	3 EA			
	Furnish and Install Load Centers Total				

# 8. Demolish, Furnish and Install Capstans

The Furnish and Install Capstans shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes demolition of existing capstans, modification of concrete foundations, and the complete installation of new capstans with associated electrical/mechanical work.

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REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	<u>TOTAL</u>
4272 - 8.A	Demolish and dispose of existing capstan	6 EA		
4272 - 8.B	Demolish and dispose of existing motor (C#8-5)	1 EA		
4272 - 8.C	Modify capstan pit for new capstan	7 EA		
4272 - 8.D	Furnish and Install Capstans	7 EA		
4272 - 8.E	Furnish and Install Capstan power connections	7 EA		
Furnish and Install Capstans Total				

# 9. Commissioning

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all labor, testing, documentation, and coordination required to commission the kiosks, load centers, capstans, and associated feeders. Commissioning shall occur only after Substation G is restored and energized, currently anticipated **no earlier than October 2028**.

REF	WORK ITEM	QUANTITY	<u>UNIT</u>	<u>TOTAL</u>
	DESCRIPTION		<u>PRICE</u>	
4272 - 9.A	Mobilization and Demobilization	LUMP SUM		
4272 - 9.B	Testing and Commissioning	LUMP SUM		
Commissioning Total				

# 10. Demolition of Kiosks, Load Centers and Transformers

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes removal and disposal of existing electrical equipment, including kiosks, load centers, and associated infrastructure. Demolition shall occur only after successful commissioning of new equipment and shall be coordinated to avoid disruption to active shipyard operations.

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REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL		
4272 - 10.A	Demolish and dispose of existing kiosks/load centers	LUMP SUM				
4272 - 10.B	Demolish and dispose of existing cables	LUMP SUM				
4272 - 10.C	Patch openings	LUMP SUM				
4272 - 10.D	Demolish and dispose of existing Transformers	LUMP SUM				
	Demolition Total					

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# PW 4582 - Berth 9 and 9A

#### 1. Mobilization and Demobilization

Contractor's Mobilization and Demobilization work lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all costs associated with the Contractor's mobilization to and demobilization from the project site, including transportation of equipment, establishment and removal of temporary facilities, site access coordination with the tenant (GMD Shipyard), permits, insurance, and preparatory/closeout tasks necessary to support the full scope of work.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
4582 - 1.A	Mobilization of Operation	LUMP SUM		
4582 - 1.B	Insurance	LUMP SUM		
4582 - 1.C	Payment and Performance Bonds	LUMP SUM		
4582 - 2.D	Shop Drawings	LUMP SUM		
4582 - 2.E	AUTOCAD As-Builts	LUMP SUM		
4582 - 1.F	Demobilization	LUMP SUM		
4582 - 1.G	Construction Fencing and Site Access	LUMP SUM		
4582 - 1.H	Testing Allowance	LUMP SUM	50,000.00	
4582 - 1.I	Utility Tunnel Concrete Repair Allowance	LUMP SUM	200,000.00	
4582 - 1.J	Crane Beam Concrete Repair Allowance	LUMP SUM	100,000.00	

#### 2. Abatement

The Abatement work shall be the lump sum total, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes all labor, materials, and equipment required for the safe removal, handling, and disposal of asbestoscontaining materials, contaminated soils, and associated hazardous materials from the

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utility tunnel and work area. Work must be performed by qualified personnel and in accordance with all regulatory requirements.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	<u>TOTAL</u>
4582 - 2.A	Hazardous Material Abatement – Utility Tunnel and Manholes	LUMP SUM		
4582 - 2.B	Pipe Removal - Utility Tunnel	LUMP SUM		
4582 - 2.C	Transportation & Disposal of Waste	LUMP SUM		
4582 - 2.D	Valve Removal	LUMP SUM		

# 3. Install Conduits & Cable

The Install Conduits and Cable shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes the complete installation of electrical conduits and cabling, including feeders, grounding, raceways, supports, and terminations. All materials, labor, and coordination to ensure a codecompliant and fully functional system are included.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	<u>TOTAL</u>
4582 - 3.A	Furnish and Install conduit supports in utility tunnel and altar	LUMP SUM		
4582 - 3.B	Furnish and install conduits	LUMP SUM		
4582 - 3.C	Furnish and install Cable	LUMP SUM		

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# 4. Core Drilling & Penetrations

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all coring and penetrations through concrete walls, foundations, or slabs to accommodate conduit and cable routing. Includes necessary sealing, patching, protection of adjacent infrastructure, and compliance with structural and safety requirements.

REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	<u>DESCRIPTION</u>			
4582 – 4.A	Utility Tunnel Wall	LUMP SUM		
4582 – 4.B	Service Altar Roof	LUMP SUM		
4582 – 4.C	Sump Pump Room Wall	LUMP SUM		

#### 5. Duct Bank and Manholes

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes furnishing and installing concrete-encased duct banks, associated conduits, spacers, rebar, color additives, trenching, backfill, demolishing obstructions, finding and clearing openings in crane beam, and manholes. The work shall conform to all dimensional and alignment requirements shown on the drawings.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
4582 – 5.A	Convert steam tunnel to duct bank	42 LF		
4582 – 5.B	Furnish and Install Manhole	4 EA		
4582 – 5.C	Concrete Duct Bank	450 LF		

#### 6. Furnish and Install Kiosks

The Furnish and Install Kiosks shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes procurement, delivery, and complete installation of electrical kiosks, including pad foundations, grounding, internal wiring, terminations, weatherproofing, labeling, and coordination with adjacent equipment.

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REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
4582 – 6.A	Furnish and Install Kiosk 5-3	LUMP SUM		
4582 – 6.B	Furnish and Install Kiosk 5-4	LUMP SUM		
4582 – 6.C	Furnish and Install Kiosk 5-5	LUMP SUM		
4582 – 6.D	Furnish and Install Kiosk 5-6	LUMP SUM		
4582 – 6.E	Furnish and Install Kiosk 5-7	LUMP SUM		
4582 – 6.F	Furnish and Install Kiosk 5-8	LUMP SUM		
4582 – 6.G	Furnish and Install Kiosk 5-9	LUMP SUM		
4582 – 6.H	Furnish and Install Kiosk 5-10	LUMP SUM		
4582 <b>–</b> 6.I	Furnish and Install Kiosk 6-1	LUMP SUM		
4582 – 6.J	Furnish and Install Kiosk 6-1A	LUMP SUM		
4582 - 6.K	Furnish and Install Kiosk 6-2	LUMP SUM		
4582- 6.L	Furnish and Install Kiosk 6-2A	LUMP SUM		
4582- 6.M	Furnish and Install Kiosk 6-3	LUMP SUM		
4582 - 6.N	Concrete pedestal	13 EA		
		Furnish and In	stall Kiosks Total	

# 7. Furnish and Install Load Centers

The Furnish and Install Load Centers shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes furnishing and installing load centers, including structural base, internal components, wire terminations, labeling, grounding, and connection to upstream and downstream systems. All work must meet the specified performance and code standards.

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REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	<b>DESCRIPTION</b>			
4582 - 7.A	Furnish and Install	LUMP SUM		
	Load Center 5-3			
4582 - 7.B	Furnish and Install	LUMP SUM		
	Load Center 5-4			
4582 - 7.C	Furnish and Install	LUMP SUM		
	Load Center 6-1			
4582 - 7.D	Furnish and Install	LUMP SUM		
	Load Center 6-2			
4582 - 7.E	Concrete pedestal	4 EA		
Furnish and Install Load Centers Total				

#### 8. Demolish, Furnish and Install Capstans

The Furnish and Install Capstans shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes demolition of existing capstans, modification of concrete foundations, and the complete installation of new capstans with associated electrical/mechanical work.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	<u>TOTAL</u>
4582 - 8.A	Demolish and dispose of existing capstan	9 EA		
4582 - 8.B	Modify capstan pit for new capstan	9 EA		
4582 - 8.C	Furnish and Install Capstans	11 EA		
4582 - 8.D	Furnish and Install Capstan power connections	11 EA		

# 9. Commissioning

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all labor, testing, documentation, and coordination required to commission the kiosks, load centers, capstans, and associated feeders. Commissioning shall occur only after Substation G is restored and energized, currently anticipated **no earlier than October 2028**.

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REF	WORK ITEM	QUANTITY	UNIT PRICE	TOTAL
	<b>DESCRIPTION</b>			
4582 - 9.A	Mobilization and Demobilization	LUMP SUM		
4582 - 9.B	Testing and Commissioning	LUMP SUM		
	Commissioning Total			

# 10. Demolition of Kiosks, Load Centers and Transformers

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes removal and disposal of existing electrical equipment, including kiosks, load centers, and associated infrastructure. Demolition shall occur only after successful commissioning of new equipment and shall be coordinated to avoid disruption to active shipyard operations.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL	
4582 - 10.A	Demolish and dispose of existing kiosks/load centers	LUMP SUM			
4582 -10.B	Demolish and dispose of existing cables	LUMP SUM			
4582 - 10.C	Patch openings	LUMP SUM			
4582 - 10.D	Demolish and dispose of existing Transformers	LUMP SUM			
	Demolition Total				

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# PW 4583 - Berth 10 and 10A

#### 1. Mobilization and Demobilization – Berth 10

Contractor's Mobilization and Demobilization work lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all costs associated with the Contractor's mobilization to and demobilization from the project site, including transportation of equipment, establishment and removal of temporary facilities, site access coordination with the tenant (GMD Shipyard), permits, insurance, and preparatory/closeout tasks necessary to support the full scope of work.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
4583 - 1.A	Mobilization of	LUMP SUM		
	Operation			
4583 - 1.B	Insurance	LUMP SUM		
4583 - 1.C	Payment and	LUMP SUM		
	Performance Bonds			
4583 - 2.D	Shop Drawings	LUMP SUM		
4583 - 2.E	AUTOCAD As-Builts	LUMP SUM		
4583 - 1.F	Demobilization	LUMP SUM		
4583 - 1.G	Construction	LUMP SUM		
	Fencing and Site			
	Access			
4583 - 1.H	Testing Allowance	LUMP SUM	50,000.00	
4583 - 1.I	Utility Tunnel	LUMP SUM	200,000.00	
	Concrete Repair			
	Allowance			
4583 - 1.J	Crane Beam	LUMP SUM	100,000.00	
	Concrete Repair			
	Allowance			

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#### 2. Abatement

The Abatement work shall be the lump sum total, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes all labor, materials, and equipment required for the safe removal, handling, and disposal of asbestos-containing materials, contaminated soils, and associated hazardous materials from the utility tunnel and work area. Work must be performed by qualified personnel and in accordance with all regulatory requirements.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	TOTAL
4583 - 2.A	Hazardous Material Abatement – Utility Tunnel and Manholes	LUMP SUM		
4583 - 2.B	Pipe Removal - Utility Tunnel	LUMP SUM		
4583 - 2.C	Transportation & Disposal of Waste	LUMP SUM		
4583 - 2.D	Valve Removal	LUMP SUM		
_	·	Aba	tement Total	

#### 3. Install Conduits & Cable

The Install Conduits and Cable shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes the complete installation of electrical conduits and cabling, including feeders, grounding, raceways, supports, and terminations. All materials, labor, and coordination to ensure a codecompliant and fully functional system are included.

REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	DESCRIPTION			
4583 - 3.A	Furnish and Install conduit supports in utility tunnel and altar	LUMP SUM		
4583 - 3.B	Furnish and install conduits	LUMP SUM		
4583 - 3.C	Furnish and install Cable	LUMP SUM		
	Install Conduits & Cable Total			

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#### 4. Core Drilling & Penetrations

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all coring and penetrations through concrete walls, foundations, or slabs to accommodate conduit and cable routing. Includes necessary sealing, patching, protection of adjacent infrastructure, and compliance with structural and safety requirements.

REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	<b>DESCRIPTION</b>			
4583 - 4.A	Utility Tunnel Wall	LUMP SUM		
4583 - 4.B	Service Altar Roof	LUMP SUM		
Core Drilling & Penetrations Total				

#### 5. Duct Bank and Manholes

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes furnishing and installing concrete-encased duct banks, associated conduits, spacers, rebar, color additives, trenching, backfill, and manholes. The work shall conform to all dimensional and alignment requirements shown on the drawings.

REF	WORK ITEM	QUANTITY	UNIT PRICE	TOTAL
	<b>DESCRIPTION</b>			
4583 - 5.A	Convert steam conduit to duct bank	56 LF		
4583 - 5.B	Furnish and Install Manhole	1 EA		
Furnish and Install Kiosks Total				

#### 6. Furnish and Install Kiosks

The Furnish and Install Kiosks shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes procurement, delivery, and complete installation of electrical kiosks, including pad foundations, grounding, internal wiring, terminations, weatherproofing, labeling, and coordination with adjacent equipment.

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REF	WORK ITEM	QUANTITY	UNIT PRICE	TOTAL
	<u>DESCRIPTION</u>			
4583 - 6.A	Furnish and Install	LUMP SUM		
	Kiosk 6-3A			
4583 - 6.B	Furnish and Install	LUMP SUM		
	Kiosk 6-4			
4583 - 6.C	Furnish and Install	LUMP SUM		
	Kiosk 6-5			
4583 - 6.D	Furnish and Install	LUMP SUM		
	Kiosk 6-6			
4583 - 6.E	Furnish and Install	LUMP SUM		
	Kiosk 6-7			
4583 - 6.F	Furnish and Install	LUMP SUM		
	Kiosk 6-8			
4583 - 6.G	Furnish and Install	LUMP SUM		
	Kiosk 6-9			
4583 - 6.H	Concrete pedestal	7 EA		
		Furnish and In	stall Kiosks Total	

#### 7. Furnish and Install Load Centers

The Furnish and Install Load Centers shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes furnishing and installing load centers, including structural base, internal components, wire terminations, labeling, grounding, and connection to upstream and downstream systems. All work must meet the specified performance and code standards.

REF	WORK ITEM	QUANTITY	UNIT PRICE	<u>TOTAL</u>
	<u>DESCRIPTION</u>			
4583 - 7.A	Furnish and Install	LUMP SUM		
	Load Center 6-3			
4583 - 7.B	Furnish and Install	LUMP SUM		
	Load Center 6-4			
4583 - 7.C	Concrete pedestal	2 EA		
Furnish and Install Load Centers Total				

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#### 8. Demolish, Furnish and Install Capstans

The Furnish and Install Capstans shall be the unit cost, based upon the following item descriptions and as detailed in the Plans and Specifications. It includes demolition of existing capstans, modification of concrete foundations, and the complete installation of new capstans with associated electrical/mechanical work.

REF	WORK ITEM DESCRIPTION	QUANTITY	UNIT PRICE	<u>TOTAL</u>
4583 - 8.A	Demolish and dispose of existing capstan	5 EA		
4583 - 8.B	Modify capstan pit for new capstan	5 EA		
4583 - 8.C	Furnish and Install Capstans	7 EA		
4583 - 8.D	Furnish and Install Capstan power connections	7 EA		
		Furnish and Install (	Capstans Total	

#### 9. Commissioning

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes all labor, testing, documentation, and coordination required to commission the kiosks, load centers, capstans, and associated feeders. Commissioning shall occur only after Substation G is restored and energized, currently anticipated **no earlier than October 2028**.

REF	WORK ITEM	QUANTITY	UNIT PRICE	TOTAL
	DESCRIPTION			
4583 - 9.A	Mobilization and Demobilization	LUMP SUM		
4583 - 9.B	Testing and Commissioning	LUMP SUM		
Commissioning Total				

#### 10. Demolition of Kiosks, Load Centers and Transformers

This item shall be the lump sum total, based upon the following description and as detailed in the Plans and Specifications. It includes removal and disposal of existing electrical equipment, including kiosks, load centers, and associated infrastructure.

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Demolition shall occur only after successful commissioning of new equipment and shall be coordinated to avoid disruption to active shipyard operations.

REF	WORK ITEM	QUANTITY	UNIT PRICE	TOTAL
	DESCRIPTION			
4583 - 10.A	Demolish and dispose of existing kiosks/load centers	LUMP SUM		
4583 - 10.B	Demolish and dispose of existing cables	LUMP SUM		
4583 - 10.C	Patch openings	LUMP SUM		
	Demolition Total			

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## **B. UNIT PRICES**

The following unit prices shall be used to determine adjustments in the Contract Sum when changes in quantities occur or when directed work is required beyond the original scope. Unit prices shall include all costs for materials, labor, equipment, overhead, profit, and all incidental expenses necessary to complete the work.

Work Item Description	Unit	<b>Unit Price</b>
Hazardous Material Abatement – Floor Cleaning including standing water and sediment	S LF	\$
Hazardous Material Abatement – Wall/Ceiling cleaning	SF	\$
Install conduit (various sizes)	LF	\$
Install cable (various voltages)	LF	\$
Additional conduit supports / hangers	EA	\$
Furnish and install pull boxes / junction boxes	EA	\$
Furnish and Install manhole	EA	\$
Termination and splicing	EA	\$
Excavation	CY	\$
Backfill – new fill	CY	\$
Backfill – existing material	CY	\$
Concrete duct banks	CY	\$
Asphalt / pavement restoration	SF	\$
Concrete slab / pedestal modification	EA	\$
Core drilling crane beam	EA	\$
Core drilling utility tunnel wall	EA	\$
Penetration sealing	EA	\$

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Work Item Description	Unit	<b>Unit Price</b>
Hazardous Material Abatement – Floor Cleaning including standing water and sediment	LF	\$
Hazardous Material Abatement – Wall/Ceiling cleaning	SF	\$
Temporary power provisions	LS/day	\$
Additional testing / commissioning time	HR	\$

## **Alternative Capstan Power Feed**

Provide unit costs per linear foot for the following scope components for furnishing and installing a complete new duct bank to serve capstans in the event existing conduits are inaccessible or unsuitable for reuse. All unit costs shall be fully inclusive of labor, materials, equipment, permits, overhead, and profit.

Payment will be based on measured horizontal length, regardless of depth, and shall include all incidental work for a complete and operational installation.

Sub-Item	Description	Unit	Unit (\$/LF)	Price
1. Excavation	Trenching including shoring, and spoil handling	LF	\$	
2. Core Drill Opening in Crane Beam	If required, core drilling of crane beam to route conduits.	LF	\$	
3. Duct Bank Concrete Encasement	Concrete-encased duct bank with spacers, rebar, and color additive per specifications	LF	\$	
4. Conduit Installation	Furnish and install specified conduits, including bends, sweeps, and supports	LF	\$	
5. Cable Installation	Furnish, pull, and terminate feeder cables, including splicing, labeling, and testing	LF	\$	

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Sub-Item	Description	Unit	Unit (\$/LF)	Price
6. Backfill & Compaction	Backfill with approved material, compact to specification, and restore subgrade	LF	\$	
7. Surface Restoration	Restore asphalt, concrete, or other surfaces disturbed by trenching	LF	\$	
8. Miscellaneous & Incidental	Includes traffic control, permits, protection of existing utilities, and cleanup	LF	\$	
Total Unit Price (Sum of Above)	All-inclusive cost per LF for complete operational duct bank	LF	\$	

#### Alternative for duct bank at Berth 8

Provide unit costs per linear foot for the following scope components for furnishing and installing a complete new duct bank to reach the pier at the end of Berth 8 in the event existing conduits in existing electrical duct bank are inaccessible or unsuitable for reuse. All unit costs shall be fully inclusive of labor, materials, equipment, permits, overhead, and profit.

Payment will be based on measured horizontal length, regardless of depth, and shall include all incidental work for a complete and operational installation.

Sub-Item	Description	Unit	Unit (\$/LF)	Price
1. Excavation	Trenching including shoring, and spoil handling. Note routing under 30" deep tie beams between rails.	LF	\$	
2. Duct Bank Concrete Encasement	Concrete-encased duct bank with spacers, rebar, and color additive per specifications	LF	\$	
4. Conduit Installation	Furnish and install specified conduits, including bends, sweeps, and supports	LF	\$	

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141 Flushing Ave, Suite 801 Brooklyn, NY 11205

Sub-Item	Description	Unit	Unit (\$/LF)	Price
5. Cable Installation	Furnish, pull, and terminate feeder cables, including splicing, labeling, and testing	LF	\$	
6. Backfill & Compaction	Backfill with approved material, compact to specification, and restore subgrade	LF	\$	
7. Surface Restoration	Restore asphalt, concrete, or other surfaces disturbed by trenching	LF	\$	
8. Miscellaneous & Incidental	Includes traffic control, permits, protection of existing utilities, and cleanup	LF	\$	
Total Unit Price (Sum of Above)	All-inclusive cost per LF for complete operational duct bank	LF	\$	

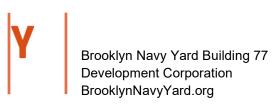
BSD - 21 -



## PW 4272 - Berths 8, 8A, and 8B

Indicate TOTAL PRICE in words:
IN WITNESS WHEREOF, Bidder states that they have visited and examined the site of the Work. Bidder affirms that they have carefully examined the Contract form provided. Bidder agrees that it will execute the Contract unchanged in form and faithfully perform the Work required thereunder for the price set forth above and have executed this Bid Form on the day of 2025.
Bidder's Name:
By:(Signature of Individual, Partner, Member or Corporate Officer)
Title:
Address:
(Corporate or LLC Seal) Attest: Secretary of Corporate or LLC Bidder

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## PW 4582 - Berth 9 and 9A

Indicate TOTAL PRICE in words:
IN WITNESS WHEREOF, Bidder states that they have visited and examined the site of the Work. Bidder affirms that they have carefully examined the Contract form provided. Bidder agrees that it will execute the Contract unchanged in form and faithfully perform the Work required thereunder for the price set forth above and have executed this Bid Form on the day of 2025.
Bidder's Name:
By:(Signature of Individual, Partner, Member or Corporate Officer)
(Signature of Individual, Partner, Member or Corporate Officer)
Title:
Address:
(Corporate or LLC Seal)
Attest: Secretary of Corporate or LLC Bidder

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## PW 4583 - Berth 10 and 10A

Indicate TOTAL PRICE in words:
IN WITNESS WHEREOF, Bidder states that they have visited and examined the site of the Work. Bidder affirms that they have carefully examined the Contract form provided. Bidder agrees that it will execute the Contract unchanged in form and faithfully perform the Work required thereunder for the price set forth above and have executed this Bid Form on the day of 2025.
Bidder's Name:
By:(Signature of Individual, Partner, Member or Corporate Officer)
(Signature of Individual, Partner, Member or Corporate Officer)
Title:
Address:
(Corporate or LLC Seal)
Attest: Secretary of Corporate or LLC Bidder

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## **ACKNOWLEDGMENT, IF AN INDIVIDUAL**

STATE OF NEW YORK)	
COUNTY OF)	
On this day of, 2025, befo	re me personally came _ to me known, who, being by me duly sworn
did depose and say that he/ she resides at	_
Individual described in and who executed the for matters therein stated are in all respects true.	and that he/she is the egoing instrument and that the several
	Notary Public
<u>ACKNOWLEDGMENT</u>	, IF A PARTNERSHIP
STATE OF NEW YORK)	
county of)	
On this day of, 2025, befo	re me personally came to me known, who, being by me duly sworn
did depose and say that he/ she resides at	_
member of, the firm described in and which exect several matters therein stated are in all respects	
	Notary Public
	Notally Fublic

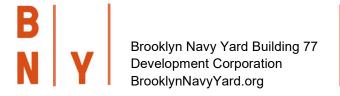
BSD - 25 -

141 Flushing Ave, Suite 801 Brooklyn, NY 11205

# ACKNOWLEDGMENT, IF A LIMITED LIABILITY COMPANY

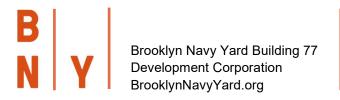
STATE OF NEW YORK)	
: ss.: COUNTY OF)	
, to me known, who, bein he/she is a member of and which executed the foregoing instrumen	he year 2025, before me personally came ng by me duly sworn, did depose and say that that the limited liability company described in nt; and that he/she signed his/her name thereto by oility company and that the several matters therein
-	Notary Public
<u>ACKNOWLEDGME</u>	ENT, IF A CORPORATION
STATE OF NEW YORK) : ss.: COUNTY OF)	
he/she is the of of which executed the foregoing instrument;	the year 2025, before me personally came ng by me duly sworn, did depose and say that tha the business described in and and that he/she signed his /her name thereto by poration and that the several matters therein stated
-	Notary Public

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# EXHIBIT B FORM OF BID BOND

KNOW					PRESENTS,				_	
" Princi										
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					ound unto					
•	•	•		•	the City of N		•	•	-	
-		•			ollectively, as		•			
				_		_				
					payment of					
					es, their heir					
=		=	· ·		y these prese		,		5.5,5466655	J. J,
		.,		,,, ~	,					
Signed	and seale	ed with c	our seal	s and date	ed this	day of			_, 20	
WHERE	-ΔS the P	rincinal	has suh	ımitted a l	oid to Obligee	hased or	١٠			
VVIILIKE	.A3, the f	ППСГРАП	1103 300	militica a i	old to obliget	. basca oi				
1.	Obligee's	Reques	t for Bi	ds; and						
2.	Obligee's	Informa	ation fo	r Bidders;	and					
3.	Obligee's	Bid sub	missior	n Docume	nts; and					
4.	The Proje	ect Speci	ification	n Docume	nts issued by	Obligee; a	and			
5.	Any adde	enda issu	ued by (	Obligee in	connection w	ith the al	ove do	cument	S.	
6.	Documer	nts 1 thr	ough 5	above are	incorporated	d herein b	y refere	nce		
For										
								(P	roject)	
Project	number			(BID)						



WHEREAS, the Condition of the above obligation is such that the Principal has submitted to Obligee the id which requires Principal to enter into a written contract for the performance of the Project.

#### NOW, THEREFORE,

- A. If the BID is rejected, or
- B. If the BID is accepted and the Principal and Obligee have executed and delivered the required contract in the form set forth in the Information for Bidders, in accordance with the accepted BID (Contract); and
- C. If the Principal furnishes Obligee with the required bond for Principal's faithful performance the Contract; and
- D. If the Principal furnishes Obligee with the required bond for the payment of all persons performing labor or furnishing materials in connection with the Contract; and
- E. If the Principal shall in all other respects perform the agreements created by Obligee's acceptance of the Bid
- F. If the Principal shall pay to the Obligee an amount equaling the difference, not to exceed the Penal Sum hereof, between the amount specified in said BID and such larger amount for which the Obligee may in good faith contract with another party to undertake the Project covered by said Bid.

Then this obligation shall be null and void, otherwise to remain in full force and effect.

It is understood and agreed that the liability of the Surety for any and all claims hereunder shall in no event exceed the Penal Sum as shown herein.

The Surety, for value received, hereby stipulates and agrees that the obligations of said Surety under this Bond shall be in no way impaired or affected by any extension of the time within which the Obligee may accept the Bid; and said Surety does hereby waive notice of any such extension.

(Principal)	{{SEAL}}
By: Title:	
Address	<del></del>
(Surety)	

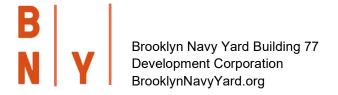


By:		
(,	Attorney-In-Fact)	
Address		

#### **IMPORTANT**

- A. Surety companies executing this bond must be certified and appear on the United States Treasury Department's most recent Circular 570 as amended.
- B. Surety companies can execute this bond only in the amount certified on the United States Treasury Department's most recent Circular 570 as amended.

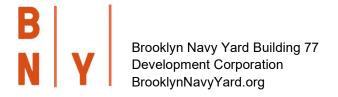
  Sureties executing this bond must be licensed as a surety by the State of New York.



# EXHIBIT C EXPERIENCE QUESTIONNAIRE

As used in the questions below the words "YOU" or "YOUR" means, the bidding individual or bidding entity and each and every one of such bidding entity's officers, directors, partners, members or principals (any shareholder owning I0% or more of the company stock is deemed a principal).

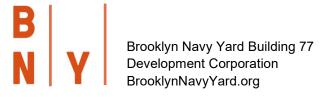
ate:
idder's Name:
idder's Office Address:
idder's Telephone Number:
idder's Federal Taxpayer Identification Number:
idder is a(n): Individual □ Partnership □ Corporation □ LLC □ (Check one, whichever applies)
. What type of construction work are YOU primarily engaged in?
. You have been engaged in such construction work for a) as a Prime Contractor?years nd/or b) as a Subcontractor years
. Have YOU or any organization YOU have been affiliated with in any capacity ever failed to omplete a Contract awarded to YOU? Yes $\Box$ No $\Box$
Yes, for whom, where, when and why?



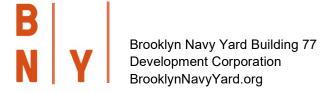
D. Have YOU or any organization YOU have been affiliated with in any capacity ever been declared in default by any City, State or Federal Agency or on any Contract? Yes $\square$ No $\square$						
If Yes where, when, by whom and why?						
E. Have YOU or any organization YOU have been affiliated with in any capacity ever been investigated by any City, State or Federal Agency? Yes □ No □						
If Yes where, when, by whom and why?						
F. Have YOU or any organization YOU have been affiliated with in any capacity ever when called before a GRAND JURY to testify, refused to sign a WAIVER OF IMMUNITY or answer any relevant questions or have been indicted for any reason whatsoever? Yes \(\Boxed{\text{NO}}\) No \(\Boxed{\text{If Yes where, when and why?}\)						
G. List the names of all organization YOU have been affiliated with in any capacity that are not						
listed in paragraphs D. E. or F. above.						
·						



H. Have YOU ever appeared before the Board of Responsibility of the City of New York? Yes $\Box$ No $\Box$						
If Yes when and why						
I. In what other businesses do YOU have a financial interest?						
<u>REFERENCES</u>						
List all corporations and individuals for whom YOU have performed significant work for and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.						
List all cities for which YOU have performed significant work for and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.						



List all counties for whom YOU have performed significant work for and an official from which BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.
List all States have YOU performed work and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.
List all Federal construction projects YOU have performed work on and an official from whom BNYDC can obtain a reference. YOU must include a current address and telephone number for each reference.



Have YOU filed Performance Record reports with the Bureau of Contract Information, Inc., Washington, D.C.? Yes □ No □ if Yes list Date(s)



#### PROJECT EXPERIENCE FORMS AND RESUMES

#### **Individual Construction Experience**

For each key individual in your organization please attach a resume providing at a minimum the following information:

Name

Education

Professional designations

Professional affiliations

**Awards** 

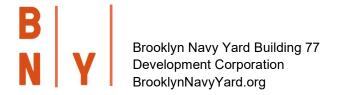
Relevant experience including size of previous projects, cost of such project, location of such projects, a description of such projects and the key individuals position for each project

**Special Experience Requirements**: for each Special Requirement set forth in the Information For Bidders:

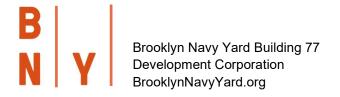
- A. If bidder intends to perform the specific areas of work with its own forces, Bidder must provide Resumes for Key personnel and Project Experience Forms that demonstrates Bidders ability to fulfill the Special Requirements.
- B. If bidder intends to subcontract the specific areas of work, the proposed subcontractor(s) must provide Resumes for Key personnel and Project Experience Forms that demonstrates subcontractor(s) ability to fulfill the Special Requirements.

I (We) have read and understood all the questions in the foregoing Experience Questionnaire and that I (We) have supplied true, full and complete information and answers I (We) understand that BNYDC will rely on the information contained herein.

Bidder	
Name:	
Ву:	(Signature of Individual, Partner, Member or Corporate Officer)
Title: _	
Addres	SS:
 Attest:	(Corporate or LLC Seal) Secretary of Corporate or LLC Bidder

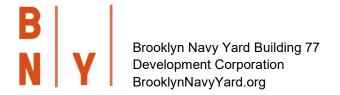


ACKNOWLEDGMENT, IF AN INDIVIDUAL	
STATE OF NEW YORK)	
SS.:	
COUNTY OF)	
On this day of, 20, before me pers	
to me known, who, being by me duly sworn, did depo	
	and that he/she is the Individual
described in and who executed the foregoing instrum are in all respects true.	ent and that the several matters therein stated
	Notary Public
ACKNOWLEDGMENT, IF A PARTNERSHIP	
STATE OF NEW YORK)	
SS.:	
COUNTY OF)	
On this day of, 20, before me pers	onally came me known, who, being by me duly sworn, did
depose and say that he/ she resides at	
depose and say that her she resides at	and that he/she is a member
of, the firm described in and which executed the fore therein stated are in all respects true.	
·	
	Notary Public



## ACKNOWLEDGMENT, IF A LIMITED LIABILITY COMPANY

STATE OF NEW YORK)	
: ss.: COUNTY OF)	
On the day of in the year 20, before me per me known, who, being by me duly sworn, did depose and say to the limited liability company deforegoing instrument; and that he/she signed his/her name the said limited liability company and that the several matters there	that that he/she is a member of escribed in and which executed the ereto by authority of the members of
	Notary Public
ACKNOWLEDGMENT, IF A CORPORATION	
STATE OF NEW YORK)	
: ss.: COUNTY OF)	
On the day of in the year 20, before me per me known, who, being by me duly sworn, did depose and say to fee the business described in an instrument; and that he/she signed his /her name thereto by a	that that he/she is thed which executed the foregoing
said corporation and that the several matters therein stated ar	•
	Notary Public



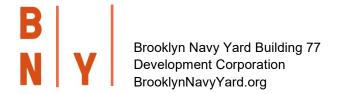
# PROJECT EXPERIENCE FORM (To be completed for each of three projects)

Name of Project:
Location of Project:
Owner or Owner's representative familiar with the work performed:
Name:
Title:
Phone number:
Brief description of work completed:
Was the work was performed as a prime subcontractor, or joint venture:
Dollar amount of Contract or subcontract: \$
Date Started:
Original Scheduled Completion Date:
Actual Completion Date:
If Not Completed By Original Scheduled Date, Give Reasons Therefore:



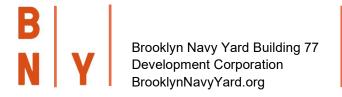
# PROJECT EXPERIENCE FORM (To be completed for each of three projects)

Name of Project:
Location of Project:
Owner or Owner's representative familiar with the work performed:
Name:
Title:
Phone number:
Brief description of work completed:
Was the work was performed as a prime subsentractor, or igint ventures
Was the work was performed as a prime subcontractor, or joint venture:
Dollar amount of Contract or subcontract: \$
Date Started:
Original Scheduled Completion Date:
Actual Completion Date:
If Not Completed By Original Scheduled Date, Give Reasons Therefore:



# PROJECT EXPERIENCE FORM (To be completed for each of three projects) Name of Project: \_\_\_\_\_ Location of Project: Owner or Owner's representative familiar with the work performed: Name: Title: \_\_\_\_\_ Phone number: \_\_\_\_\_ Brief description of work completed: Was the work was performed as a prime subcontractor, or joint venture: \_\_\_\_\_\_ Dollar amount of Contract or subcontract: \$ Date Started: Original Scheduled Completion Date: Actual Completion Date:

If Not Completed By Original Scheduled Date, Give Reasons Therefore:



# EXHIBIT D DECLARATION OF UNDERSTANDING

#### **DECLARATION OF UNDERSTANDING**

By signing in the space provided below, the undersigned certifies that the Bidder (i) has read and understands the scope and requirements of this Project, as described in the IFB and all attachments; (ii) has the capacity to execute this Project, (iii) agrees to accept payment in accordance with the requirements of this IFB and the standard Contract, attached hereto as Exhibit H, and (iv) will, if its Bid is accepted, enter into the attached Contract with the Brooklyn Navy Yard Development Corporation.

The undersigned further stipulates that the information in his/her Bid is, to the best of his/her knowledge, true and accurate.

Authorized S	Signature, Title		 Date
Consultant	Firm		
Business Add	dress		
City		State	Zip
Telephone Number		Fax Number	
Federal Tax	Identification Number		
[] Corporation [] Individual	[] Partnership [] Other (State)		
		(Seal, if a Corpo	oration)



Building 77 141 Flushing Ave, Suite 801 Brooklyn, NY 11205

# EXHIBIT E CONFIRMATION OF PASSPORT COMPLIANCE

#### **CONFIRMATION OF PASSPORT COMPLIANCE**

The Respondent shall submit this Confirmation of PASSPort Compliance, which replaces VENDEX, and shall include its PASSPort identification number. All VENDEX processes are now completed in the PASSPort Portal, this replaces the paper forms. Please register and complete new questionnaires as soon as possible. PASSPort will not be importing any information from VENDEX. The main purpose of PASSPort is to be a completely paperless interactive system.

Please access to the NYC.gov PASSPort website thru the link below: https://www.nyc.gov/site/mocs/passport/about-passport.page



Building 77 141 Flushing Ave, Suite 801 Brooklyn, NY 11205

# CONFIRMATION OF PASSPORT COMPLIANCE

The Proposer shall submit this Confirmation of PASSPort Compliance
Name of Proposer:
Proposer's Federal Tax ID:
Proposer's Address:
Proposer's Telephone Number:
Proposer's Fax Number:
Date of Proposal Submission:
Project ID:
<b>PASSPort Compliance:</b> To demonstrate compliance with PASSPort requirements, the Proposer shall complete either Section (1) or Section (2) below, whichever applies.
(1) <b>Submission of Questionnaires</b> : By signing in the space provided below, the Proposer certifies that as of the date specified below, the Proposer has submitted PASSPort Questionnaires to the PASSPort website thru the link below: <a href="https://www.nyc.gov/site/mocs/passport/about-passport.page">https://www.nyc.gov/site/mocs/passport/about-passport.page</a>
Date of Submission:
By:
(Signature of Partner or corporate officer)
Print Name:
(2) <b>Submission of Certification of No Change:</b> By signing in the space provided below, the Proposer certifies that they have read and follow the instructions on the PASSPort website.
By:
(Signature of Partner or corporate officer)
Print Name:



# **Doing Business Data Form**

To be completed by the Cit	ty agency prior to distribution	Agency		Transaction	ID	
Check One	Transaction Type (check one)					
☐ Proposal ☐ Award	☐ Concession ☐ Economic I	Development Agreement	☐ Franchise	☐ Grant	☐ Pension Investment Contrac	t □ Contract
either type responses directly	for or proposing on an award or a into this fillable form or print anso n is required for a proposal to b	wers by hand in black ink,	and be sure to fi	ll out the cer	tification box on the last page. S	ubmission of a
Data Form will be included in	nation to be provided on principa a public database of people who this form will be disclosed to the	do business with the City	of New York, as	will the orga	nizations that own 10% or more	of the enitity. No
	d Data Form to the City office the or 212-788-8104 with any ques					
Entity Information				If you are	completing this form by hand, <b>p</b>	lease print clearly
Entity EIN/TIN	Entity Nar	me				
Filing Status		(Select One)				
<b>NEW:</b> Data Forms submitted listing of <b>organizations</b> , as wor more ownership of the enof ownership is submitted thupdate form, a no change fo	vell as individuals, with 10% tity. Until such certification rough a change, new or	☐ Change from previous changed, and indicate	us Data Form date te the name of the	ed e persons w	a Form. Fill out the entire form.  Fill out only those se ho no longer hold positions with Skip to the bottom o	the entity.
apacto form, a no change to	m viii not be accepted.	- No onange nom pre	TOUS DAIG TOTAL		Onp to the bottom o	r tho last page.
Entity is a Non-Profit	□ Yes □ No					
Entity Type	any type) □ Joint Venture □	LLC ☐ Partnership (any	type) 🗆 Sole F	Proprietor	Other (specify)	
Address						
Oity			State		Zip	
Phone	E-mail					
name of the person being rep  Chief Executive Officer (CEC		noved from the <i>Doing Bus</i>	siness Database,		the date that the change became	
-	er, such as the President, Executive Direc					
First Name	MI _	Last			Birth Date (mm/dd/yy)	
Office Title		Employer (if no	ot employed by e	entity)		
Home Address						
☐ This person replaced forme	er CEO				on date	
Chief Financial Officer (CFO The highest ranking financial officer,	) or equivalent officer such as the Treasurer, Comptroller, Finan	ncial Director or VP for Finance.			☐ This pos	ition does not exist
First Name	MI _	Last			Birth Date (mm/dd/yy)	
Office Title		Employer (if no	ot employed by e	entity)		
Home Address						
☐ This person replaced forme	er CFO				on date	
Chief Operating Officer (CO The highest ranking operational office	O) or equivalent officer er, such as the Chief Planning Officer, Dir	rector of Operations or VP for Op	perations.		☐ This pos	ition does not exist
First Name	MI	Last			Birth Date (mm/dd/yy)	
Office Title		Employer (if no	ot employed by e	entity)		
Home Address						
☐ This person replaced forme	er COO				on date	

#### **Principal Owners**

Please fill in the required identification information for all individuals or organizations that, through stock shares, partnership agreements or other means, **own or control** 10% or more of the entity. If no individual or organization owners exist, please check the appropriate box to indicate why and skip to the **Senior Managers** section. If the entity is owned by other companies that control 10% or more of the entity, those companies must be listed. If an owner was identified on the previous page, fill in his/her name and write "See above." If the entity is filing a Change Form, list any individuals or organizations that are no longer owners at the bottom of this section. If more space is needed, attach additional pages labeled "Additional Owners."

If more space is needed, attach addition	al pages labeled "Additional Owners."	
There are no owners listed because (s ☐ The entity is not-for-profit	select one):  ☐ The entity is an individual	☐ No individual or organization owns 10% or more of the entity
Other (explain)		
Individual Owners (who own or contro	ol 10% or more of the entity)	
First Name	MI Last	Birth Date (mm/dd/yy)
Office Title	Emŗ	ployer (if not employed by entity)
Home Address		
First Name	MI Last	Birth Date (mm/dd/yy)
Office Title	Emŗ	oloyer (if not employed by entity)
Home Address		
Organization Owners (that own or cor	ntrol 10% or more of the entity)	
Organization Name		
Organization Name		
Organization Name		
Remove the following previously-repo	orted Principal Owners	
Name		Removal Date
Name		Removal Date
Name		Removal Date
		evious page, fill in his/her name and write "See above." If the entity is filing a Change Form, n. If more space is needed, attach additional pages labeled "Additional Senior Managers."
•	MI Last	Birth Date (mm/dd/yy)
		bloyer (if not employed by entity)
Home Address	LIII,	nover (ir not employed by entity)
	MI Last	_ Birth Date (mm/dd/yy)
		bloyer (if not employed by entity)
		in not employed by entity,
		Birth Date (mm/dd/yy)
		bloyer (if not employed by entity)
Home Address	•	
Remove the following previously-repo		
	•	removal date
		removal date
Certification I certify that the information submitted	on these two pages and addition	nal pages is accurate and complete. I understand that willful or fraudulent submission of a e and therefore denied future City awards.
Name		Title
Entity Name		Work Phone #
01 1		5.



Building 77 141 Flushing Avenue, Suite 801 Brooklyn, NY 11205

#### **Dear Vendor:**

The Brooklyn Navy Yard Development Corporation is compiling statistical data on companies that provides construction, professional services, standard services, and goods to our company so that we can comply with the New York City Local Law (LL 129). Please complete the attached information sheet and email it to <a href="mailto:smosley@bnydc.org">smosley@bnydc.org</a> in our Finance Department. If you need help in completing this form, please feel free to contact Shirene Mosley at (718) 907-5935 or email.

If you are a minority or woman-owned business enterprise (M/WBE) but are not yet certified by the City of New York we <u>strongly</u> urge you to do so. The city has an aggressive program to help certified M/WBEs, it is in your best interest to get certified. For more information on getting certified, we suggest that you call the New York City Department of Small Business Services' Certification Hotline at (212) 513-6311. Addition information can also be obtained through the City's website at: www.nyc.gov/getcertified.

We sincerely appreciate your cooperation.

Sincerely, Brian Linett

Sr. Vice President & Controller



Building 77 141 Flushing Avenue, Suite 801 Brooklyn, NY 11205

Please complete the form below and return it to the Finance Department by fax at (718) 643-9296. This information is being compiled for statistical purposes.

Name:	First	Last					
Title:							
Company Nan	ne:						
Company Address:	Street	City		State		ZIP	
Telephone:		Email:	address:				
Federal ID/ So	cial Security #	!				,	
Check appropriate box:	Individual/ Sole proprietor	Corporation □	Partnersh	•	Other		
Are you a mino	ority-owned bu	siness?		Yes [	]	No 🗆	
Are you certified by New York City as a minority-owned business? Yes \Boxed No \Boxed minority-owned business? Yes \Boxed No \Boxed							
If you are a minority-owned business which category best describes your company?		rican Asian ≀	American	Hispar Americ	iic ean □	Other 🗆	
Are you a Caud	asian woman-	owned busines	ss?	Yes □		No 🗆	
Are you certified by New York City as a woman-owned business? Yes \( \) No \( \) women-owned business? Yes \( \) No \( \)							
Your work for the category?	Your work for the Brooklyn Navy Yard Development Corporation falls under which category?						
Construction	Profession □	Professional Services Standard Services Goods □ □ □			ds		
Construction Subcontract	Profession Subcontract	al Services ct □	Other			~	

# BNYDC CONSTRUCTION CONTRACT

CONSTRUCTION CONTRACT NUMBER [] (hereinafter referred to as the	
"Contract") dated as of [], between BROOKLYN NAVY YARD	
<b>DEVELOPMENT CORPORATION</b> , having an office at Building 77, 141 Flushing	
Avenue, Suite 801, Brooklyn, New York 11205 (hereinafter referred to as "BNYDC");	
[], having its principal place of business at [] (hereinafter referred to as t	:he
"Contractor") for [] (hereinafter referred to as "Project") at Building []	
(hereinafter referred to as "Project Site(s)") which Project Site(s) is located within the	
Brooklyn Navy Yard (the "Premises"). The Work as defined in Section 1.2 hereof sh	
commence upon BNYDC's issuance to Contractor of a Notice to Proceed, setting the Commencement Date. This Contract shall have a term of [] consecutive calenda	
days, measured starting from the Commencement Date, unless extended in writing	
both parties (hereinafter referred to as the "Term") Substantial Completion of the	
Work, as defined in Section 8.2 of this Contract, shall be completed by the date that	
[] calendar days from the Commencement Date (the "Substantial Completion	
Deadline") and Final Completion of the Work, as defined in Section 8.4 of this Contra	act,
shall be completed by the date that is [] calendar days from the Commencement	1
Date (the "Final Completion Deadline"). Such Work shall be performed for the total	L
amount of [] and [_]/100 Dollars (\$[]) (hereinafter referred to as the "Contract Price"). A breakdown of the Contract Price is attached hereto as Exhibit "	'O"
Contract Tree j. 11 breakdown of the Contract Tree is attached hereto as Exhibit	Q.
In consideration of the IFB, the BSD the RFB, Contract Price, and the mutual	
covenants contained herein and other valuable consideration, the parties agree as	
follows:	
ARTICLE 1	
GENERAL PROVISIONS AND DEFINITIONS	
Section 1.1 <u>Contract</u> This Contract is composed of the following items:	
A. Articles 1-17 of this Contract and all Exhibits annexed hereto;	
B. All Change Orders as defined in Section 1.2.5 hereof and, all	
amendments and addenda to this Contract;	
C. The Information For Bidders (hereinafter referred to as the "IFB	"),
Bid Submission Documents, (hereinafter referred to as the "BSD") and	
Request For Bids (hereinafter referred to as the "RFB") issued by BNYI together with all addenda to the IFB, BSD, or RFB.	JC,
CONSTRUCTION CONTRACT NUMBER []  CONTRACTOR   Page 1 o	f 95

- D. All provisions of laws, rules, regulations and Executive Orders of the United States Government, the State of New York, the City of New York, or any agency or subdivision thereof, which are required to be a part of or apply to this Contract, whether or not any specific reference is made to the same in this Contract.
- E. All required bid, payment and performance bonds.

<u>Section 1.2 Definitions</u> The following words shall, whenever they appear in this Contract, have the meanings set for them in this section, unless a different meaning is clear from the context:

- A. "Architect/Engineer" shall mean the entity or entities retained by BNYDC to perform design services for the Project.
- B. "BSD" shall mean the Bid Submission Documents as promulgated by BNYDC upon which Contractor presented its bid in response to the RFB and upon which the Contract Price is based.
- C. "BNYDC's Contractors" shall mean other Contractors or construction managers engaged by BNYDC to perform work on the Project or at the Project Site(s).
- D. "Change Orders" shall mean changed, deleted and/or additional Work to be performed by the Contractor pursuant to Article 6 hereof.
- E. The "City" shall mean the City of New York.
- F. The "City Contract" shall mean the management contract between the City of New York and the Brooklyn Navy Yard Development Corp.
- G. "Construction Documents" shall mean the drawings identified on **Exhibit "C"** and the specifications annexed as **Exhibit "D"**.
- H. "Contract Price" shall mean the total compensation for the Work as set forth on page 1 hereof.
- I. "DSBS" shall mean the City of New York Department of Small Business Services.

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- J. "Extra Work" shall mean Work by Contactor performed at the request of BNYDC or Work performed by Contactor with BNYDC's. knowledge and approval for which there is no extra charge
- K. "Federal" shall mean the Government of the United States of America.
- L. "IFB" shall mean the Information For Bidders contained in the RFB promulgated by BNYDC upon which Contractor based its bid and upon which the Bid Submission Documents are based.
- M. "Liquidated Damages" shall mean the liquidated damages rate set forth in the IFB multiplied by the number of calendar days that Substantial Completion (as defined in Section 8.2) of the Work is delayed from the Substantial Completion Deadline set forth in the Recitals to this Contract.
- N. "Premises" shall mean the Brooklyn Navy Yard.
- O. "President" shall mean the President of BNYDC, or the President's designee.
- P. "Project" shall mean the services to be performed under this Contract, as defined on page 1 of this Agreement.
- Q. "Protest Work" shall mean Work the Contractor believes is Change Order Work for which no Change Order has been issued.
- R. "Project Site(s)" shall mean the location within the Brooklyn Navy Yard where the Work is to be performed as defined on page 1 hereof.
- S. "RFB" shall mean the Request For Bids which contained the IFB promulgated by BNYDC upon which Contractor presented its bid on the BSD and upon which the Contract and the Contract Price are based.
- T. "Project Engineer" shall mean a BNYDC's representative whose authority is set forth in Article 8.5 hereof.
- U. "State" shall mean the State of New York.

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- V. "Subcontractor(s)" shall mean any entity the Contractor enters into a subcontract or material purchase order (hereinafter referred to as "Subcontract(s)") for purpose of performing the Work. All Subcontractor(s) and Subcontract(s) must be approved by BNYDC.
- W. "Tenant", "Subtenant", "Licensee," "Invitee" "Person" or "Visitor" shall mean any person or entity that is on the Premises with or without the permission of BNYDC.
- X. "Work" shall mean all labor, equipment, services, permits, approvals, inspections and material necessary for the complete and satisfactory completion of the Project as set forth in this Contract.

### Section 1.3 Funding

- A. Funds for the payment of Contractor under this Contract may be provided by or through the City, pursuant to the City Contract (hereinafter referred to as City Contract Funded). Therefore if the Project is City Contract Funded, Contractor shall take no action which constitutes a breach of the City Contract. Contractor acknowledges that it has carefully reviewed and completely understands the terms and conditions of the City Contract which was available for review during the bidding period. Contractor further understands and agrees that if the City Contract is terminated this Contract may be assigned by BNYDC to the City.
- B. Funds for payment of Contractor under this Contract may also be provided by the United States Federal Emergency Management Agency's Public Assistance funds ("FEMA Funding"). The requirements in connection with FEMA Funding are set forth in Exhibit "O", which is attached hereto and made a part hereof. Failure by the contractor to comply with the requirements set forth in Exhibit "O" shall be a material default under this Contract.

<u>Section 1.4</u> Applicable Laws, Rules and Regulations The Work shall be performed in strict compliance with all applicable federal, state and local laws, rules, regulations, codes and orders. Failure by the Contractor to comply with any such law, rule, regulation code or order shall be a material default under this Contract. Without limiting the generality of the foregoing, the Contractor agrees that it shall specifically comply with the following:

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- A. <u>Equal Employment</u> The requirements are set forth in **Exhibit "A"**, which is attached hereto and made a part hereof.
- B. <u>Federal Job Training Partnership Act</u> (hereinafter referred to as the <u>"FJTPA"</u>) The FJTPA, which specifies that when hiring for the Work, the Contractor shall give consideration to employing City residents who are economically disadvantaged or are eligible under FJTPA, and who have qualifications and skills commensurate with the requirements for the positions available. To the greatest extent feasible, the Contractor shall give opportunities for training and employment to lower income persons in the area of the Premises.
- C. <u>Minimum Wages; Payroll Reports</u> The provisions of Sections 220 and 230 of the New York State Labor Law shall apply to all Work under this Contract. If no prevailing wage is applicable, then Contractor will pay workers the minimum hourly rate required by law, unless a higher amount is required pursuant to any other provision of this Contract. The Contractor shall furnish on demand by BNYDC or DSBS or such other agency or office as the President may direct, a verified copy of its payroll, and also any other information required by BNYDC to satisfy BNYDC that the provisions of this Section are being observed.
- D. <u>MacBride Principles</u> The requirements are set forth in **Exhibit "B"**, which is attached hereto and made a part hereof.
- E. <u>Noise Control</u> The provisions for noise control for the Work at the Project Site(s) and on the Premises are set forth in Section 24-216 of the City's Administrative Code as it may be amended from time to time.
- F. <u>ADA Requirements</u> Title II of the Americans with Disabilities Act, the rules and regulations promulgated thereunder, and any state and local laws establishing construction requirements with respect to access for disabled persons.
- G. <u>Tropical Hardwoods</u> The provisions for the use of Tropical Hardwoods used for the Work at the Project Site(s) and on the Premises are set forth in Section 167-b of the New York State Finance Law, which prohibits the use of tropical hardwoods, except as expressly permitted.
- H. Intentionally Omitted.

CONSTRUCTION CONTR	RACT NUMBER []
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- I. <u>Whistleblower Protection</u> The requirements are set forth in "**Exhibit K**", which is attached hereto and made a part hereof.
- J. <u>Paid Sick Leave</u> The requirements are set forth in **"Exhibit L"**, which is attached hereto and made a part hereof.
- K. <u>OSHA</u> The Contractor shall ensure that the Work is performed in a location and manner free from recognized hazards and shall comply with Occupational Safety and Health Administration ("OSHA") standards, rules and regulations. The Contractor shall regularly examine workplace conditions and use safe and well-maintained tools, equipment and Personal Protective Equipment to ensure conformance with applicable OSHA standards.
- L. [Site Management Plan] The Contractor shall perform all Work in compliance of the terms and provisions of that certain Site Management Plan ("SMP") referenced in the Environmental Easement (the "Environmental Easement") between the City, BNYDC and the People of the State of New York dated as of June 26, 2018 and recorded on July 3, 2018, C.R.F.N. 2018000219215. Contractor specifically acknowledges and agrees that any ground disturbance activities at the Project Site (including all digging for construction, utility installations, or otherwise) must be performed in strict accordance with the notice and other provisions the SMP, including but not limited to the Excavation Work Plan attached as Exhibit "M" to this Contract and the Health and Safety Plan attached as **Exhibit "N"** to this Contract, which Plans are attached as appendices to the SMP; (ii) Contractor's failure to strictly comply with the Environmental Easement and the SMP shall be a material default under this Contract and (iii) in addition to all of BNYDC's remedies under this Contract, Contractor shall be responsible for payment of any fines or other consequences related to Contractor's failure to strictly comply with the Environmental Easement and the SMP.]

Contractor agrees to incorporate, each of the provisions contained in Article 1.4 and each of the exhibits referenced therein into each Subcontract so as to bind each Subcontractor to the provision of Article 1.4.

<u>Section 1.5 Intent of Contract</u> The intent of this contract is to complete the Project; therefore matters not expressly included in this Contract but which are reasonably inferable therefrom as being necessary to produce the intended results shall be deemed included as a part of the Work. The Contract parts are

CONSTRUCTION CONTRACT NUMBER [	_]
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complementary and cumulative and what is called for by one part shall be as binding as if called for by all.

Section 1.6 The Construction Documents The drawings identified in Exhibit "C" which is attached hereto and made a part hereof and the Specifications identified in Exhibit "D" are complementary. Anything shown in any of the drawings and not mentioned in the specifications, or mentioned in any of the specifications and not shown in the drawings, shall have the same effect as if shown or mentioned in both. In the event of a conflict between the drawings and the specifications, Contractor shall do the more complete installation, unless directed, in BNYDC's sole discretion, otherwise in writing.

Section 1.7 Contract Modifications The Contract is to be construed as one coherent overall document. If part of the Contract is Modified for the purpose of varying, modifying, rescinding or adding to the Contract then such modified portions of the Contract must be read together with the unmodified portions of the Contract to which they relate so as to give effect to the provisions of the Contract Documents that remain in full force and effect. Notwithstanding the above, and to the extent BNYDC or Contractor becomes aware of any conflict within any of the Contract, then BNYDC and Contractor shall promptly inform each other of such conflict and BNYDC shall resolve the conflict. BNYDC's decision is final and binding upon Contractor. Contractor shall proceed with the Work in accordance with BNYDC's determination. If Contractor performs Work before the conflict is resolved such Work is be done at Contractor's sole risk, cost and expense.

### **ARTICLE 2**

### THE PROJECT SITE (S) AND CONTRACTOR'S RESPONSIBILITIES

Section 2.1 <u>Project Site(s)</u> The Premises are the former New York Naval Shipyard, which has been in continuous use for over 200 years. As such, there are buried foundations of demolished buildings, railroad and crane tracks set in massive concrete foundations and concrete decks set on various types of piles; therefore, BNYDC makes no representations whatsoever as to any subsurface condition of the Project Site(s). The Contractor assumes all responsibility and liability for all subsurface conditions at the Project Site(s) that could have been discovered by subsurface examination. The Contract Price contemplates whatever subsurface conditions exist. No Change Order will be issued for subsurface conditions at the Project Site(s) materially differing from any assumptions made by Contractor

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unless the Contractor having notice of the history of the Premises could not have anticipated such subsurface conditions.

If access to the Project Site(s) or Premises shall be denied to the Contractor at any time by BNYDC or any person(s) not associated with BNYDC or by court action, and such access denial reasonably interferes with Contractor's ability to perform the Work, then the Term set forth on page 1 hereof shall be extended for a period equal to any such period of access denial. Notwithstanding the foregoing, the Contractor shall not be entitled to an extension of time for any access denial attributable to the actions of the Contractor. In no event shall any denial of access to the Project Site(s) be a breach of this Contract and no damages or increased costs shall be recoverable on account of such denial of access.

### Section 2.2 Contractor's Responsibilities

- A. <u>Adherence to Contract Documents</u> The Contractor shall perform the Work in strict accordance with the Contract.
- B. <u>Supervision</u> The Contractor shall use its best skills to properly administer, coordinate, supervise and superintend the Work. The Contractor shall furnish a competent on-site representative to receive notices, orders and instructions. The Contractor shall at BNYDC's request, report at a meeting between BNYDC and the Contractor on the general progress of the Work at the Project Site(s). The Contractor shall attend in person or have a competent and responsible representative attend such progress meetings.
- C. <u>Labor</u> The Contractor shall furnish and maintain an adequate staff and work force of skilled, competent, experienced, reliable and honest workers at the Project Site(s) to carry out the Work in an efficient and timely manner until completion of the Work and shall enforce discipline and order among Contractor's and Subcontractor's employees and shall not employ on the Work any unfit person or anyone not properly skilled or trained in the task to which they are assigned.
- D. <u>Labor Disputes</u> The Work may not be interrupted by labor disputes. The Contractor shall use such materials, have deliveries made to the Project Site(s), and employ only such Labor as will perform their services in harmony with all other trades performing Work at the Project Site(s), all other BNYDC's Contactors on the Premises, or otherwise. If a labor dispute does occur then the Contractor is responsible for taking all necessary actions to settle such labor dispute. If questions of union

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jurisdiction do arise, then the Contractor shall immediately take all necessary action to settle such jurisdictional disputes and shall use such labor as will settle such dispute at no additional cost to BNYDC. The Contractor shall be responsible for any time lost due to such dispute. If Contractor cannot settle the Labor disputes expeditiously, BNYDC shall after three (3) days written notice to Contractor have the right to terminate the Contractor pursuant to Article 9.2 of this Contract. BNYDC shall then have the right to enter upon the Project Site(s) and take possession thereof for the purpose of completing the Work.

- E. <u>Layout of Work</u> All layout shall be performed by the Contractor, who shall be solely responsible for establishing and maintaining the layout, line and grade tolerances required for its the Work. The Contractor shall verify all established baselines prior to use and shall notify BNYDC of any discrepancies.
- F. <u>Cleaning and Rubbish Removal</u> Contractor shall clear all debris and rubbish created by its operations on a daily basis. The debris and rubbish shall be collected and deposited in containers provided by Contractor. If the Contractor fails to clear and collect the debris and rubbish then, BNYDC may do so for the account of the Contractor. Such debris and rubbish removal costs shall be deducted from the Contract Price unless sooner paid by Contractor to BNYDC.

### <u>Section 2.3</u> Safety The Contractor shall be solely responsible for:

- A. Construction means, methods and techniques; and
- B. Employing methods of construction, materials, scaffolding, tools, structures and equipment which meet or exceed federal, state and local safety and health related rules and regulations, laws and codes; and
- C. Complying with the requirements of all insurance carriers providing insurance coverage for the work.

The Contractor shall coordinate with BNYDC and all BNYDC's Contactors on the Project Site(s) to ensure that the Project Site(s) complies with all safety regulations promulgated by any governmental agency having jurisdiction over the Project Site(s) or the Work. The Contractor shall cooperate fully with BNYDC and other persons, to prevent loss and accidents with respect to the Work on or at the Project Site(s).

#### **ARTICLE 3**

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#### TIME OF PERFORMANCE

Section 3.1 Commencement and Coordination of Work Contractor shall commence the Work at the Project Site(s) on the date specified on page 1 of this Contract. Contractor is completely responsible for the coordination of the Work. BNYDC Contractors or third-party Contractors may from time to time work at, on or about the Project Site(s). Contractor agrees to coordinate the Work scheduling to accommodate the needs of such BNYDC Contractors or third-party Contractors.

### Section 3.2 BNYDC's Contractors

- A. BNYDC reserves the right to have BNYDC's Contractors or third-party Contractors perform work on the Project or at the Project Site(s). Such BNYDC's Contractors or third-party Contractors may provide additional work beyond the Work covered by this Contract including, but not limited to, tenant improvements. Contractor shall, without further compensation, coordinate the Work with the work of BNYDC's Contractors or third-party Contractors. Contractor shall provide BNYDC's Contractors or third-party Contractors access to the Project Site(s) as often and for as long as BNYDC's Contractors or third-party Contractors may request. Contractor shall furnish to BNYDC Contractors or third-party Contractors any services that Contractor utilizes or furnishes to its Subcontractors including, but not limited to, use of hoisting facilities and temporary utilities.
- B. Contractor shall integrate the schedule of BNYDC's Contractors or third-party Contractors into the Progress Schedule, as defined in Article 3.3.
- C. Contractor shall permit BNYDC, BNYDC Contractors and third-party Contractors to install equipment of furnishings in the Project, provided that such installation shall not materially interfere with Contractor's performance of its obligations hereunder.
- D. If Contractor causes damage to the property of BNYDC, BNYDC's Contractors or third-party Contractors or to any other work or property on the Project Site(s) or Premises, then Contractor shall promptly pay for such damage. Such payment for damages shall be deducted from the Contract Price unless sooner paid by Contractor to BNYDC.
- E. BNYDC's Contractors and third-party Contractors may be required to do work before, or simultaneously with the Work. Contractor agrees that, when

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requested by BNYDC's Contractor shall stop or suspend the Work to allow BNYDC's Contractors and third-party Contractors to complete their work. When BNYDC makes a request for Contractor to stop, interrupt or suspend Work to the extent that there are delays in the performance of the Work, the period of time during which the Work shall have ceased shall be recognized as a Contemplated Delay.

Section 3.3 Schedules Ten days after the issuance of this Contract, Contractor shall submit to BNYDC in writing, on a form provided by or otherwise acceptable to BNYDC, a schedule of all items of Work to be performed showing the relative dollar value of each item, the date when each item of Work is to be commenced, the duration of each item of Work and the date when each item of Work is to be completed (hereinafter referred to as "Progress Schedule"). As required by section 3.2 b) above, the Progress Schedule shall show the interrelationship of each construction activity of the Contractor under this Contract and all other contracts affecting the Work. BNYDC must approve the Progress Schedule before Work commences. BNYDC will promptly review the submitted Progress Schedule and notify the Contractor to change those items that BNYDC deems incomplete, inaccurate or untimely. Upon receipt of such notification by BNYDC Contractor will incorporate the required changes and submit a revised Progress Schedule. Upon final approval by BNYDC of the Progress Schedule, Contractor shall strictly adhere to the approved Progress Schedule.

It is a condition precedent that an approved Progress Schedule is on file with BNYDC before payment of any kind will be made to the Contractor.

<u>Section 3.4 Time for Completion</u> Time is of the essence in this Contract. All Work must be completed within the number of calendar days set forth on page 1 hereof, from the date specified on page 1 hereof, subject to the provisions of Article 3.7 below.

<u>Section 3.5 Contemplated Delays</u> BNYDC and Contractor acknowledge that they are aware that delays are common to construction projects (hereinafter referred to as "Contemplated Delays").

The Following circumstances shall be deemed Contemplated Delays:

A. Errors in the Construction Documents, or discrepancies in the Construction Documents, or Changes to the Construction Documents, or incomplete Construction Documents that necessitate the issuance of corrective Change Orders.

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- B. Slow processing of shop drawings.
- C. Interference from BNYDC Contractors or third-party Contractors or visitors to the Project Site(s) as contemplated by this Article 3.
- D. Adverse weather conditions
- E. Delays, disruptions, hindrances, interferences, or acceleration caused by:
  - i. Acts, failures to act, errors or omissions of BNYDC, the Architect/Engineer or other BNYDC consultants (hereinafter referred to as "Consultants") in the performance of their respective obligations on the Project, or their failure to give approvals and/or consents within the time periods set forth in the Progress Schedule that result in delays.
  - ii. Economic, industry-wide strikes; fire; acts of God.
- iii. Acts of the public enemy.
- iv. Unavailability of, or inability to obtain, labor or materials by reason of the acts of any governmental body which affect the supply or availability of labor or materials.
- v. Floods.
- vi. Rebellions, riots, insurrections or sabotage.
- vii. Suspension, resequencing, stoppage or interruption of the Work ordered by BNYDC under this Agreement.
- viii. Interruption or failure of utilities, including without limitation, electric, gas, heat, steam and water.

### Section 3.6 Assumption of the Risk for Delays

Notwithstanding any other provisions of this Contract, and for the benefit of BNYDC, Architect/Engineer and the Consultants, Contractor agrees to make no claim against BNYDC, the Architect/Engineer, or the Consultants due to any Contemplated Delays or other delays even if Contractor complies with the provisions of Article 3.7, and Contractor is granted an extension of the Term. Contractor agrees to assume the risk of any and all loss and expense for such other delays in the performance of the Work or any other obligation of Contractor under this Contract.

The intent of this Article 3.6 is to avoid protracted costly litigation as to whether delays, should they occur, were anticipated or unanticipated, foreseeable or

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unforeseeable, reasonable or unreasonable or as to whether or not they were the fault of BNYDC, Architect/Engineer, Consultants or their representatives. Contractor agrees that all delays, regardless of duration the Contractor assumes any and all loss and expense for such delays in the performance of the Work or any other obligation of Contractor under this Contract.

Contractor certifies that it has considered, as an experienced Contractor, the risk of encountering such delays and its assumption of any and all loss and expense for such delays in the performance of the Work in reaching the Contract Price contained in this Contract.

<u>Section 3.7 Extension of Time for Performance</u>. If performance by the Contractor is a Contemplated Delay, Contractor may be allowed a reasonable extension of the Term to complete the Work. Only the President, upon written application by the Contractor, may grant an extension of time.

Section 3.8 Grounds for Extension If the Contractor has otherwise strictly complied with all of the requirements of this Contract and if Contractor applies, in accordance with Section 3.9 hereof, for an extension of time to complete the Work due to a Contemplated Delay, then Contractor shall be entitled to an extension of the Term to complete the Work. The President shall determine how many days of extension time to grant, but in no event more than the number of days missed due to the contemplated delay.

The Contractor shall not receive separate extensions of time for each of several causes of delay operating concurrently. If one of several causes of delay operating concurrently results from any act, fault or omission of the Contractor or of its Subcontractors or material suppliers, and would of itself (irrespective of the concurrent causes) have delayed the Work, no extension of time will be allowed for the period of delay resulting from such act, fault or omission.

<u>Section 3.9 Applications for Extension of Time to Complete Work</u>. Contractor must within five (5) days after commencement of the Contemplated Delay, submit a written application to the President containing the following:

- A. Contract identification
- B. The nature of each alleged cause of delay in completing the Work
- C. The number of days attributable to each such cause
- D. The date that each such alleged cause of delay began

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- E. The anticipated end date of each alleged cause of delay
- F. Original bid amount contained in the BSD
- G. Contract start date
- H. Original completion date
- I. All previous time extensions granted
- J. The extension of time currently requested.

As part of the application for Extension of Time, Contractor must include the following statement: "Contractor understands and agrees that if a time extension is granted it is only for purposes of permitting continuation of Work and that, unless otherwise agreed by BNDYC in its sole discretion, Liquidated Damages will continue to accrue for each day Substantial Completion is delayed past the applicable Substantial Completion Deadline."

Section 3.10 Analyses and Approval of Time Extensions The President shall analyze Contractor's application for extension of time to complete Work and issue a written acceptance or rejection of said application. If the President accepts the application to extend the time for the performance of the Contract then the Term shall be extended the number of days the President specifies.

<u>Section 3.11 Waiver of Claims</u> The Contractor waives all claims for damages, including all costs and increased costs for labor and material, incurred on account of any delay, hindrance or cause whatsoever, and the Contractor agrees that its sole right and remedy for any delay, hindrance or cause shall be that the Contractor shall be entitled to such extension of the Term as the President may grant. Contractor further agrees that such extension of the Term is full and adequate consideration for all delays, hindrances, or causes.

Section 3.12 Liquidated Damages If the Contractor fails to complete the Work by the Substantial Completion Deadline set forth in the Recitals to this Contract, Contractor shall immediately become liable to BNYDC for the specified Liquidated Damages. The Liquidated Damages shall be deducted from the Contract Price unless sooner paid by Contractor to BNYDC.

BNYDC and Contractor agreed to the assessment of liquidated damages because each recognizes and acknowledges that the actual damages suffered by BNYDC

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by reason of any delay in the completion of the Work will be of such a nature that they will be unreasonably difficult to determine.

BNYDC reserves the right, in accordance with Article 9 hereof, to terminate this Contract and have the Work completed by others at the expense of the Contractor and, in addition, to collect Liquidated Damages.

#### **ARTICLE 4**

### **WORK HOURS**

The Contractor shall perform Work only between the hours of 7:30 a.m. and 4:30 p.m., Monday through Friday, except as otherwise specified in the RFB. In an emergency or if the Contractor is required to complete the Work in accordance with the Progress Schedule, Work, with the approval of BNYDC, may be performed at other hours. No extra compensation for any overtime charges or additional expenses resulting from such work shall be paid to Contractor.

#### **ARTICLE 5**

### PAYMENT; METHOD OF PAYMENT; PAYMENT RECORDS

<u>Section 5.1 Payment</u> BNYDC agrees, upon Final Completion of the Work, to pay the Contractor in full satisfaction for the performance of the Work, and the Contractor agrees to accept, the Contract Price.

<u>Section 5.2 Partial Payment</u> From time to time as the Work progresses, and provided that the Contractor is not in default of this Contract, but not more than once a month, the Contractor shall submit to BNYDC the following required documents (hereinafter referred to as "Required Documents"):

- A. Fully executed and notarized Contractor's Requisition for Progress Payment in the form annexed hereto as **Exhibit** "F"; and
- B. Contractor shall submit for all Work for which Contractor is requesting payment a fully executed and notarized partial release and partial lien waiver, in the form annexed hereto as **Exhibit "I"**; and
- C. Contractor shall submit for each Subcontractor that did Work for which Contractor is requesting payment a fully

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executed and notarized partial release and partial lien waiver, in the form annexed hereto as **Exhibit "I"**.

BNYDC will review the Required Documents and when satisfied that the documents are accurate and complete, promptly pay the Contractor the amount requested, less retainage as follows: until the Work is substantially complete, 5% of the amount requested.

If BNYDC is not satisfied with the accuracy or completeness of the Required Documents, BNYDC will return the Required Documents to Contractor together with a statement setting forth the items of inaccuracy or incompleteness. The statement from BNYDC shall be conclusive and binding upon the Contractor as to all the items included therein.

No further progress payments shall be paid to Contractor until Contractor submits and BNYDC accepts the Required Documents.

<u>Section 5.3 Final Requisition</u> On the day that Final Completion of the Work is achieved, Contractor shall submit to BNYDC the following documents (hereinafter referred to as "Final Documents"):

- A. Fully executed and notarized Contractor's Final Requisition for Payment in the form annexed hereto as **Exhibit "F"**; and
- B. Contractor shall submit for all Work for which Contractor is requesting final payment a fully executed and notarized final release and final lien waiver, in the form annexed hereto as **Exhibit "J"**; and
- C. Contractor shall submit for each Subcontractor that did Work on the Project a fully executed and notarized final release and final lien waiver, in the form annexed hereto as **Exhibit "J"**.

BNYDC will review the Final Documents and when satisfied that the Final Documents are accurate and complete, promptly pay the Contractor the final payment less 1% of the final Contract Price as retainage for guaranty or warranty to be held by BNYDC for one (1) year, and return to Contractor excess retainage, if any.

If BNYDC is not satisfied with the accuracy or completeness of the Final Documents, BNYDC will return the Final Documents to Contractor together with a statement setting forth the items of inaccuracy or incompleteness.

The statement from BNYDC shall be conclusive and binding upon the Contractor as to all the items included therein.

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Final payment shall not be made to Contractor until Contractor submits and BNYDC accepts the Final Documents.

### Section 5.4 Withholding of Payment

Anything contained in this Agreement to the contrary notwithstanding, BNYDC, reserves the right to withhold from any payment due Contractor any amount that BNYDC deems sufficient to reimburse BNYDC for its actual expenditures made for the account of Contractor.

The right to withhold money from Contractor includes without limitation, all amount payable hereunder. If in BNYDC's opinion there is an actual or potential breach of this Contract, or an actual or potential default under this Contract by Contractor and the remaining balance payable to Contractor under this Contract would be insufficient to complete the Work. In connection therewith, BNYDC may nullify, in whole or in part, any previously approved but unpaid Partial Payments.

Section 5.5 Stored Materials BNYDC will allow materials or equipment that are not incorporated in the Work but will be installed in the Project and are delivered (hereinafter referred to as "Material") and suitably stored at the Project Site(s) to be included as an item in the Contractor's Requisition for Progress Payment. If approved in advance by BNYDC, BNYDC will allow eighty percent (80%) of the cost of the Material suitably stored at a location other than at the Project Site(s) to be included as an item in the Contractor's Requisition for Progress Payment so long as Contractor submits paid invoices, bills of sale or such other document satisfactory to BNYDC that establish BNYDC's title to such materials or equipment. Contractor must also protect BNYDC's interest in the Material by providing BNYDC acceptable proof that BNYDC's interest in the material is properly insured. Since off site storage of Material is for the convenience of Contractor transportation to the Project Site(s) of the Material shall not be included as an item in the Contractor's Requisition for Progress Payment.

Section 5.6 Progress Payment Any payment to Contractor pursuant to a Contractor's Requisition for Progress Payment shall only be for completed work in accordance with Section 5.2 hereof or stored materials pursuant to Section 5.5 hereof. In no event shall BNYDC make a Progress Payment for a downpayment or deposit for materials or equipment.

Section 5.7 <u>Miscellaneous Payment Provisions</u> Nothing contained in this Article 5 shall relieve the Contractor of its obligation to give notice of claims pursuant to any other provision of this Contract. The acceptance of the final payment by the

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Contractor is a specific waiver and release of any claim the Contractor may have against BNYDC on account of or arising out of the Work. The making of the final payment by BNYDC shall not act as an estoppel against BNYDC or prevent BNYDC from enforcing any right under this Contract or any rights that may accrue or have already accrued at law or in equity.

Section 5.7 Joint Payment All payments by BNYDC shall be in the form of one or more separate checks which together total the amount due, made payable, at the option of BNYDC, either: (1) to the Contractor, (2) to the Contractor and one or more of its suppliers or Subcontractors, or (3) directly to its suppliers or Subcontractors. This provision is strictly for the benefit of BNYDC in order that satisfactory morale and relations with Subcontractors or suppliers is maintained and shall not under any circumstances confer any right upon a third party. In the event BNYDC makes a joint payment to the Contractor and one or more of its suppliers or Subcontractors or pays Contractor's suppliers or Subcontractors directly, then the Contractor shall be notified of such payment and such payment shall be reflected in Contractor's next Requisition and applied to the Contract Price.

Section 5.8 Payment Records Contractor agrees that its records pertaining to this Contract, the Project Site(s), the Project, all payments made hereunder, all purchases, and expenses charged hereunder or otherwise expended (hereinafter referred to as "Records") shall be subject to examination, audit and post audit at any time by BNYDC, the Comptroller of the City, the Director of Administrative Services of the City, DSBS, or such other designated official, and/or agent of the City, the State of New York, or the United States Government (hereinafter referred to as "Audit"). The Contractor shall maintain the Records at its business premises for a period of at least six years from the date of final payment. The Contractor shall maintain all Records and additional documents and records required by BNYDC (hereinafter referred to as "Additional Records"). Contract agrees that the maintenance of the Records and Additional Records are a material part of this Contract. Contractor agrees to promptly prepare and furnish to BNYDC such statements, Records, Additional Records, reports, data or information as requested by BNYDC. The Contractor acknowledges that its Subcontractors are subject to the provisions of this Section and will include such terms in all Subcontracts. Contractor undertakes to provide BNYDC such statements, Records, Additional Records, reports, data or information from Subcontractors as requested by BNYDC

If an Audit discloses any discrepancy, then BNYDC and the Contractor and shall immediately address and clear such discrepancies. If determined by

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said audit that BNYDC has overpaid Contractor then Contractor shall immediately return such overpayment to BNYDC. Said return of funds shall be in addition to any claim for damages BNYDC may have as against Contractor. If determined by said audit that Contractor has been underpaid by BNYDC then upon a receipt and approval of a fully executed and notarized requisition for payment, BNYDC will pay Contractor the requested amount.

#### **ARTICLE 6**

### **CHANGE ORDERS; PROTEST WORK**

<u>Section 6.1 Extra Work</u> BNYDC reserves the right to interpret the Construction Documents and/or to order minor changes in the Work, if those changes do not involve any adjustment in the Contract Price. The Contractor will promptly comply with any such interpretation or order.

Section 6.2 Field Orders In order to resolve conflicts in the Construction Documents, to order minor changes to avoid conflicts between different trades, or for Extra Work Architect/Engineer and BNYDC's Project Engineer shall have the authority to issue written field orders (hereinafter referred to as "Field Orders"). A Field Order is not a Change Order, only the President under Section 6.3 below has the authority to issue a Change Order.

Section 6.3 Change Orders. BNYDC reserves the right to, from time to time during the course of the Work, change, delete or add Work to the Contract, Such deleted or additional work shall hereinafter be referred to as a "Change Order". The President and the Contractor must sign all Change Orders. An oral directive or a writing not signed by the President and the Contractor shall be void ab initio and of no effect. Contractor upon receipt of a valid Change Order shall promptly perform required Work thereunder. The price for the Work required by the Change Order shall be determined as follows:

- A. If Contractor and BNYDC agree upon a lump sum amount that the Contract Price will be amended by such lump sum amount; and/or
- B. If this Contract the RFB, IFB, or the BSD contains unit prices (hereinafter referred to as "Unit Prices"), which are applicable to the type of work involved in the Change Order, then said Unit Prices will be used to set the amount that the Contract Price will be amended.

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- C. If BNYDC and the Contractor cannot agree upon a Change Order price prior to the performance of the Change Order, and if Unit Prices are not applicable to the Change Order, then the Contractor shall be paid for such Change Order Work an amount equal to either
  - 1. With respect to Change Order Work performed by the Contractor the sum of:
    - a. Contractor's actual, documented to BNYDC's satisfaction, incurred costs defined as:
      - i) Base wages paid to laborers, including all insurance, welfare and other fringe benefits, and payments to labor organizations; and
      - ii) Cost of materials purchased, plus transportation costs, less all Contractor's discounts; and
      - iii) The actual cost of additional insurance necessitated by the Change Order Work; and
      - iv) The cost of installation, maintenance, operation and rental (or rental value of Contractor owned plant and equipment, but not tools) necessitated by the Change Order; and
      - v) The cost of necessary installation and dismantling of such plant and equipment (including transportation to and from the Project Site) (hereinafter referred to as "Actual Costs"); plus
    - b. 10% of such Actual Costs as compensation for all other costs, including overhead and small tools (hereinafter referred to as "Additional Costs"); plus
    - c. An additional 10% of such Actual Costs as compensation for profit (hereinafter referred to as "Profit"); or
- 2. With respect to Change Order Work performed by a Subcontractor, the sum of:
  - a. The Subcontractor's Actual Costs; and
  - b. 10% of Actual Costs as compensation for Subcontractor's Additional Costs,
  - c. Not more than 5% of Actual Costs for Subcontractor's profit; and
  - d. Not more than 5% of Subcontractor's Actual Costs for the Contractor's Additional Costs and profit;
  - e. The total of the markups described in (2) (b), (2) (c) and (2) (d) above shall not exceed 20% of the Subcontractor's Actual Costs.

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- D. If the Change Order deletes Work, then the Contract Price shall be reduced by an amount equal to the sum of (a) the Actual Costs, plus (6) all unearned Profit and Additional Costs.
- E. If BNYDC and the Contractor cannot agree on a price for the Change Order Work under paragraphs a), b) or c) above, then the Contractor agrees that Contractor shall nevertheless immediately perform or delete the Change Order Work. The price to be paid or the credit to be taken for said Change Order Work shall be determined by BNYDC based upon the current market value for said work (hereinafter referred to as "Actual Market Value"), but in no event shall such Actual Market Value exceed the Actual Costs of performing said Change Order Work. The determination of Actual Market Value shall be made by the President and shall be binding upon the Contractor.

<u>Section 6.4 Payment for Change Orders</u> Request for payment of a Change Orders may be included with the Contractor's next Partial Requisition. Such request shall constitute Contractor's agreement that the Change Order relieves BNYDC from any liability for Contractor's loss due to delay, disruption, cost, or expense occasioned by reason of such Change Order and further Contractor releases BNYDC from any further liability therefore.

Section 6.5 Protest Work Contractor must, at least 7 days prior to commencing Protest Work, give BNYDC a formal written notice of the Protest Work together with a detailed explanation of why the contested work is not already covered by the Contract and an itemization of the cost to perform such disputed work. Notwithstanding any such claim of Protest Work, the Contractor shall proceed to diligently perform the Work in question, unless BNYDC shall by written notice direct that such work shall not be performed.

<u>Section 6.6 Protest Work Records</u> Contractor shall, while performing Protest Work, furnish BNYDC daily a written report showing:

- A. The name and social security number of each worker performing Protest Work (hereinafter referred to as a "Protest Worker"); and
- B. The number of hours worked by each Protest Worker; and
- C. The type of work each Protest Worker performed; and

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- D. The cost, nature and quantity of all materials accompanied by paid receipts from the vendor from whom such materials were purchased showing date purchased and cost; and
- E. The cost, nature and quantity of all equipment furnished or used in connection with the Protest Work accompanied by certified records showing daily usage costs, paid receipts from the vendor from whom such equipment was purchased or rented showing date purchased or rented and cost.

Failure to comply with the requirements of this Section 6.6 shall be deemed a waiver of any claim for payment on account of Protest Work.

#### **ARTICLE 7**

#### **SUBCONTRACTS**

<u>Section 7.1 Subcontracts</u> The Contractor is not an agent of BNYDC, the City or DSBS. All Subcontracts are between Contractor and Subcontractor. BNYDC, the City and DSBS have no responsibility for and assume no liability under any Subcontract.

Contractor shall include in each Subcontract a representation and warranty that Subcontractor presently has no interest, and Subcontractor shall not acquire any interest, which would directly or indirectly conflict, in any manner or degree, with the performance of Work on the Project and that no person with any such conflicting interest shall be employed in the performance of the Subcontract; any such interest on the part of the Subcontractor, its employees, agents or assigns must be fully disclosed to BNYDC.

The Contractor shall include and enforce all applicable terms and conditions set forth in this Contract in every Subcontract.

<u>Section 7.2 Investigation Forms for Subcontractors</u>. The Contractor shall cause each Subcontractor to submit to the City, Mayor's Office of Contract Services (hereinafter referred to as MOCS), a Procurement and Sourcing Solutions Portal (hereinafter referred to as "PASSport") profile. The Subcontractor shall not commence Work until BNYDC receives clearance from the MOCS.

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Section 7.3 Indemnification of Subcontractor's Lien. To the fullest extent permitted by law, Contractor indemnifies and holds BNYDC, the City, DSBS and the directors, officers, agents and employees of each harmless against any and all Subcontractors' liens which may be filed. If the Contractor fails to promptly discharge all Subcontractors' liens, BNYDC shall make no further payment to the Contractor under this Contract. BNYDC, the City and DSBS shall have the right to discharge any liens which may be filed by any Subcontractor of any tier, and may recover the costs of securing such discharge from the Contractor by withholding such amount from the next payment due or otherwise.

#### **ARTICLE 8**

#### INSPECTION AND COMPLETION OF THE WORK

Section 8.1 Inspection All Work, materials and methods of construction shall at all times be subject to the inspection by BNYDC or its designee, or any City, New York State or Federal agency or department with jurisdiction over the Premises. If any Work, material or method of construction does not meet the approval of BNYDC or its designee, or any City, New York State or Federal agency or department with jurisdiction over the Premises such Work, material or method of construction shall be immediately changed, corrected, replaced and made good, at the Contractor's expense. BNYDC shall be the final judge of the quality and suitability of the Work, materials, and the methods of construction. Acceptance of any Work, material or method of construction shall not relieve the Contractor from any of its obligations under this Contract. BNYDC and its agents shall have no liability or obligation as a result of the inspection and the Contractor shall not be relieved of any Contract obligations by the making of an inspection or any acceptance resulting therefrom.

Section 8.2 Substantial Completion of the Work. When Contractor believes that the Work is complete Contractor shall request in writing that BNYDC inspect the Project. The Project shall be deemed substantially completed (hereinafter referred to as "Substantial Completion") on the date when all of the following shall have occurred:

- A. BNYDC may use and occupy the Project; and
- B. Only minor incomplete or unsatisfactory Work (hereinafter referred to as "Punch Lists"), if any, remains incomplete provided it does not interfere with BNYDC's use and occupancy; and

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C. A Temporary Certificate of Completion or Certificate of Occupancy and/or such other required approval (i.e., a Notice of Completion or a New York City agency sign-off, as may be applicable) shall have been issued by the appropriate local governmental authority for all or a portion of the Project.

<u>Section 8.3 Punch List</u> When BNYDC or its designee prepares a Punch List, Contractor shall promptly complete and/or correct said work on the Punch List. The Contractor shall remain fully responsible to perform all Work whether or not there is a Punch List. BNYDC shall be entitled to withhold from any payment, in addition to any other sums properly withheld hereunder, the sum of two times the value of the Punch List, but in no event less than \$1,000.

<u>Section 8.4 Final Completion of the Work</u>. The Project shall be deemed finally completed (hereinafter referred to as "Final Completion") on the date when the Work shall have been finally completed and BNYDC shall have received:

- A. Evidence that all Work including Punch List items, have been fully and satisfactorily completed in a good and workmanlike manner, in conformance with this Contract; and
- B. The Project has received, in full compliance with all applicable laws, rules, requirements and regulations of all government Authorities having jurisdiction over the Project the required signoffs and Certificates of Completion and/or Occupancy; and
- C. Contractor has delivered all final certificates of approval relating to the Work and the contemplated uses of the Project, including, without limitation, all necessary certificates of the Board of Fire Underwriters or any successor thereof, Inspection and approval by the Bureau of Electrical Control, the City Fire Department, the City Department of Environmental Protection, all warranties and all guarantees for the Work and the Certificate of Completion and/or Occupancy, shall have been delivered to BNYDC; and
- D. All required receipts, releases, releases of liens, affidavits, waivers, as-built drawings and any other documents required under this Contract shall have been delivered to BNYDC.

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<u>Section 8.5 Project Engineer</u> BNYDC may employ a Project Engineer as BNYDC's representative at the Project Site(s). The Project Engineer shall, subject to review by BNYDC, have the authority, in the first instance, to inspect, supervise and control the performance of the Work.

NOTE – The Project Engineer, or any other person, does not have the power to issue a Change Order. Only the President, in compliance with section 6.3, has the power to issue a Change Order.

Section 8.6 Occupation or Use Prior to Completion BNYDC shall have the right before the Final Completion, to take over, occupy, operate or otherwise use any part of the Project. Contractor shall not interfere with or object to such take over, occupancy, operation or use any part of the Project. BNYDC shall notify Contractor in writing of such take over, occupancy, operation or use part of the Project specifying the date of such take over, occupancy, operation or use of part of the Project. Contractor's guarantee on the part of the Project taken over, occupied, operated or used by BNYDC shall begin on the date of such take over, occupancy, operation or use by BNYDC. If BNYDC shall take over, occupy, operate or use any part of the Project, BNYDC shall first inspect the parts of the Project to be so taken over, occupied, operated or used by BNYDC. Contractor will then be furnished in writing with a statement of Substantial Completion, and a Punch List for such part so taken over, occupied, operated or used by BNYDC.

#### **ARTICLE 9**

### SUSPENSION OF WORK; TERMINATION

Section 9.1 Suspension BNYDC may, at any time, with or without cause, suspend the Work or any portion thereof for a period of not more than 90 days by giving Contractor written notice of such suspension (hereinafter referred to as "Suspension Notice"). Contractor shall immediately stop the Work covered by BNYDC's Suspension Notice and cause all Subcontractors to stop the Work covered by BNYDC's Suspension Notice. Contractor and Subcontractors shall resume the Work on the date set by BNYDC. Contractor and Subcontractors shall not be entitled to any additional compensation for costs attributable to any suspension, but the time for completion of the Work shall be extended by the period of suspension. The Contractor shall secure and make safe the Project Site(s) to BNYDC's satisfaction during any suspension.

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<u>Section 9.2 Defaults and Terminations for Cause</u> In addition to any other rights that BNYDC may have, BNYDC shall have the right to declare the Contractor in default and terminate, for cause, this Contract, in whole or in part, if any of the following occur:

- A. The Contractor shall become insolvent; or
- B. The Contractor shall fail to perform the Work in the method and manner required by BNYDC; or
- C. The Contractor shall fail to complete the Work within the Term; or
- D. The Contractor shall fail to assign workers, order materials or enter into Subcontracts in a manner deemed sufficient by BNYDC to permit completion of the Work in accordance with the approved work schedule; or
- E. The Contractor's interest in this Contract or its right to receive funds shall be assigned, transferred, conveyed or otherwise disposed of voluntarily or by operation of law without the prior written consent of BNYDC; or
- F. The Contractor shall not comply with or violate any provision of this Contract; or
- G. The Contractor shall fail to comply with any of the applicable laws, rules, regulations or orders that may be applicable to this Contract, or the Contractor shall be defaulted or debarred by the City, the State of New York or the United States Government; or
- H. Any statement or representation of the Contractor in the Contract or in any document submitted by the Contractor with respect to the Work, the Project, or the Contract (or for purposes of securing the Contract) was untrue or incorrect when made.

Section 9.3 Termination for Convenience BNYDC reserves the right to terminate Contract at any time for its own convenience, without fault, and for such reasons as BNYDC deems appropriate (hereinafter referred to as "Convenience Termination"). A Convenience Termination shall take effect immediately upon Contractor receipt of BNYDC's written Convenience Termination notice. Contractor shall be entitled to full payment of sums due hereunder for Work

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performed prior to such Convenience Termination. Contractor shall not be entitled to profit or overhead on the unperformed portion of the Work.

Section 9.4 Effects of a Default or a Termination Upon termination of this Contract, Contractor and all Subcontractors will immediately cease work and take all necessary steps to remove all hazards so as to make the Project Site(s) safe. After securing the Project Site(s), Contractor shall promptly present BNYDC a statement of costs actually incurred to the date of termination. The Contractor shall not recover as part of its costs any unearned or anticipated overhead or profit for itself or for its Subcontractors as a result of any termination.

Section 9.5 Payment Due when Termination not for Cause BNYDC will promptly review the statement of costs submitted by the Contractor by verifying and auditing all canceled checks, Subcontracts, paid receipts, bills from Subcontractors and any other document deemed necessary. BNYDC will notify the Contractor in writing when BNYDC is satisfied that the statement of costs is accurate (hereinafter referred to as "Approved Statement of Costs"). Contractor may then submit a Final Requisition for the balance of the Approved Statement of Costs, Contractors Final Release and Final Lien Waivers, all Subcontractors Final Release and Final Lien Waivers. Receipt of payment from BNYDC of the amount of the Final Requisition shall be full and final payment to the Contractor.

<u>Section 9.6 Payment Due when Termination is for Cause</u> In addition to any other rights BNYDC may have in law, in equity, or under this Contract if termination is for cause, BNYDC may, at its sole discretion, have the Work completed by another Contractor of its choice, or elect not to complete the Work.

BNYDC shall deduct from all monies then due Contractor the sum of:

- A. All expenses incurred in completing the Work; or
- B. The value of the Work not completed (as determined by BNYDC, in its sole discretion; and
- C. all incidental expenses incurred as a result of the termination for cause, including all actual legal fees and accounting fees.

If, after making the above computation, there remains a balance due Contractor BNYDC shall pay such amount to the Contractor upon Contractor submitting a Final Requisition for such balance, Contractors Final Release and Final Lien Waivers, all Subcontractors Final Release and Final Lien Waivers. Receipt of payment from BNYDC of the amount of the Final Requisition shall be full and final payment to the Contractor.

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If there is a balance due from the Contractor to BNYDC, then the Contractor shall immediately pay that amount to BNYDC.

No monies shall be due or payable to Contractor, if Contract is terminated for cause, until the Project is completed or BNYDC abandons the Project.

BNYDC need not wait until the completion of the Project to seek the enforcement of its rights hereunder.

#### **ARTICLE 10**

### PROTECTION OF PERSONS AND PROPERTY; INDEMNIFICATION

<u>Section 10.1Protection of Persons and Property</u> The Contractor is responsible for providing safety and protection for all persons at the Project Site(s). The Contractor is responsible for all property damage, loss, injury, theft or vandalism at the Project Site(s) resulting from the Contractor's acts or omissions or those acts or omissions of any Subcontractors or any act or omission by anyone for whose acts Contractor may be liable.

Section 10.2 Indemnification To the fullest extent permitted by law, Contractor agrees to indemnify, keep indemnified, and hold harmless BNYDC and the City and their respective affiliates, officers, directors, members, partners, trustees, beneficiaries, agents and employees (hereinafter referred to as "Indemnities") from and against any and all liability, civil money penalties, fines, claims, losses, suits, damages, demands, judgments, actions, causes of action, settlements, expenses including but not limited to attorney's fees and disbursements, costs and charges of every nature and kind, both legal and otherwise, whether direct or indirect, arising out of (i) the acts or omissions of the Contractor, its Subcontractors, agents, employees or material suppliers, and any and all Persons on the Project Site(s) or in connected to the Work or (ii) any negligence, fault or default of the Contractor, its Subcontractors, agents, employees or material suppliers.

Contractor specifically agrees and acknowledges that there shall be no personal liability on the part of any officer, director, employee or agent of the Indemnities in connection with this Contract or otherwise.

This section 10.2 shall survive any termination of this Contract and remain in full force and effect.

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Section 10.3 BNYDC, the City and DSBS not liable BNYDC, the City and DSBS shall not be liable for any damage, injury or liability that may be sustained by Contractor, Subcontractor or any other person whatsoever, or to their goods and chattels from any cause whatsoever arising from or out of the Work at the Project Site(s). Contractor hereby releases and discharges BNYDC, the City and DSBS from any and all demands, claims, actions and causes of action arising from the aforesaid.

Contractor shall look solely and exclusively to the funding for this Project for the satisfaction of any claim or cause of action Contractor may have against BNYDC, the City or DSBS in connection with this Contract or the failure of BNYDC to perform any of its obligations hereunder.

Section 10.4 Contractor Not an Agent of BNYDC, the City, or DSBS Contractor, Contractor's employees, Subcontractors or Subcontractor's employees are not agents, servants or employees of the Indemnities by virtue of this Contract or by virtue of any approval, permit, license, grant, right or authorization given by BNYDC, the City, DSBS or any of their officers, directors, employees or agents. Contractor, Contractor's employees, Subcontractors, or Subcontractor's employees shall not in any way directly or indirectly represent that they are agents, servants or employees of the Indemnities. The Contractor is solely responsible for the work, direction, compensation and personal conduct of its officers, employees, agents, Subcontractors, Subcontractor's officers, employees, and agents.

#### **ARTICLE 11**

#### **INSURANCE AND BONDS**

<u>Section 11.1 Insurance, Performance Bond and Payment Bond</u> Contractor and each Subcontractor shall provide:

- A. Proof of Insurance as set forth in **Exhibit "G"** which is attached hereto and made a part hereof; and
- B. A Performance Bond in the exact form set forth in **Exhibit "H"** which is attached hereto and made a part hereof in the Penal Sum set forth in Attachment 1 of the IFB; and
- C. A Payment Bond in the exact form set forth in **Exhibit "H"** which is attached hereto and made a part hereof in the Penal Sum set forth in Attachment 1 of the IFB.

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<u>Section 11.2 Bid Security</u> The bid bond or bid deposit as required by the RFB, the IFB and the BSD shall be retained by BNYDC as security for the Contractor entering into this Contract and commencing Work on the Project. A bid bond will be only be returned to the Contractor in compliance with its own terms. A bid deposit will only be returned to Contractor after the BNYDC receives this Contract duly executed by Contractor, the required Performance Bond and the required Payment Bond.

#### **ARTICLE 12**

### LABOR AND MATERIALS; GUARANTEES

Section 12.1 Materials and Equipment All materials and equipment permanently installed in or on the Project shall be new, except as approved by BNYDC or as specified in the Construction Documents. Notwithstanding the foregoing, BNYDC encourages the use of recycled products where practicable. The Contractor shall notify BNYDC if it intends to use recycled products with respect to any materials to be permanently installed on the Project. All labor performed on the Project shall be performed by skilled workers in their respective trades and shall be of first class quality in accordance with the standards of the construction industry and the particular trade. The Contractor shall obtain in the name of BNYDC all manufacturers' warranties and guarantees on all equipment and materials required by this Contract and installed in or on the Project and shall deliver such warranties and guarantees to BNYDC.

Section 12.2 Guarantee of Work Unless otherwise specifically set forth in the Construction Documents or elsewhere in this Contract, Contractor fully warrants and guarantees the materials, equipment, and Work against any and all defects whether latent or patent for a period of one year from the date Final Completion is achieved (hereinafter referred to as the "Warranty Period"). During the warranty period Contractor shall promptly repair, replace, rebuild or restore (as BNYDC may direct) all defective Work and materials and shall pay all costs for labor and materials necessary to correct such defective Work. Should Contractor fail to promptly repair, replace, rebuild or restore such defective Work, BNYDC shall repair, replace, rebuild or restore such defective Work and Contractor shall promptly pay to BNYDC all costs incurred by BNYDC in connection therewith. BNYDC's certificate setting forth the costs incurred in repairing, replacing, rebuilding or restoring any damaged or defective Work shall be binding and conclusive as to the amount thereof upon the Contractor.

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Section 12.3 Security for Materials and Guarantees As security for the Contractor's faithful performance of its obligations under this Article 12, BNYDC will deduct from the Final Completion payment an amount equal to one percent (1%) of the Contract Price or such greater amount fixed in the RFB, the IFB and the BSD (hereinafter referred to as "Retainage"). In BNYDC's sole discretion, BNYDC may require Contractor to post in addition to the Retainage security in such amount, as BNYDC deems necessary to guarantee Contractors performance under this Article 12.

If Contractor faithfully performs all its obligations hereunder, BNYDC will as soon as practicable after the expiration of the Warranty Period return to Contractor the Retainage and additional security, if any, without interest. Notice by BNYDC to repair, replace, rebuild and/or restore any defective or damaged Work shall be timely if given up to 10 days after the expiration of the Warranty Period.

<u>Section 12.4 Rights not Exclusive</u> BNYDC's rights under this Article 12 are in addition to all other rights BNYDC may have under this Contract, at law or in equity.

#### **ARTICLE 13**

### TITLE TO THE WORK, MATERIALS AND EQUIPMENT

Section 13.1 Tax Exempt Status Pursuant to Section 1115(a)(15) and (16) of the New York State Tax Law, purchases of tangible personal property by the Contractor or its Subcontractors arising out of this Contract are exempt from the sales and use tax imposed by Article 28 of the New York State Tax Law, to the extent that such property is used to alter, maintain or improve, and becomes an integral component part of City-owned or leased real property which is improved under this Contract. This exemption does not apply to tools, machinery, equipment or other property purchased or leased by the Contractor or its Subcontractors, or to supplies, materials or other property which are consumed in the course of construction or for any other reason not incorporated into the real property which is improved under this Contract.

Section 13.2 Exclusion of Tax From Contract Price Contractor represents and warrants that to the extent applicable state and local sales taxes have been excluded from the Contract Price. Contractor and its Subcontractors shall be responsible for and shall pay any and all applicable taxes, including sales and use taxes imposed upon purchased or leased tools, machinery, equipment, and upon all such unincorporated supplies and materials and other property as

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provided by law. The Contract Price shall be deemed to include full payment and consideration for the sale of all supplies and materials necessary for the performance of the Contract.

Section 13.3 Evidence of Title At the request of BNYDC, Contractor shall furnish BNYDC such paid bills, bills of sale and/or other instrument properly executed, acknowledged and delivered as BNYDC may require, proving title for all supplies, materials and equipment permanently installed in or on the Project has passed to the City, free of liens or encumbrances. Contractor shall clearly mark or otherwise identify all such materials as the property of the City.

<u>Section 13.4 Title to Materials</u> Title to all materials used on the Project immediately vests in BNYDC upon the earlier of (1) delivery of such materials to the Premises or (2) payment by BNYDC for such materials. Notwithstanding such transfer of title to the materials until such time as such materials are installed in accordance with the provisions of this Contract and up to Final Completion of the Work, Contractor shall:

- A. Protect the materials against loss or damage, and maintain the materials in proper condition and repair; and
- B. Replace or make good any loss, theft, disappearance, or damage to the materials, and furnish additional materials in place of any that may be lost, stolen or rendered unusable all without cost to BNYDC.

Such transfer of title shall in no way affect any of the Contractor's obligations hereunder.

BNYDC reserves the right, in its sole discretion, to reject any defective or otherwise unsatisfactory materials. Title to any rejected, defective or otherwise unsatisfactory materials shall be deemed to revert to Contractor.

Section 13.5 Subcontracts to Separate Materials from Labor All Subcontracts shall be in a form similar to this Contract with respect to the separation of the sale of materials from the work and labor, services, consumable supplies and any other items to be provided. The Subcontracts shall provide separate prices for (1) materials and (2) all other services and items. Such separation shall actually be followed in practice, including the separation of payments for materials from the payments for other work and labor and other things to be provided.

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<u>Section 13.6 Tax Exempt Certificates</u> Contractor and Subcontractors shall obtain, Contractor Exempt Purchase Certificates (Form ST-120.1) and shall furnish to all persons, firms or corporations from which they purchase materials for the performance of the Work such Contractor Exempt Purchase Certificates.

#### **ARTICLE 14**

### REPRESENTATIONS AND WARRANTIES

Contractor represents and warrants the following:

### Section 14.1 Illegal Consideration

Contractor has not been asked to pay, and has neither offered to pay, nor paid, any illegal consideration, whether monetary or otherwise, in connection with the procurement of this Contract.

<u>Section 14.2 Solicitation</u> Contractor has not employed any person to solicit or procure this Contract, and has not made and shall not make, except to full time employees of the Contractor, any payment or any agreement for the payment of any commission, percentage, brokerage, contingent fee or any other compensation in connection with the procurement of this Contract.

<u>Section 14.3 Conflict of Interest</u> Contractor has not acquired nor will it acquire any interest of any nature, direct or indirect (including without limitation, any interest in land in an area related to the Work or any interest in any corporation, partnership, etc. with any such interest), which would conflict in any manner or degree with the performance of the Work and no person having any such conflicting interest shall be employed by the Contractor in the performance of this Contract.

Section 14.4 Investigation Forms All questionnaires and disclosure forms delivered by the Contractor to BNYDC to date are, to the best of the Contractor's knowledge, true and correct in all material respects; no material change has occurred in the circumstances of the Contractor, its principals, or affiliated persons or entities since the respective dates upon which such disclosure forms were executed which would otherwise require disclosure on such forms; and no material disclosed in such disclosure forms contains, to the best of the Contractor's knowledge, any untrue statement of a material fact or omits to state a material fact necessary in order to make any statement contained in such form not misleading.

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<u>Section 14.5 Anti-Boycott Provisions</u> Contractor shall comply in all respects with the provisions of §6-114 of the Administrative Code of the City and the rules and regulations issued by the Comptroller of the City thereunder.

Contractor certifies it is not now participating in, nor shall it participate in, during the term of this Contract, an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder.

Upon the final determination by the United States Department of Commerce or any other agency of the Government of the United States that Contractor has participated in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, BNYDC may, at its sole option, render this Contract forfeit and void.

#### **ARTICLE 15**

#### WOMEN OWNED AND MINORITY OWNED BUSINESSES PARTICIPATION

Section 15.1 M/WBE Program. Section 6-129 of the Administrative Code of the City of New York ("Section 6-129") establishes the program for participation in City procurement ("M/WBE Program") by "MBEs and WBEs, certified in accordance with Section 1304 of the New York City Charter. As stated in Section 6-129, the intent of the program is to address the impact of discrimination on the City's procurement process, and to promote the public interest in avoiding fraud and favoritism in the procurement process, increasing competition for City business, and lowering contract costs. BNYDC endorses these goals and has adopted an M/WBE Program to further participation by MBEs and WBEs for its projects. The Contractor shall comply with all requirements of BNYDC's M/WBE Program described in this Contract.

### Section 15.2 M/WBE Participation Goal.

A. The percentage goal for M/WBE participation (the "Participation Goal") for the Contract is [\_\_]% of the total dollar value of the Contract. The Participation Goal represents a percentage of the total dollar value of the Contract that may be achieved by awarding subcontracts to firms certified with DSBS or DMWBD (each as defined below) as MBEs or WBEs, and/or by crediting the participation of prime contractors and/or qualified joint ventures as provided in Section 15.2(D) and Section 15.2(E) below.

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- B. M/WBE firms must be certified by either (i) DSBS, or (ii) Empire State Development's Division of Minority and Women's Business Development ("DMWBD") to credit such firms' participation toward attainment of the Participation Goal. Such certification must occur prior to the firms' commencement of work. A list of M/WBE firms may be obtained (i) from the DSBS website at www.nyc.gov/buycertified, by emailing DSBS at buyer@sbs.nyc.gov, by calling (212) 513-6356, or by visiting or writing DSBS at 110 William Street, New York, New York, 10038, 7th Floor, and (ii) from the ESD website at www.ny.newnycontracts.com. Eligible firms that have not yet been certified may contact DSBS or DMWBD for additional information on how to get certified. No credit shall be given for participation by a graduate M/WBE, as defined in Section 6-129(c)(20).
- C. The Participation Goal is a material term of this Contract and the Contractor shall be subject to the BNYDC approved Participation Goal.
- D. An M/WBE Contractor shall be permitted to count its own participation toward fulfillment of the Participation Goal. The value of an M/WBE Contractor's participation shall be determined by subtracting from the total value of the Contract any amounts that the Contractor will pay to direct Subcontractors. A Contractor that is certified as both an MBE and a WBE may count its own participation either toward the goal for MBEs or the goal for WBEs, but not both. If a Contractor is not an M/WBE, it must meet the Participation Goal through the awarding of subcontracts to firms certified with DSBS or DMWBD as MBEs or WBEs.
- E. A Contractor that is a Qualified Joint Venture (as defined in Section 6-129, and as discussed further in Section 5) shall be permitted to count a percentage of its own M/WBE participation toward fulfillment of the Participation Goal. The value of Contractor's participation shall be determined by subtracting from the total value of the Contract any amounts that Contractor pays to direct Subcontractors, and then multiplying the remainder by the percentage to be applied to total profit to determine the amount to which an MBE or WBE is entitled pursuant to the joint venture agreement, provided that where a participant in a joint venture is certified as both an MBE and a WBE, such amount shall be counted either toward the goal for MBEs or the goal for WBEs, but not both.

### Section 15.3 M/WBE Proposal Submission Forms.

A. The Contractor has submitted with its bid a completed M/WBE Utilization Plan, which is attached as Exhibit "P", indicating:

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- i. whether the Contractor is an MBE or WBE, or Qualified Joint Venture;
- ii. the percentage of work it intends to award to direct Subcontractors;
- iii. in cases where the Contractor intends to award direct subcontracts, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs, and the time frames in which such work is scheduled to begin and end; as well as the name, addresses, and telephone numbers of the M/WBE subcontractors if required by the solicitation; and copies of DSBS or DMWBD certifications for each proposed MBE or WBE subcontractor listed in its M/WBE Utilization;
- iv. the Contractor's required certification and affirmations, as attached as Exhibit "P" to this IFB.
- B. THE CONTRACTOR HAS COMPLETED AN M/WBE UTILIZATION PLAN, AS ATTACHED HERETO AS EXHIBIT "P". IN THE EVENT THAT BNYDC DETERMINES THAT THE CONTRACTOR HAS SUBMITTED AN M/WBE UTILIZATION PLAN WHERE THE VENDOR CERTIFICATION AND REQUIRED AFFIRMATIONS ARE COMPLETED BUT OTHER ASPECTS OF THE M/WBE UTILIZATION PLAN ARE NOT COMPLETE, OR CONTAIN A COPY OR COMPUTATION ERROR THAT IS AT ODDS WITH THE VENDOR CERTIFICATION AND AFFIRMATIONS, THE CONTRACTOR WILL BE NOTIFIED BY BNYDC AND WILL BE GIVEN FOUR (4) CALENDAR DAYS FROM RECEIPT OF NOTIFICATION TO CURE THE SPECIFIED DEFICIENCIES AND RETURN A COMPLETED M/WBE UTILIZATION PLAN TO BNYDC. RECEIPT OF NOTIFICATION IS DEFINED AS THE DATE NOTICE IS E-MAILED OR FAXED (IF THE CONTRACTOR HAS PROVIDED AN E-MAIL ADDRESS OR FAX NUMBER), OR NO LATER THAN FIVE (5) CALENDAR DAYS FROM THE DATE OF MAILING OR UPON DELIVERY, IF DELIVERED.
- C. Every twelve (12) months within the Term, the Contractor shall submit a list of proposed persons or entities to which it intends to award subcontracts within the subsequent 12 months. BNYDC may also require the Contractor to report periodically about the contracts awarded by its direct Subcontractors to indirect subcontractors (as defined in Section 6-129(c)(22)). In the event that the Contractor's selection of a Subcontractor is disapproved, the Contractor shall have a reasonable time to propose alternate subcontractors.

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- A. The Contractor shall, with each voucher for payment, and/or periodically as BNYDC may require, submit statements, certified under penalty of perjury, which shall include, but not be limited, to:
  - i. the total amount the Contractor paid to its direct subcontractors, and, where applicable pursuant to Section 6-129(j), the total amount direct subcontractors paid to indirect subcontractors;
  - ii. the names, addresses and contact numbers of each MBE or WBE hired as a subcontractor by the Contractor, and, where applicable, hired by any of the Contractor's direct subcontractors; and
  - iii. the dates and amounts paid to each MBE or WBE.
- B. The Contractor shall also submit, along with its voucher for final payment:
  - i. the total amount it paid to subcontractors, and, where applicable pursuant to Section 6- 129(j), the total amount its direct subcontractors paid directly to their indirect subcontractors; and
  - ii. a final list, certified under penalty of perjury, which shall include the name, address and contact information of each subcontractor that is an MBE or WBE, the work performed by, and the dates and amounts paid to each.
- C. If payments made to, or work performed by, MBEs or WBEs are less than the amount specified in the Contractor's M/WBE Utilization Form, BNYDC shall take appropriate action, in accordance with the enforcement provisions described in the Contract and in Section 15.13.

<u>Section 15.5 Modifications Based on Change Orders</u>. Where the Contractor requests a change order the value of which exceeds the greater of 10 percent of the Contract, as applicable, or \$500,000, BNYDC shall review the scope of work for the Contract or Task Order, as applicable, and the scale and types of work involved in the change order, and determine whether the Participation Goal should be modified.

<u>Section 15.6 Other M/WBE Requirements.</u> The IFB contains additional provisions related to the M/WBE requirements applicable to this Contract.

Section 15.7 Intentionally Omitted

### Section 15.8 Modification of M/WBE Utilization Plan.

A.	A Contractor may request a modification of its M/WBE Utilization Plan (a
	"Modification") during the Term of this Contract. BNYDC may grant a
	request for Modification of a Contractor's M/WBE Utilization Plan if it

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determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Participation Goal. In making such determination, BNYDC shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- ii. The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- iii. The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- iv. The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- v. The Contractor held meetings with MBEs and/or WBEs prior to the date their bids were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids were solicited;
- vi. The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;
- vii. Timely written requests for assistance made by the Contractor to BNYDC's M/WBE liaison officer at mwbe@bnydc.org and to DSBS and DMWBD;
- viii. Description of how recommendations made by DSBS, DMWBD and BNYDC were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

BNYDC's M/WBE liaison officer shall provide written notice to the Contractor of the determination.

B. BNYDC may modify the Participation Goal when the scope of the work has been changed by BNYDC in a manner that affects the scale and types

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of work that the Contractor indicated in its M/WBE Utilization Plan would be awarded to subcontractors.

Section 15.9 Substitutions. Substitutions to the MBEs and/or WBEs that Contractor identified as firms they intended to use in connection with the performance of the Contract may only be made with the approval of BNYDC, which shall only be given when the Contractor has proposed to use a firm that would satisfy the Participation Goal to the same extent as the firm previously identified, unless BNYDC determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such determination, BNYDC shall require evidence of the efforts listed in Section B(1) above, as applicable, along with any other relevant factors.

Section 15.10 Indefinite Quantity Contracts. If this Contract is for an indefinite quantity of construction or is a requirements type contract, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that BNYDC has determined that such work is not needed.

<u>Section 15.11 Progress Review, Evaluation and Assessment.</u> At least once annually during the term of the Contract, BNYDC shall review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

BNYDC shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

#### Section 15.12 Miscellaneous Provisions.

- A. The Contractor shall take notice that this Contract may be audited. Furthermore, such this Contract may also be examined by the City's Comptroller to assess compliance with its M/WBE Utilization Plan.
- B. DSBS and DMWBD are available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.

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C. The Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein and the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required Participation Goal.

#### Section 15.13 Enforcement.

- A. Whenever BNYDC believes that the Contractor or a subcontractor is not in compliance with the M/WBE Program or its M/WBE Utilization Plan, BNYDC shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. BNYDC shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
- B. In the event that the Contractor has been found to have violated the M/WBE Program or its M/WBE Utilization Plan, BNYDC may determine that one of the following actions should be taken:
  - i. entering into an agreement with the Contractor allowing the Contractor to cure the violation;
  - ii. revoking the Contractor's pre-qualification to bid for future contracts;
  - iii. making a finding that the Contractor is in default of the Contract;
  - iv. terminating the Contract;
  - v. declaring the Contractor to be in breach of Contract;
  - vi. withholding payment or reimbursement;
  - vii. determining not to renew the Contract;
  - viii. assessing actual and consequential damages;
    - ix. assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
    - x. exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
    - xi. taking any other appropriate remedy.

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- C. If the Contractor has been found to have failed to fulfill its Participation Goal contained in its M/WBE Utilization Plan or the Participation Goal as modified by BNYDC pursuant to Section 15.8, BNYDC may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the Participation Goal and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which BNYDC will suffer by reason of Contractor's failure to meet the Participation Goal, the foregoing amount is hereby fixed and agreed as the liquidated damages that BNYDC will suffer by reason of such failure, and not as a penalty. BNYDC may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by BNYDC, the Contractor shall be liable to pay the difference.
- D. Whenever BNYDC has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), BNYDC shall notify the Commissioner of DSBS or DMWBD, as applicable, who shall determine whether the certification of such business enterprise should be revoked.
- E. Statements made in any instrument submitted to BNYDC pursuant to the M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant the M/WBE Program shall, in addition, be grounds for revocation of its certification.
- F. The Contractor's record in implementing its M/WBE Utilization Plan shall be a factor in the evaluation of its performance. Whenever BNYDC determines that a Contractor's compliance with an M/WBE Utilization Plan has been unsatisfactory, BNYDC shall, after consultation with the BNYDC M/WBE liaison officer, file an advice of caution form for inclusion in PASSPort as caution data.

#### **ARTICLE 16**

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#### **INVESTIGATION**

Section 16.1 Cooperation with Investigation The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by BNYDC. The parties to this Contract agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a State or City governmental agency or authority that is empowered directly or by designation to compel the attendance of witnesses and to examine witnesses under oath, or the Inspector General of a governmental agency that is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit or license that is the subject of the investigation, audit or inquiry. If any person who has been advised that his/her statement, and any information from such statement, will not be used against him/her in any subsequent criminal proceeding refuses to testify before a grand jury or other governmental agency or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or the Inspector General of the governmental agency that is a party in interest, and is seeking testimony, concerning the award of or performance under any transaction, agreement, lease, permit, contract, or license entered into with BNYDC, The City, the State, or any political subdivision or public authority thereof, or the Port Authority of New York and New Jersey, or any local development corporation within the City, or any public benefit corporation organized under the Laws of the State of New York, or, if any person refuses to testify for a reason other than the assertion of his/her privilege against self incrimination in any such investigation, then BNYDC and/or the Commissioner whose agency is a party in interest to the transaction, submitted bid, submitted proposal, contract, lease, permit, or license shall convene a hearing, upon not less than five days written notice to the parties involved, to determine if any penalties should attach for the failure of a person to testify.

If any non-governmental party to the hearing requests an adjournment, BNYDC or the Commissioner who convened the hearing may, upon granting the adjournment, suspend any contract, lease, permit or license, pending the final determination, without the City or BNYDC incurring any penalty or damages for delay or otherwise.

<u>Section 16.2 Penalties</u> The penalties that may attach after a final determination by BNYDC or the Commissioner may include but shall not exceed:

A. The disqualification, for a period not to exceed five years from the date of an adverse determination for any person or any

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entity of which such person was a member at the time the testimony was sought, from submitting bids for, or transacting business with, or entering into or obtaining any contract, lease, permit or license with or from BNYDC and/or the City; and/or

B. The cancellation or termination of any and all such existing BNYDC and/or City contracts, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this Contract, nor the proceeds of which pledged, to an unaffiliated and unrelated institutional lender for fair value prior to the issuance of the notice scheduling the hearing, without the City or BNYDC incurring any penalty or damages on account of such cancellation or termination; monies lawfully due for goods delivered, work done, rentals or fees accrued prior to the cancellation or termination shall be paid by the BNYDC or the City.

<u>Section 16.3 Factors in Assessing Penalties</u> BNYDC and/or The Commissioner shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in subparagraphs (a) and (b) below. BNYDC and/or The Commissioner may also consider, if relevant and appropriate, the criteria established in subparagraphs (c) and (d) below, in addition to any other information, which may be relevant and appropriate:

- A. The party's good faith endeavors or lack thereof to cooperate fully and faithfully with any governmental investigation or audit, including but not limited to the discipline, discharge or disassociation of any person failing to testify, the production of accurate and complete books and records, and the forthcoming testimony of all other members, agents, assignees or fiduciaries whose testimony is sought.
- B. The relationship of the person who refused to testify to any entity that is a party to the hearing, including but not limited to, whether the person whose testimony is sought has an ownership interest in the entity and/or the degree of authority and responsibility the person has within the entity.
- C. The nexus of the testimony sought to the subject entity and its contracts, leases, permits or licenses with BNYDC and the City.

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- D. The effect a penalty may have on an unaffiliated and unrelated party or entity that has a significant interest in an entity subject to penalties as described above, provided that the party or entity has given actual notice to BNYDC and/or the Commissioner upon the acquisition of the interest, or at the hearing called for gives notice and proves that such interest was previously acquired. Under either circumstance the party or entity shall present evidence at the hearing demonstrating the potential adverse impact a penalty will have on such person or entity.
- 1. The term "license" or "permit" as used in this Article 16 shall be defined as a license, permit, franchise or concession not granted as a matter of right.
- 2. The term "person" as used in this Article 16 shall be defined as any natural person doing business alone or associated with another person or entity as a partner, director, officer, principal or employee.
- 3. The term "entity" as used in this Article 16 shall be defined as any firm, partnership, corporation, association, joint venture, limited liability company or person that receives monies, benefits, licenses, leases or permits from or through the City or otherwise transacts business with the City.
- 4. The term "member" as used in this Article 16 shall be defined as any person associated with another person or entity as a partner, member of a limited liability company, director, officer, principal or employee.

Section 16.4 Termination In addition to and notwithstanding any other provision of this Contract, the President and/or the Commissioner may in his/her sole discretion terminate this Contract upon not less than three days written notice in the event the Contractor fails to promptly report in writing to BNYDC and the Commissioner of the Department of Investigations of the City any solicitation of money, goods, requests for future employment or other benefit or thing of value, by or on behalf of any employee of the City or other person, firm, corporation or entity for any purpose which may be related to the procurement or obtaining of this Contract by the Contractor, or affecting the performance of this Contract.

#### **ARTICLE 17**

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#### MISCELLANEOUS PROVISIONS

<u>Section 17.1 Notices</u> All notices, demands and requests required or permitted to be given under this Contract shall be in writing and shall not be effective unless personally delivered, sent by United States registered or certified mail, postage paid, return receipt optional, or sent by an overnight courier service of recognized reputation, addressed as hereinafter provided. All such notices, demands and requests mailed to BNYDC shall be addressed to BNYDC as follows:

Brooklyn Navy Yard Development Corporation
Building 77
141 Flushing Avenue, Suite 801
Brooklyn, New York 11205
Attention: Counsel

Or at such other address as BNYDC may from time to time designate by written notice to Contractor. All such notices, demands and requests mailed to Contractor shall be addressed to Contractor at Contractor's address as stated on page 1 hereof. Or at such other address as Contractor may from time to time designate by written notice to BNYDC.

Notices, demands and requests which shall be served in the manner aforesaid shall be deemed given for all purposes hereunder at the time such notice, demand, or request is deposited in any post office or branch post office or official depository regularly maintained by the United States Postal Service.

<u>Section 17.2 Severability</u> If any provision of this Agreement shall contravene or be invalid under the laws of the United States or the State, it is agreed that such provision shall not invalidate the whole Contract but the Contract shall be construed as if not containing the particular provision or provisions held to be invalid.

Section 17.3 Claims and Actions Against BNYDC Contractor shall look solely to the funds available to and appropriated by BNYDC under the City Contract for this particular project for the satisfaction of any claim or cause of action the Contractor may have against BNYDC in connection with this Contract. No director, officer, employee, agent or other person authorized to act on behalf of BNYDC shall have any personal liability in connection with this Contract or any failure of BNYDC to perform its obligations hereunder. The Contractor agrees that it shall have no claim against BNYDC for damages, or in any action or proceeding at law or in equity, unless the Contractor shall give notice of the

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existence of such claims to BNYDC within sixty (60) days after the cause of action arose, or the damages first became ascertainable, whichever shall occur first. The notice of claim must strictly comply as to form with all of the provisions required by law regarding claims against the City as provided for in §7-201 of the New York City Administrative Code (except for the time to file such claim which shall be sixty (60) days) with service of the same to be made by personal delivery upon an officer or agent of BNYDC.

Serving the notice of claim in strict accordance with this Article shall be a necessary and non-waivable jurisdictional element of any claim by the Contractor. Any action or proceeding by the Contractor against BNYDC must be commenced within sixty (60) days after the service of said notice of claim, but not before thirty (30) days after the service of the notice of claim.

Contractor acknowledges that it will be adequately compensated by money damages alone for any act or omission of BNYDC and, therefore, specifically waives all rights that it may have for equitable relief, including injunctive relief. The filing of a Notice of Appeal by BNYDC in any judicial proceeding shall stay the enforcement of any judgment against BNYDC, pending a resolution and final determination of that appeal, without BNYDC posting any security and without any court order being obtained.

In addition to any other contractual statute of limitations set forth herein, the Contractor agrees that no action against BNYDC shall lie or be maintained if BNYDC is barred by any statute or time limitation whatsoever at the time the Contractor institutes its suit or for twenty (20) days thereafter, from maintaining, prosecuting or instituting any claim against the City, the State of New York, the United States Government, any insurance company which may be liable, or any of them, based upon the same facts alleged by the Contractor, either as a third-party plaintiff or in a plenary action.

Section 17.4 Governing Law & Venue. This Contract is deemed executed in the City of New York, State of New York and shall be governed by and construed in accordance with the laws of the State of New York. The parties agree that any and all claims asserted by or against BNYDC, the City or DSBS arising under this Contract or related hereto shall be heard and determined either in the courts of the United States ("Federal Courts") located in New York City or in the courts of the State of New York ("New York State Courts") located in the City and County of New York.

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<u>Section 17.5 Service of Process</u> If BNYDC, the City or DSBS initiates any action against the Contractor in Federal Court or in New York State Courts, personal service of process may be made on the Contractor either in person, wherever the Contractor may be found, or by registered mail addressed to the Contractor at its address as set forth on page 1 of this Contract, or to such other address as the Contractor may have provided to BNYDC, the City or DSBS, as the case may be.

Section 17.6 Waiver by the Contractor With respect to any action between BNYDC, the City or DSBS and the Contractor in New York State Court, the Contractor expressly waives and relinquishes any rights it might otherwise have (1) to move to dismiss on grounds of forum non conveniens, (2) to remove to Federal Court, and (3) to move for a change of venue to a New York State Court outside New York County. With respect to any action between BNYDC, the City or DSBS and the Contractor in Federal Court located in New York City, the Contractor expressly waives and relinquishes any rights it might otherwise have to move to transfer the action to a Federal Court outside New York City.

<u>Section 17.7 Change of Venue</u> If the Contractor commences any action against the City or DSBS in a court located other than in the City and State of New York, upon request of BNYDC, the City or DSBS, as the case may be, the Contractor shall either consent to a transfer of the action to a court of competent jurisdiction located in the City and State of New York or, if the court where the action is initially brought will not or cannot transfer the action, the Contractor shall consent to dismiss such action without prejudice and may thereafter reinstitute the action in a court of competent jurisdiction in New York City.

<u>Section 17.8 Assignment</u> Contractor can neither assign this Contract, nor the right to receive the funds to be paid under this Contract, without the express written consent of BNYDC. BNYDC can either assign this Contract or the rights hereunder to the City without the consent of the Contractor.

Section 17.9 Contract Interpretations In the event any interpretation of this Contract is required after execution, or if any actual or apparent conflict between any two or more provisions of the Contract is discovered, then the Contract or such conflict shall be interpreted by the President and that interpretation shall be conclusive and binding on the parties hereto. In the event of any dispute between BNYDC and the Contractor as to whether or not the Work is completed, the inspection report of BNYDC or its agent shall be considered binding, final and conclusive.

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<u>Section 17.10 Titles</u> The titles to any article or any subdivision of this Contract are for organizational purposes only.

<u>Section 17.11 Merger</u> This Contract may not be modified orally. This Contract may be supplemented, amended or revised only in writing by the mutual agreement of the BNYDC and Contractor. This Contract supersedes all previous agreements and/or Contracts whether oral or written between the BNYDC and Contractor.

<u>Section 17.12 Non-Waiver</u> Forbearance, neglect or failure by BNYDC to enforce any and all of the provisions of this Contract or to insist upon strict compliance by Contractor shall not be construed as a waiver of any rights or privileges of BNYDC. A waiver by BNYDC of a past act or circumstance shall not constitute or be a course of conduct or waiver of any subsequent act or circumstance.

Section 17.13 Contractor's Performance Evaluation Provisions Contractor's performance of the Work may be evaluated by BNYDC (i) upon the vouchering of 50% of the Contract Price and/or (ii) upon Substantial Completion of the Work. BNYDC will send a copy of the evaluation to the Contractor after such evaluation and the Contractor may respond in writing to such evaluation. The response will be filed with the evaluation. The evaluation may be filed with the City.

By executing this Contract Contractor verifies that Contractor has carefully and completely reviewed and understands the terms and conditions this Contract.

**IN WITNESS WHEREOF**, the parties have hereunto set their hands and seal the day and year first above written.

# BROOKLYN NAVY YARD DEVELOPMENT CORPORATION

Ву:
Name:
Title:
[]
By:
Name:
Tide.

## [ACKNOWLEDGMENT, IF A PARTNERSHIP

STATE OF)	
COUNTY OF)	
On this day ofto me known and known of	me personally came, to me to be one of the partners of the firm
foregoing instrument andhe acknowledged for the act and deed of said firm.	ged to me thathe executed the same as and
	Notary Public
<u>ACKNOWLEDGMEN</u>	NT, IF AN INDIVIDUAL
STATE OF) ss.:	
COUNTY OF)	
On this day of, 20_, before	
individual described in and who executed acknowledged to me thathe executed for	e e
	Notary Public
<u>ACKNOWLEDGMEN</u>	T, IF A CORPORATION
STATE OF) ss:	
COUNTY OF)	
, to me known, who,	the year 20, before me personally came being by me duly sworn, did depose and say
that he is the	, the corporation described in and which
	ne signed his name thereto by authority of the
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# BNYDC CONSTRUCTION CONTRACT \_\_\_\_\_\_\_ Notary Public

## E.O. 50 CONSTRUCTION RIDER

#### A. EQUAL EMPLOYMENT OPPORTUNITY

This contract is subject to the requirements of Executive Order No. 50 (April 25, 1980) as amended ("E.O. 50") and the Rules and Regulations promulgated thereunder. No contract will be awarded unless and until these requirements have been complied with in their entirety. By signing this contract, the Contractor agrees that:

- (1) It will not engage in any unlawful discrimination against any employee or applicant for employment because of race, creed, color, national origin, sex, age, disability, marital status or sexual orientation with respect to all employment decisions including, but not limited to, recruitment, hiring, upgrading, demotion, downgrading, transfer, training, rates of pay or other forms of compensation, layoff, termination, and all other terms and conditions of employment;
- (2) When it subcontracts it will not engage in any unlawful discrimination in the selection of Subcontractors on the basis of the race, creed, color, national origin, sex, age, disability, marital status or sexual orientation of the owner, manager or any other officer, director, agent or employee of such Subcontractors;
- (3) It will state in all solicitations or advertisements for employees placed by or on behalf of the Contractor that all qualified applicants will receive consideration for employment without regard to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation, or that it is an equal employment opportunity employer;
- (4) It will send to each labor organization or representative of workers with which it has a collective bargaining agreement or other contract or memorandum of understanding, written notification of its equal employment opportunity commitments under E.O. 50 and the rules and regulations promulgated thereunder; and
- (5) It will furnish all information and reports (which are required by E. O. 50, the rules and regulations promulgated thereunder, and orders of the Director of the New York City Department of Small Business Services, Division of Labor Services ("DLS"), including an Employment Report if the Contract Price is \$1,000,000 or more), before the award of the Contract and will permit access to its

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books, records and accounts by DLS for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

The Contractor understands that in the event of its noncompliance with the nondiscrimination clauses of this Contract or with any of such rules, regulations, or orders, such noncompliance shall constitute a material breach of this Contract and noncompliance with E.O. 50 and the rules and regulations promulgated thereunder. After a hearing held pursuant to the rules of DLS, the Director of DLS may direct the imposition upon the Contractor found to be in noncompliance of any or all of the following sanctions:

- (i) Disapproval of the Contractor;
- (ii) Suspension or termination of this Contract;
- (iii) Declaring the Contractor in default; or
- (iv) In lieu of any of the foregoing sanctions, the Director of DLS may impose an employment program.

The Director of DLS may recommend to BNYDC that a hearing be convened for purposes of declaring a Contractor who has repeatedly failed to comply with E. O. 50 and the rules and regulations promulgated thereunder to be non-responsible.

If the Contract Price is \$1,000,000 or more, the Contractor further agrees as follows:

- (i) It shall employ trainees for training level jobs and it shall participate in on-the-job training programs, other than apprenticeship programs, that are approved by DLS and, where required by law, the U.S. Department of Labor, Bureau of Apprenticeship Training or the New York State Department of Labor;
- (ii) It shall make a good faith effort to achieve the ratio of one "trainee" (which means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program, other than an apprenticeship program, approved by DLS and, where required by law, the New York State Department of Labor and the United States Department of Labor, Bureau of Apprenticeship and Training) to four journey-level employees of each job group on each construction project. The Contractor shall be considered to employ four journey-level employees in a particular job group when he or she employs any number of journey-level employees in that craft whose aggregate work hours equal the number of hours four full time journey-level employees would have worked in a work week as defined by the prevailing practice in the industry for the particular craft, i.e., 40 hours, 37 hours, 35 hours,

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etc. For example, in a craft where there is a 40 hour work week, the employment of four journey-level employees results in 160 hours of employment (4 x 40). Hence, any number of journey-level employees which results in 160 hours of work is considered for purposes of the training program to equal four journey-level employees, i.e., three journey-level employees who work 53 hours (3 x 53 = 160). The training requirement shall not apply to any trade in which the employment of four or more journey-level employees and the trainee shall be for less than four weeks; provided, that four weeks shall mean four weeks of full time work as defined by the prevailing practice in the industry for the particular craft, i.e., 160 hours (4 weeks x 40 hours), 150 hours (4 weeks x 37 hours), 140 hours (4 weeks x 35 hours), etc.;

- (iii) It shall attempt to provide continuous employment for trainees after the completion of this Contract to enable them to complete their course of training;
- (iv) It shall, to the extent it is a party to any collective bargaining agreement, refer, recommend and sponsor for union membership any of its trainees who can perform the duties of a qualified journey-level employee or who have successfully completed the training program. Such former trainees shall be paid full journey-level wages and fringe benefits, whether or not union membership is granted after such referral, recommendation or sponsorship, and the Contractor shall make good faith efforts to continue the employment of such persons; and
- (v) If the Contractor fails to provide training to the required number of trainees for the required number of weeks, the Contractor's compensation shall be decreased by an amount (the "Credit") equal to the difference between the wages and fringe benefits paid by the Contractor to the trainees and the wages and fringe benefits which would have been paid to the trainees had the number and duration of the positions been as required unless the Contractor can demonstrate that it made a good faith effort to provide training and was unsuccessful. The wages and fringes deducted will be whatever a first term trainee would receive under the prevailing wage schedule in effect at the time the trainees should have been employed. For purposes hereof, a good faith effort includes but is not limited to:
- (a) Documented efforts to secure trainees from approved training programs,
- (b) Documented outreach efforts to community and civil rights groups to identify candidates for training positions and sponsorship of those

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- persons by the Contractor for entrance into an approved training program, and
- (c) Written notification to DLS that the Contractor has been unable to secure trainees pursuant to subsections (a) and (b) above and requesting DLS's assistance in securing trainees; provided, that neither the provisions of any collective bargaining agreement nor the refusal by a union with which the Contractor has a collective bargaining agreement to recognize the validity of the training program shall excuse the Contractor's obligation to provide training pursuant to E.O. 50 and these regulations.

If the Contract Price is \$1,000,000 or more, the Contractor shall include the provisions of the foregoing paragraph in every subcontract in the amount of \$750,000 or more to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor. If the Contract Price is less than \$1,000,000, the Contractor shall include the provisions of this rider (other than the provisions of the immediately preceding paragraph) in every subcontract or purchase order in excess of \$50,000 to which it becomes a party unless exempted by E.O. 50 and the rules and regulations promulgated thereunder, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as may be directed by the Director of DLS as a means of enforcing such provisions including sanctions for noncompliance and/or the taking of a Credit.

The Contractor further agrees that it will refrain from entering into any contract or contract modification subject to E.O. 50 and the rules and regulations promulgated thereunder with a subcontractor who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated thereunder.

# B. <u>CONSTRUCTION EMPLOYMENT REPORT SUBMISSION</u> REQUIREMENTS

Pursuant to Executive Order No. 50 (April 25, 1980) as amended and the implementing rules and regulations, all Contractors with contracts of \$1,000,000 or more, and all subcontractors with contracts of \$1,000,000 or more, must complete and submit an Employment Report (ER) and EEO-1 report. If you submit an ER you must comply with the training requirements set forth above.

If you are a Contractor with a contract of less than \$1,000,000 you must complete the attached certification of less than \$1,000,000 contract.

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# DEPARTMENT OF SMALL BUSINESS SERVICES DIVISION OF LABOR SERVICES LESS THAN \$1,000,000 CONTRACT CERTIFICATE

CONTRACTOR		
ADDRESS		
TELEPHONE # ()		
NAME & TITLE OF SIGNATORY		
CONTRACTING ENTITY BROOKLYN NAVY YARD	DEVELOPMENT CORPORATION	
CONTRACT AMOUNT		
PROJECT NUMBER		
DESCRIPTION AND ADDRESS OF PROPOSED CO	ONTRACT	
I, (fill in name of person signing)	hereby affirm	
that I am authorized by the above named Contract proposed contract with the above named entity o		
DATE	SIGNATURE	
WILLFUL OR FRAUDULENT FALSIFICATION	OF ANY DATA OR INFORMATION	
SUBMITTED HEREWITH MAY RESULT IN THE	E TERMINATION OF ANY	
CONTRACT BETWEEN THE CITY AND THE BI		
THE BIDDER OR CONTRACTOR FROM PARTIC		
CONTRACT FOR A PERIOD OF UP TO THREE	,	
FALSIFICATION MAY RESULT IN CRIMINAL I	PROSECUTION.	

#### **EXHIBIT B**

#### **MACBRIDE PRINCIPLES RIDER**

For purposes of this rider, the "Contractor" means the Contractor, as defined in the Contract to which this rider is attached, and the "contracting entity" means Brooklyn Navy Yard Development Corporation.

#### ARTICLE I. MACBRIDE PRINCIPLES

#### **PART A**

The Contractor stipulates that such Contractor and any individual or legal entity in which the Contractor holds a ten percent or greater ownership interest and any individual or legal entity that holds a ten percent or greater ownership interest in the Contractor either (a) have no business operations in Northern Ireland, or (b) shall take lawful steps in good faith to conduct any business operations they have in Northern Ireland in accordance with the MacBride Principles, and shall permit independent monitoring of their compliance with such principles.

#### PART B

For purposes hereof, "MacBride Principles" shall mean those principles relating to nondiscrimination in employment and freedom of work place opportunity which require employers doing business in Northern Ireland to:

- (1) Increase the representation of individuals from underrepresented religious groups in the work force, including managerial, supervisory, administrative, clerical and technical jobs;
- (2) Take steps to promote adequate security for the protection of employees from underrepresented religious groups both at the workplace and while traveling to and from work;
- (3) Ban provocative religious or political emblems from the workplace;
- (4) Publicly advertise all job openings and make special recruitment efforts to attract applicants from underrepresented religious groups;
- (5) Establish layoff, recall and termination procedures which do not in practice favor a particular religious group;
- (6) Abolish all job reservations, apprenticeship restrictions and different employment criteria which discriminate on the basis of religion;
- (7) Develop training programs that will prepare substantial numbers of current employees from underrepresented religious groups for skilled jobs, including the expansion of existing programs and the creation of new

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- programs to train, upgrade and improve the skills of workers from underrepresented religious groups;
- (8) Establish procedures to assess, identify and actively recruit employees from underrepresented religious groups with potential for further advancement; and
- (9) Appoint a senior management staff member to oversee affirmative action efforts and develop a timetable to ensure their full implementation.

#### ARTICLE II. ENFORCEMENT OF ARTICLE I

The Contractor agrees that the covenants and representations in Article I above are material conditions to this contract. In the event the contracting entity receives information that the Contractor who made the stipulation required by this rider is in violation thereof, the contracting entity shall review such information and give the Contractor an opportunity to respond. If the contracting entity finds that a violation has occurred, the contracting entity shall have the right to declare the Contractor in default and/or terminate this contract for cause and procure the supplies, services or work from another source in any manner the contracting entity deems proper. In the event of such termination, the Contractor shall pay to the contracting entity, or the contracting entity in its sole discretion may withhold from any amounts otherwise payable to the Contractor, the difference between the contract price for the uncompleted portion of this contract and the cost to the contracting entity of completing performance of this contract either itself or by engaging another Contractor or Contractors. In the case of a requirements contract, the Contractor shall be liable for such difference in price for the entire amount of supplies required by the contracting entity for the uncompleted term of its contract. In the case of a construction contract, the contracting entity shall also have the right to hold the Contractor in partial or total default in accordance with the default provisions of this contract, and/or may seek debarment or suspension of the Contractor. The rights and remedies of the contracting entity hereunder shall be in addition to, and not in lieu of, any rights and remedies the contracting entity has pursuant to this contract or by operation of law.

CONSTRUCTION CONTRACT NUMBER [_	
CONTRACTOR [ ]	

## EXHIBIT C

#### **LIST OF CONTRACT DRAWINGS**

## EXHIBIT D

#### **SPECIFICATIONS**

The specifications governing the scope of work under this contract are as follows:		
[Populate or reference name and date of separate specification(s) documents.]		
Specification sections issued in addenda, shall supersede the previous specifications.		

## EXHIBIT E

**INTENTIONALLY OMITTED** 

# EXHIBIT F CONTRACTORS REQUISITION FOR PROGRESS PAYMENTS

ESTIMATE FOR PARTIAL PAYMENT NO. \_\_\_\_\_

a.	Value of Work Completed To Date	\$
b.	Retainage	\$
c.	Net Amount Earned (a - b)	\$
d.	Amount Due for Stored Material	\$
e.	Total Amount Due This Estimate (c + d)	\$
f.	Total Previously Approved	\$
g.	Net Amount Due This Payment (e - f)	\$
h.	Less Amount Withheld by BNYDC* *Reason:	\$
		-
i.	Payment Due This Estimate (g - h)	\$
-	,	
j.	Total of All Requisitions Approved to Date by BNYDC ( $f + i$ )	\$

#### CONTRACTOR'S CERTIFICATE

I/We certify that:

- a. All items, units, quantities and prices for work and material shown on this estimate are true and correct; and
- b. All work has been performed and material supplied in full compliance with the terms and conditions of the Contract to which this Certificate applies; and
- c. All contract provisions relating to prevailing wages and benefits have been complied with and payroll documentation is attached; and
- d. All outstanding claims for labor, materials and equipment for the performance of said contract have been paid in full in accordance with the requirements of the Contract; and
- e. The above Payment Due This Estimate is a true and correct as of the last day of the period covered by this **CONTRACTORS REQUISITION FOR PROGRESS PAYMENTS**.
- f. All subcontractors have been paid in full.

Signature:	Date:
Title:	
BNYDC'S CERTIF	<u>FICATE</u>
We have verified this CONTRACTORS REQUISIT	ION FOR PROGRESS PAYMENTS
Contract Time: Cal. Days	
Consumed Contract Time: Cal. Days	
% of Contract Completed:%	
Signature: Title	Date:
BNYDC APPRO	VAL
Payment Approval Amount: \$	
Signature: Title	
CONSTRUCTION CONTRACT NUMBER [] CONTRACTOR []	Page 63 of 95

#### **EXHIBIT G**

The following is minimum acceptable insurance coverage requirements for Contracting Services:

#### I. Insurance Requirements

A. Commercial General Liability Policy issued on an Occurrence form with a combined single limit for Bodily Injury, Personal Injury and Property Damage of at least \$1,000,000 per occurrence and \$2,000,000 in the aggregate. Coverage shall include endorsements for: Products/Completed Operations; Underground Hazards where applicable; Contractual Liability for tort liability assumed under contract, Personal Injury; Waiver of Subrogation; Policy Aggregate shall apply on per project basis; Mobile Equipment if such equipment not subject to any motor vehicle statutory law.

Additional Insured endorsement as per Insurance Services Organization (a/k/a ISO) form CG 20 10 07 04 Additional Insured Scheduled Organization and form CG 20 37 07 04 Additional Insured – Completed Operations. Such endorsement shall include BNYDC and any other designated party as Additional Insured, as required by written contract to which this Exhibit is attached and part of.

There shall be no coverage restrictions or coverage exclusions on the General Liability Policy pertaining to, but not limited to: gravity related injuries, unsafe workplace, injuries sustained by employee of Contractor or sub-contractor, Third Party over type actions, construction operations, and construction activity.

The insurance procured by the Contractor shall be primary and non-contributory to any other insurance that may be in effect.

- B. Statutory Workers Compensation Policy and Employer's Liability Policy of minimum \$1,000,000 for work operations in State where project work is performed, including any applicable other states coverage endorsement.
- C. Automobile Liability Insurance Policy for Bodily Injury and Property Damage in the amount of \$1,000,000 per occurrence covering all owned, non-owned, hired, borrowed vehicles subject to statutory motor vehicle law.
- D. Contractors Pollution Liability policy of at least \$1,000,000 for damages arising out of bodily injury, property damages, environmental damages caused by a pollution incident from Contractors work, completed operations, or transportation whether work performed by or on behalf of Contractor.
- E. Umbrella/Excess Liability Policy of at least \$5,000,000 per occurrence. Umbrella Liability policy is to be provided on at least a follow form basis of the underlying General Liability Insurance policy, Automobile Insurance Policy, and Workers' Compensation Insurance policy. The insurance procured by the Contractor shall be primary and non- contributory to any other insurance that may be in effect.
- F. Professional Liability (Errors and Omissions) of at least \$1,000,000 each claim for wrongful acts while performing and/or providing professional services. Coverage shall continue for at least three (3) years beyond the final performance of services.
- G. The following are to be included as additional insured(s) for coverage required in sections A,C,D and E. Each additional insured listed below shall be issued a separate Certificate of Insurance.

and E. Each additional histored listed below shall be issu	ded a separate Certificate of Hisdrance.
Certificate Holder	
CONSTRUCTION CONTRACT NUMBER []	
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Brooklyn Navy Yard Development Corporation Building 77 141 Flushing Avenue, Suite 801 Brooklyn, New York 11205

And as Additional Insureds Brooklyn Navy Yard Development Corporation City of New York

#### **Certificate Holder**

City of New York c/o City of New York Department of Small Business Services One Liberty Plaza, 165 Broadway New York, NY 10006

And as Additional Insureds City of New York Brooklyn Navy Yard Development Corporation

- H. A Certificate of insurance using the ACCORD 25 form is to be provided to the Additional Insured and the Certificate must specifically include a copy of the stipulated additional insured endorsement as required in Section A. Certificate Holder must be notified of any cancellation, non-renewal or material modification of existing policy. Notice is to be received 30 days prior to any change in status. In addition to ACCORD 25 form, a completed New York Construction Certificate of Liability Insurance Addendum (ACCORD 855 form) shall be provided.
- II. If the Contractor utilizes the services of subcontractor for work performed, the same provisions of this Insurance Requirement Exhibit shall be required of those parties. It is the sole responsibility of the Contractor to maintain compliance of such.
- III. Insurance coverage shall be maintained with responsible insurance companies licensed and admitted to do business in the State of New York and such companies shall have an A.M.Best Rating of A- VII. If a Non-Admitted Insurance Company is used, an AM Best rating of A- shall apply.
- IV. Any self-insured insurance retentions and, or any deductibles utilized on any of the above required insurance coverage is the sole responsibility of the Contractor, and Contractor agrees to satisfy those retention and or deductible obligations directly with their insurance company.
- V. The policies required hereunder shall contain the following provisions:
  - "A. Notices from the insurer (the "Insurer") to BNYDC ("BNYDC") and the City of New York (the "City"), in connection with this policy, shall be addressed to the General Counsel, BNYDC, at Building 77, 141 Flushing Avenue, Suite 801, Brooklyn, New York 11205 (with a copy to BNYDC's Deputy General Counsel at the same address);
  - B. The Insurer shall accept notice of accident from BNYDC or the City, within 120 days after receipt by an official of such Additional Insured (as identified above) of notice of such accident as valid and timely notice under this policy;

CONSTRUCTION CONTRA	CT NUMBER []
CONTRACTOR [	1

C. The Insurer shall accept notice of claim from the City within 120 days after such claim has been filed with the Comptroller of the City and notice of claim from BNYDC, within 120 days after receipt by such party as valid and timely notice under this policy;

The Insurer understands and agrees that notice of accident or claim to such Insurer by any one of the following entities shall be deemed notice by all under the policy:

Contractor; or BNYDC; or The City; or Any other Additional Insured.

- E. This policy shall not be canceled, terminated or modified by the Insurer or Contractor unless 30 days prior written notice is sent by registered mail to BNYDC or the City, nor shall this policy be canceled, terminated or modified by the Contractor without prior written consent of BNYDC;
- F. The presence of engineers, inspectors or other employees or agents of Contractor, BNYDC or the City at the site of the Services performed by Contractor shall not invalidate this policy of insurance;
- G. Violation of any of the terms of any other policy issued by the Insurer to Contractor or a subcontractor of Contractor shall not invalidate this policy; and
- H. Insurance, if any, carried by BNYDC, the City or the Additional Insureds will not be called upon to contribute to a loss that would otherwise be paid by the Insurer."

CONSTRUCTION CONT	RACT NUMBER []
CONTRACTOR (	1

# EXHIBIT H PERFORMANCE AND PAYMENT BONDS

#### Form of Performance Bond

KNOW ALL MEN BY THESE PRESENTS, that	
(hereinafter called the "Principal") and corporation organized and existing under the laws of the State of	a
called the "Surety"), as Surety, are held and firmly bound unto the	
Development Corporation the City of New York and The City of	
of Small Business Services (hereinafter collectively called the "Ob	ligee") in the sum of
Dollars (\$) for the p	
well and truly to be made, the said Principal and Surety bind the	
respective heirs, administrators, executors, successors and assigns firmly by these presents.	s, joinny and severany,
WHEREAS, Principal and Obligee, have entered into Cons	struction Contract
Number dated (hereinafter referred to as "Co	onstruction Contract".
NOW, THEREFORE, THE CONDITION OF THIS OBLIGATION of the above bounden Principal shall:	ATION IS SUCH, that
A. Well and truly perform all the undertakings,	covenants, terms.
conditions, and agreements of said Construction Co	
provided therein and any extensions thereof that m	ay be granted by the
Obligee, and during the life of any guaranty require	ed under said Contract;
and B. Shall also well and truly perform all the unde	outolings sorronants
B. Shall also well and truly perform all the unde terms, conditions, and agreements of any and all du	<u> </u>
modifications of said Contract that may hereafter be	=
C. Shall as required by the Construction Contra	
harmless Obligee from any and all loss, damage, fin	_
expense including costs and attorney's fees, which t sustain;	he said Obligee may
Then this obligation shall be null and void; otherwise it sha	all remain in full force
and effect.	
Surety agrees that no change, extension of time, alteration,	
other modification of the terms of either the said Construction Co Work to be performed thereunder, or in the specifications thereun	
CONSTRUCTION CONTRACT NUMBER []	D (7 227
CONTRACTOR []	Page 67 of 95

thereunder, shall in anyway affect Surety's obligation on this Bond, and Surety does hereby waive notice of any such changes, extensions of time, alterations, additions, omissions, and other modifications.

The Surety, for value received, agrees, if requested to do so by the Obligee, to perform fully and complete the obligations of the Principal mentioned and described in said Construction Contract and any and all modifications thereof pursuant to and in accordance with the undertakings, covenants, terms, conditions and agreements thereof, if the Principal fails, neglects and/or refuses to so perform fully and completely said obligations, and further agrees to commence the performance and completion of said obligations within twenty (20) days after notice from the Obligee of such failure, neglect and/or refusal of the Principal and to perform and complete the same within the time required under said Contract and any and all modifications thereof as extended by the period of time elapsing between the date of such failure, neglect and/or refusal of the Principal and the date of the giving of such notice by the Obligee to the Surety.

Anything contained herein to the contrary notwithstanding, the Surety hereby agrees that a payment or payments made by the Obligee to the Principal which may be at variance with the terms of said contract or any other act of the Obligee which is at variance with, or in violation of, the terms of said contract, shall not serve to release the Surety from its obligations hereunder, in whole or in part, it being the intent of this bond that the Surety's obligations to complete shall be absolute and that any disputes relating to the performance of said contract shall be disposed of at a later date and without interference in, or with the performance of, said Construction Contract.

IN WITNESS WHEREOF,	the above bounden	parties have e	executed this
instrument under their several se	als this $_{}$ day of $_{-}$	20t	he name and
corporate seal of each corporate page. Signed by its undersigned represe	•		-
PRINCIPAL	, 1	J	_(Seal)
	(Name)		_(0041)
Attest:			_
Secretary	(Business A	ddress)	
	By:		_
	(Signature)		
	Name:		
CONSTRUCTION CONTRACT NUMBER [	1		

CONTRACTOR [ ]

	Title.
SURETY	(Seal)
	(Name)
Attest:	
Secretary (Business Address)	(Business Address)
(Dusiness Frances)	By: (Signature)
	(Signature) Name:
	Title:
ACKI	NOWLEDGMENT OF SURETY
STATE OF)	
COUNTY OF)	SS.:
On thisday of	in the year 20_ before me personally came to me known, who being by me duly
	he is theof, the
seal of said corporation; that the	hich executed the above instrument; that he knows the e seal affixed to said instrument is such seal; that it was I of Directors of said corporation and that he signed his
	Notary Public (SEAL)
ACKNOWLEDGM	MENT OF PRINCIPAL, IF AN INDIVIDUAL
STATE OF)	SS.:
COUNTY OF)	55
On this day of _	in the year 20_ before me personally came to me known and to be the person
CONSTRUCTION CONTRACT NUMBER CONTRACTOR []	

described in and who executed the foregoing instrument and \_he duly acknowledged

that he executed the same. Notary Public (SEAL) ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP STATE OF\_\_\_\_\_) ss.: COUNTY OF\_\_\_\_\_) On this \_\_\_\_\_ day of \_\_\_\_\_ in the year 20\_ before me personally came to me known and known to me to be a partner of the firm of described in and who executed the foregoing instrument, and he duly acknowledged to me that he executed the same for an in behalf of said firm. Notary Public (SEAL) ACKNOWLEDGMENT OF PRINCIPAL IF A CORPORATION STATE OF\_\_\_\_\_) ss.: COUNTY OF\_\_\_\_\_) On this \_\_\_\_\_day of \_\_\_\_\_ in the year 20\_ before me personally came \_\_\_\_\_ to me known, who being by me duly sworn, did depose and say that \_he is the \_\_\_\_\_\_of , the corporation described in and which executed the above instrument; that \_\_he knows the seal of said corporation; that the seal affixed to said instrument is such seal; that it was so affixed by order of the Board of Directors of said corporation and that \_he signed his name thereto by like order. Notary Public (SEAL) CONSTRUCTION CONTRACT NUMBER [\_\_\_] CONTRACTOR [\_\_\_\_\_] Page 70 of 95

#### ACKNOWLEDGMENT OF PRINCIPAL IF A LIMITED LIABILITY COMPANY

STATE OF	)	
COUNTY OF	)	SS.:
On this	day of	in the year 20_ before me personally came to
me known, who be	ing by me duly	y sworn, did depose and say that _he is a member
the limited liability thathe knows th instrument is such	e seal of said li seal; that it was	cribed in and which executed the above instrument; mited liability company; that the seal affixed to said is so affixed by order of the Members of said limited igned his name thereto by like order.
		Notary Public (SEAL)

## Form of Payment Bond

	ALL MEN BY THESE PRESENTS, that	
corporation or called the "Sur Development of Small Busin well and truly	rety"), as Surety, are held and firmly bound unto the Brocess Services (hereinafter collectively called the "Obligee"  Dollars (\$) for the payments and the said Principal and Surety bind themselvers, administrators, executors, successors and assigns, join	(hereinafter oklyn Navy Yard York Department ) in the sum of ent of which sum res, and their
firmly by thes		J J
	EAS, Principal and Obligee, have entered into Construct dated (hereinafter referred to as "Construct	
	THEREFORE, THE CONDITION OF THIS OBLIGATION OF THE CONDITION OF	
fuel wha Wor ther inco B. Pen- cont pers C. All	or, materials, services, insurance, supplies, machinery, eas, oils, implements, tools and/or appliances and all other atever nature, furnished for, used or consumed in the proof of the called for by said Construction Contract and any and a reof, whether lienable or non-lienable and whether or not orporated in said work; and sion, welfare, vacation and/or other supplemental employer in the constructions payable under collective bargaining agreement sons employed upon said Work; and federal, state and local taxes and/or contributions requires the contributions requires the contributions of periods.	r items of osecution of the all modifications t permanently oyee benefit ts with respect to red by law to be
then this oblig effect.	ration shall be null and void; otherwise it shall remain in	full force and
other modificate Work to be pe thereunder, sh hereby waive	agrees that no change, extension of time, alteration, addi- ation of the terms of either the said Construction Contrac- rformed thereunder, or in the specifications thereunder, hall in anyway affect Surety's obligation on this Bond, an notice of any such changes, extensions of time, alteration d other modifications.	t or in the said or in the plans d Surety does
CONSTRUCTION CONTRACTOR (	CONTRACT NUMBER []	Page 72 of 95

Principal and Surety agree that this Bond inures to the benefit of all persons supplying labor and material in the prosecution of the Work provided for in said Construction Contract, as well as to the Obligee, and that such persons may maintain independent actions upon this Bond in their own names.

	OF, the above bounden parties ha	
	l seals this day of	
-	porate party being hereto affixed resentative, pursuant to authority	- ·
PRINCIPAL		(Seal)
	(Name)	
Attest:	_	
Secretary	(Business Address)	
	Ву:	
	By: (Signature)	
	Name:	
	Title:	
SURETY		(Seal)
	(Name)	,
Attest:		
Secretary (Business Address)	(Business Address)	
,	Ву:	
	(Signature)	
	Name:	
	Title:	

**ACKNOWLEDGMENT OF SURETY** 

CONSTRUCTION CONTRACT NUMBER [	_]
CONTRACTOR [ ]	

STATE OF)	
SS.: COUNTY OF)	
	in the year 20 before me personally came to me known, who being by me duly
sworn, did depose and say that _he is	theof , the
seal of said corporation; that the seal a	Recuted the above instrument; that he knows the affixed to said instrument is such seal; that it was rectors of said corporation and that he signed his
	Notary Public (SEAL)
ACKNOWLEDGMENT (	OF PRINCIPAL, IF AN INDIVIDUAL
STATE OF)	
COUNTY OF)	
came	in the year 20 before me personally to me known and to be the d the foregoing instrument andhe duly me.
	Notary Public (SEAL)
ACKNOWLEDGMENT ( STATE OF) ss.: COUNTY OF)	OF PRINCIPAL, IF A PARTNERSHIP
	in the year 20 before me personally came to me known and known to me to be
_	described in and who
CONSTRUCTION CONTRACT NUMBER [] CONTRACTOR []	Page 74 of 95

executed the foregoing instrument, and he duly acknowledged to me that he executed the same for an in behalf of said firm.

		Notary Public (SEAL)
ACKNOW	LEDGMEN'	T OF PRINCIPAL IF A CORPORATION
STATE OF		
COUNTY OF	)	5.:
		in the year 20 before me personally came to me known, who being by me duly
		is theof, the
seal of said corporation	; that the sea ne Board of I	executed the above instrument; that _he knows the all affixed to said instrument is such seal; that it was Directors of said corporation and that _he signed
ACKNOWLEDGM	ENT OF PR	Notary Public (SEAL) INCIPAL IF A LIMITED LIABILITY COMPANY
STATE OF	•	
COUNTY OF	)	5
On this	lay of	in the year 20 before me personally came to
me known, who being l	by me duly s	sworn, did depose and say that _he is a member
the limited liability con thathe knows the sea instrument is such seal;	l of said lim that it was s	bed in and which executed the above instrument; ited liability company; that the seal affixed to said so affixed by order of the Members of said limited ned his name thereto by like order.
CONSTRUCTION CONTRACT	NUMBER []	Page 75 of 95

Notary Public (SEAL)

## <u>EXHIBIT I</u> PARTIAL RELEASE AND PARTIAL LIEN WAIVER

**OWNER:** BROOKLYN NAVY YARD DEVELOPMENT CORPORATION and THE CITY OF NEW YORK PROJECT: CONTRACTOR: \_\_\_\_\_ **CONTRACTOR**, in consideration of the current payment of \$\_\_\_\_\_, a portion of the current total contract value of \$\_\_\_\_\_\_\_, the current payment bringing the total of all payments to date to \$\_\_\_\_\_\_, in addition to which retainage of \_\_\_\_% is withheld as Maintenance and Guarantee per the contract terms, the execution of this Partial Release and Partial Lien Waiver, receipt of which is hereby acknowledged, represents that it has been paid to the date hereof in full for all labor, services, equipment, or material furnished to OWNER on the PROJECT including extra work claims and does hereby forever release OWNER from any and all claims that CONTRACTOR may have against OWNER arising to the date hereof from the PROJECT. OWNER'S NOTICE: THIS DOCUMENT WAIVES CONTRACTOR'S RIGHTS UNCONDITIONALLY AND STATES THAT CONTRACTOR HAS BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST CONTACTOR IF CONTRACTOR SIGNS IT, EVEN IF CONTRACTOR HAS NOT BEEN PAID. IF CONTRACTOR HAS NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM. **CONTRACTOR:** Acknowledges that it is not permitted to file any mechanic's lien against land and improvements owned by OWNER and Warrants that it will not file a mechanic's lien or other lien against land and improvements owned by OWNER and has not and will not assign any claims for payment or right to perfect a lien against such land and improvements. **CONTRACTOR:** Warrants and represents that (1) All workmen employed by it or its subcontractor upon this PROJECT have been paid applicable prevailing wages and in full to the date hereof; 2) All material men from which the undersigned or its subcontractors have purchased materials used in the **PROJECT** have been paid in full for materials delivered on or prior to the date hereof; (3) All union fringe benefits, dues or CONSTRUCTION CONTRACT NUMBER [\_\_\_] Page 77 of 95 CONTRACTOR [\_\_\_\_\_]

other obligations have been paid in full on or prior to the date hereof; (4) None of such workman and material men has any claim or demand or right of lien against the land and improvements owned by OWNER; and (5) Represents that the signatory hereto is an authorized officer of **CONTRACTOR** with full power to execute this Final Release and Final Lien Waiver.

In addition to the rights and obligations provided by the Contract for the **PROJECT** (which is incorporated herein by reference and made a part hereof), to the fullest extent permitted by law, the undersigned further agrees to defend, indemnify and hold **OWNER**, its successors and assigns, harmless from all claims, actions, and liens filed by the undersigned's subcontractors, suppliers, material men, and laborers, and those interposed by labor organizations for union fringe benefits and/or other union dues or responsibilities, who performed labor or furnished materials in connection with the work performed to the date hereof at the **PROJECT**.

**CONTRACTOR** agrees that the **OWNER**, any lender and any title insurer may rely upon this waiver.

In witne	ess whereof, we have here	e to set our hand and seal this _	_ day of	20
	CONTRACTOR	_		
BY:		_		
Title:				

STATE OF NEW YORK)
SS:
COUNTY OF)
On theday of 20 before me personally came, personally known to me or proved to me on the basis of
satisfactory evidence to be the individual whose name is subscribed to the within
instrument and acknowledged to me that _he executed the same.
0 –
NOTARY PUBLIC
STATE OF NEW YORK)
SS:
COUNTY OF)
On the day of, 20 before me personally came
, to me known, who, being by me duly sworn, did
depose and say that he resides at; that he is the; that he is the; the business described in and which
of the business described in and which
executed the above instrument; and that he signed his name thereto by authority of the
Board of Directors of said corporation.
NOTARY PUBLIC

## EXHIBIT J FINAL RELEASE AND FINAL LIEN WAIVER

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CONSTRUCTION CONTRACT NUMBER [\_\_\_]

CONTRACTOR [\_\_\_\_]

authorized officer of **CONTRACTOR** with full power to execute this Final Release and Final Lien Waiver.

In addition to the rights and obligations provided by the Contract for the **PROJECT** (which is incorporated herein by reference and made a part hereof), to the fullest extent permitted by law, the undersigned further agrees to defend, indemnify and hold **OWNER**, its successors and assigns, harmless from all claims, actions, and liens filed by the undersigned's subcontractors, suppliers, material men, and laborers, and those interposed by labor organizations for union fringe benefits and/or other union dues or responsibilities, who performed labor or furnished materials in connection with the work performed at the **PROJECT**.

CONTRACTOR agrees that the OWNER, any lender and any title insurer may rely upon this waiver.

In witness whereof, we have here to set our hand and seal this \_\_ day of \_\_\_\_\_\_ 20\_\_.

CONTRACTOR

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

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

STATE OF NEW YORK)
ss: COUNTY OF)
On theday of 20 before me personally came, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that _he executed the same.
NOTARY PUBLIC
STATE OF NEW YORK) ss: COUNTY OF)
On the day of, 20 before me personally cam, to me known, who, being by me duly sworn, di
depose and say that he resides at; that he is the state of the business described in and which
executed the above instrument; and that he signed his name thereto by authority of the Board of Directors of said corporation.
NOTARY PUBLIC

## **EXHIBIT K**

## WHISTLEBLOWER PROTECTION EXPANSION ACT

- 1. In accordance with Local Law Nos. 30-2012 and 33-2012, codified at sections 6-132 and 12-113 of the New York City Administrative Code, respectively,
  - (a) Contractor shall not take an adverse personnel action with respect to an officer or employee in retaliation for such officer or employee making a report of information concerning conduct which such officer or employee knows or reasonably believes to involve corruption, criminal activity, conflict of interest, gross mismanagement or abuse of authority by any officer or employee relating to this Contract to (i) the Commissioner of the Department of Investigation, (ii) a member of the New York City Council, the Public Advocate, or the Comptroller, or (iii) the City Chief Procurement Officer, ACCO, Agency head, or Commissioner.
  - (b) If any of Contractor's officers or employees believes that he or she has been the subject of an adverse personnel action in violation of subparagraph (a) of paragraph 1 of this rider, he or she shall be entitled to bring a cause of action against Contractor to recover all relief necessary to make him or her whole. Such relief may include but is not limited to: (i) an injunction to restrain continued retaliation, (ii) reinstatement to the position such employee would have had but for the retaliation or to an equivalent position, (iii) reinstatement of full fringe benefits and seniority rights, (iv) payment of two times back pay, plus interest, and (v) compensation for any special damages sustained as a result of the retaliation, including litigation costs and reasonable attorney's fees.
  - (c) Contractor shall post a notice provided by the City in a prominent and accessible place on any site where work pursuant to the Contract is performed that contains information about:
    - (i) how its employees can report to the New York City Department of Investigation allegations of fraud, false claims, criminality or corruption arising out of or in connection with the Contract; and
    - (ii) the rights and remedies afforded to its employees under New York City Administrative Code sections 7-805 (the New York City False Claims Act) and 12-113 (the Whistleblower Protection Expansion Act) for lawful acts taken in connection with the reporting of allegations of fraud, false claims, criminality or corruption in connection with the Contract.
  - (d) For the purposes of this rider, "adverse personnel action" includes dismissal, demotion, suspension, disciplinary action, negative performance evaluation,

CONSTRUCTION CONTRACT NUMBER [_	_]
CONTRACTOR [ ]	

any action resulting in loss of staff, office space, equipment or other benefit, failure to appoint, failure to promote, or any transfer or assignment or failure to transfer or assign against the wishes of the affected officer or employee.

- (e) This rider is applicable to all of Contractor's subcontractors having subcontracts with a value in excess of \$100,000; accordingly, Contractor shall include this rider in all subcontracts with a value a value in excess of \$100,000.
- 2. Paragraph 1 is not applicable to this Contract if it is valued at \$100,000 or less. Subparagraphs (a), (b), (d), and (e) of paragraph 1 are not applicable to this Contract if it was solicited pursuant to a finding of an emergency. Subparagraph (c) of paragraph 1 is neither applicable to this Contract if it was solicited prior to October 18, 2012 nor if it is a renewal of a contract executed prior to October 18, 2012.

## REPORT

CORRUPTION, FRAUD, UNETHICAL CONDUCT

RELATING TO A NYC-FUNDED CONTRACT
OR PROJECT

CALL THE NYC DEPARTMENT OF INVESTIGATION

212-825-5959



#### DOI CAN ALSO BE REACHED BY MAIL OR IN PERSON AT:

New York City Department of Investigation (DOI) 80 Maiden Lane, 17th floor New York, New York 10038 Attention: COMPLAINT BUREAU

#### OR FILE A COMPLAINT ON-LINE AT:

www.nyc.gov/doi

All communications are confidential

# THE LAW PROTECTS EMPLOYEES OF CITY CONTRACTORS WHO REPORT CORRUPTION

- Any employee of a City contractor, or subcontractor of the City, or a City contractor with a contract valued at more than \$100,000 is protected under the law from retaliation by his or her employer if the employee reports wrongdoing related to the contract to the DOI.
- To be protected by this law, an employee must report to DOI or to certain other specified government officials
   information about fraud, false claims, corruption, criminality, conflict of interest, gross mismanagement, or abuse of
  authority relating to a City contract valued at more than \$100,000.
- Any employee who makes such a report and who believes he or she has been dismissed, demoted, suspended, or
  otherwise subject to an adverse personnel action because of that report is entitled to bring a lawsuit against the
  contractor and recover damages



← Scan the QR Code at Left to File a Complaint

## **EXHIBIT** L

#### PAID SICK LEAVE LAW

## **Introduction and General Provisions**

The Earned Sick Time Act, also known as the Paid Sick Leave Law ("PSLL"), requires covered employees who annually perform more than 80 hours of work in New York City to be provided with paid sick time. 1 Contractors of the City of New York or of other governmental entities may be required to provide sick time pursuant to the PSLL.

1 Pursuant to the PSLL, if fewer than five employees work for the same employer, as determined pursuant to New York City Administrative Code §20-912(g), such employer has the option of providing such employees uncompensated sick time.

The PSLL became effective on April 1, 2014, and is codified at Title 20, Chapter 8, of the New York City Administrative Code. It is administered by the City's Department of Consumer Affairs ("DCA"); DCA's rules promulgated under the PSLL are codified at Chapter 7 of Title 6 of the Rules of the City of New York ("Rules").

Contractor agrees to comply in all respects with the PSLL and the Rules, and as amended, if applicable, in the performance of this agreement. Contractor further acknowledges that such compliance is a material term of this agreement and that failure to comply with the PSLL in performance of this agreement may result in its termination.

Contractor must notify the Agency Chief Contracting Officer of the City agency or other entity with whom it is contracting in writing within ten (10) days of receipt of a complaint (whether oral or written) regarding the PSLL involving the performance of this agreement. Additionally, Contractor must cooperate with DCA's education efforts and must comply with DCA's subpoenas and other document demands as set forth in the PSLL and Rules.

The PSLL is summarized below for the convenience of Contractor. Contractor is advised to review the PSLL and Rules in their entirety. On the website www.nyc.gov/PaidSickLeave there are links to the PSLL and the associated Rules as well as additional resources for employers, such as Frequently Asked Questions, timekeeping tools and model forms, and an event calendar of upcoming presentations and webinars at which Contractor can get more information about how to comply with the PSLL. Contractor acknowledges that it is responsible for compliance with the PSLL notwithstanding any inconsistent language contained herein.

Pursuant to the PSLL and the Rules:

### Applicability, Accrual, and Use

An employee who works within the City of New York for more than eigh	nty hours in any
consecutive 12-month period designated by the employer as its "calendar	year" pursuant to the
PSLL ("Year") must be provided sick time. Employers must provide a m	inimum of one hour of
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sick time for every 30 hours worked by an employee and compensation for such sick time must be provided at the greater of the employee's regular hourly rate or the minimum wage. Employers are not required to provide more than forty hours of sick time to an employee in any Year.

An employee has the right to determine how much sick time he or she will use, provided that employers may set a reasonable minimum increment for the use of sick time not to exceed four hours per day. In addition, an employee may carry over up to forty hours of unused sick time to the following Year, provided that no employer is required to allow the use of more than forty hours of sick time in a Year or carry over unused paid sick time if the employee is paid for such unused sick time and the employer provides the employee with at least the legally required amount of paid sick time for such employee for the immediately subsequent Year on the first day of such Year.

An employee entitled to sick time pursuant to the PSLL may use sick time for any of the following:

- such employee's mental illness, physical illness, injury, or health condition or the care of such illness, injury, or condition or such employee's need for medical diagnosis or preventive medical care;
- such employee's care of a family member (an employee's child, spouse, domestic partner, parent, sibling, grandchild or grandparent, or the child or parent of an employee's spouse or domestic partner) who has a mental illness, physical illness, injury or health condition or who has a need for medical diagnosis or preventive medical care;
- closure of such employee's place of business by order of a public official due to a public health emergency; or
- such employee's need to care for a child whose school or childcare provider has been closed due to a public health emergency.

An employer must not require an employee, as a condition of taking sick time, to search for a replacement. However, an employer may require an employee to provide: reasonable notice of the need to use sick time; reasonable documentation that the use of sick time was needed for a reason above if for an absence of more than three consecutive work days; and/or written confirmation that an employee used sick time pursuant to the PSLL. However, an employer may not require documentation specifying the nature of a medical condition or otherwise require disclosure of the details of a medical condition as a condition of providing sick time and health information obtained solely due to an employee's use of sick time pursuant to the PSLL must be treated by the employer as confidential.

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CONTRACTOR [ ]	

If an employer chooses to impose any permissible discretionary requirement as a condition of using sick time, it must provide to all employees a written policy containing those requirements, using a delivery method that reasonably ensures that employees receive the policy. If such employer has not provided its written policy, it may not deny sick time to an employee because of non-compliance with such a policy.

Sick time to which an employee is entitled must be paid no later than the payday for the next regular payroll period beginning after the sick time was used.

## **Exemptions and Exceptions**

Notwithstanding the above, the PSLL does not apply to any of the following:

- an independent contractor who does not meet the definition of employee under section 190(2) of the New York State Labor Law;
- an employee covered by a valid collective bargaining agreement in effect on April 1, 2014 until the termination of such agreement;
- an employee in the construction or grocery industry covered by a valid collective bargaining agreement if the provisions of the PSLL are expressly waived in such collective bargaining agreement;
- an employee covered by another valid collective bargaining agreement if such provisions are expressly waived in such agreement and such agreement provides a benefit comparable to that provided by the PSLL for such employee;
- an audiologist, occupational therapist, physical therapist, or speech language pathologist who is licensed by the New York State Department of Education and who calls in for work assignments at will, determines his or her own schedule, has the ability to reject or accept any assignment referred to him or her, and is paid an average hourly wage that is at least four times the federal minimum wage;
- an employee in a work study program under Section 2753 of Chapter 42 of the United States Code:
- an employee whose work is compensated by a qualified scholarship program as that term is defined in the Internal Revenue Code, Section 117 of Chapter 20 of the United States Code; or
- a participant in a Work Experience Program (WEP) under section 336-c of the New York State Social Services Law.

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CONTRACTOR [ ]	

## Retaliation Prohibited

An employer may not threaten or engage in retaliation against an employee for exercising or attempting in good faith to exercise any right provided by the PSLL. In addition, an employer may not interfere with any investigation, proceeding, or hearing pursuant to the PSLL.

## Notice of Rights

An employer must provide its employees with written notice of their rights pursuant to the PSLL. Such notice must be in English and the primary language spoken by an employee, provided that DCA has made available a translation into such language. Downloadable notices are available on DCA's website at http://www.nyc.gov/html/dca/html/law/PaidSickLeave.shtml.

Any person or entity that willfully violates these notice requirements is subject to a civil penalty in an amount not to exceed fifty dollars for each employee who was not given appropriate notice.

#### Records

An employer must retain records documenting its compliance with the PSLL for a period of at least three years, and must allow DCA to access such records in furtherance of an investigation related to an alleged violation of the PSLL.

### **Enforcement and Penalties**

Upon receiving a complaint alleging a violation of the PSLL, DCA has the right to investigate such complaint and attempt to resolve it through mediation. Within 30 days of written notification of a complaint by DCA, or sooner in certain circumstances, the employer must provide DCA with a written response and such other information as DCA may request. If DCA believes that a violation of the PSLL has occurred, it has the right to issue a notice of violation to the employer.

DCA has the power to grant an employee or former employee all appropriate relief as set forth in New York City Administrative Code 20-924(d). Such relief may include, among other remedies, treble damages for the wages that should have been paid, damages for unlawful retaliation, and damages and reinstatement for unlawful discharge. In addition, DCA may impose on an employer found to have violated the PSLL civil penalties not to exceed \$500 for a first violation, \$750 for a second violation within two years of the first violation, and \$1,000 for each succeeding violation within two years of the previous violation.

## More Generous Polices and Other Legal Requirements

Nothing in the PSLL is intended to discourage, prohibit, diminish, or impair the ad	lantion on
	1
retention of a more generous sick time policy, or the obligation of an employer to	comply with
any contract, collective bargaining agreement, employment benefit plan or other ag	greement
providing more generous sick time. The PSLL provides minimum requirements pe	rtaining to
sick time and does not preempt, limit or otherwise affect the applicability of any of	ther law,
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regulation, rule, requirement, policy or standard that provides for greater accrual or use by employees of sick leave or time, whether paid or unpaid, or that extends other protections to employees. The PSLL may not be construed as creating or imposing any requirement in conflict with any federal or state law, rule or regulation.

## [EXHIBIT M EXCAVATION WORK PLAN]

## <u>[EXHIBIT N</u> <u>HEALTH AND SAFETY PLAN]</u>

## EXHIBIT O FEMA RIDERS

## EXHIBIT P M/WBE UTILIZATION PLAN

## EXHIBIT Q COST BREAKDOWN

# CONTRACTOR EXCAVATION WORK PLAN CERTIFICATION BNYDC VCP Site V00120

Projec	t Nam	e:		
Projec	t Loca	ition:		
Contractor Name:		lame:		
Contra	actor F	Point of Contact:		
Contra	actor F	POC Phone & Email:		
l,		, cer	tify that I have reviewed the following NYSDEC approved Site	
Manag work ir	accor	Plan (SMP) documents	for the Brooklyn Navy Yard (BNY) and will complete all Site ents set forth in these plans [Check to confirm and certify that eviewed]:	
		flanagement Plan (SMP)		
	□ Excavation Work Plan (EWP)			
	Health	n And Safety Plan (HASP	<b>(</b> )	
	Comn	nunity Air Monitoring Plar	n (CAMP)	
Additic	nally, a	as the contractor's respon	nsible party, I certify that: [Check all that apply]	
A.		All employees engaged HAZWOPER 40-hour 0	I in Site work at the BNY have obtained an OSHA Certification.	
B.		·	euse Fill or Soil form, has been prepared by the contractor and nd CORE Environmental Consultants, Inc. (CORE).	
		AND		
		All imported material(s) established in 6 NYCR	meets the backfill and cover soil quality standards R 375-6.7(d).	
C.		No backfill is being imp	orted to the site.	
D.			notified of scheduled work dates to ensure CORE is on Site invironmental Professional (QEP) to perform CAMP.	
E.		The reconstruction of the a minimum of 6" in thick	ne Site-wide cover will include a concrete or paving system at kness.	
 Sian			 Date	



## **APPENDIX E**

Excavation Work Plan



This Excavation Work Plan (EWP) contains procedures for potential future soil disturbances at the Site, including renovation, below-grade utility line repair, and new construction.

#### **E.1** NOTIFICATION

At least 15 days prior to the start of any activity that is anticipated to breach the Site-wide protective cover as defined in Section 2.6 of the Site Management Plan (SMP), the Site owner or their representative will notify the NYSDEC. Currently, this notification will be made to:

Jonathan Greco NYSDEC Project Manager 625 Broadway Albany, New York 12233 (518) 402-9694 Jonathan.Greco@dec.ny.gov

This notification will include:

- A detailed description of the work to be performed, including the location and aerial
  extent of excavation, plans/drawings for Site re-grading, intrusive elements or utilities to
  be installed below the soil cover, estimated volumes of impacted soil to be excavated,
  and any work that may impact an engineering control (EC);
- A summary of environmental conditions anticipated to be encountered in the work areas
  including the nature and concentration levels of constituents of concern, potential
  presence of grossly impacted media, and plans for any pre-construction sampling;
- A schedule detailing the start and completion of all intrusive work;
- A summary of the applicable components of this EWP;
- A statement that the work will be performed in compliance with this EWP and Title 29 of the Code of Federal Regulations Part 1910.120 (29 CFR 1910.120);
- A copy of the contractor's Health and Safety Plan (HASP), in electronic format, if it differs from the HASP provided in Appendix F of the Site Management Plan (SMP);
- · Identification of disposal facilities for potential waste streams; and
- Identification of sources of any anticipated backfill, along with all required chemical testing results.

## **Tenant Notification Requirements**

Tenants who wish to disturb the existing Site-wide cover (as defined in Section 2.6 of the SMP) must notify BNYDC in advance of such activities at least 90 days in advance. A project-specific Work Plan will be provided to BNYDC by the tenant describing soil disturbance activities and will



include figures identifying the area(s) to be disturbed. The Change of Use request must include the NYSDEC 60-Day Advance Notification of Site Change of Use, Transfer or Certificate of Completion, and/or Ownership form found at

http://www.dec.ny.gov/docs/remediation\_hudson\_pdf/changeofuse.pdf or in Appendix H of the SMP. BNYDC will review the Change of Use request and submit to NYSDEC.

#### E.2 SITE SECURITY

Site Security will be utilized to prevent access to the Site and vandalism or destruction of construction equipment, and to minimize health and safety concerns for surrounding properties. Currently the majority of the Site is covered by buildings, concrete, asphalt pavement, and/or millings, with some vegetated areas/landscaping.

In the event of any excavations or building demolitions, the area of excavation will be surrounded with an 8-foot security fence with a minimum of one gate that can be locked at the end of each working day. The fence will encompass the excavation, equipment, and soil storage areas, if any.

#### E.3 SOIL SCREENING METHODS

Visual, olfactory and instrument-based (e.g. photoionization detector) soil screening will be performed by a qualified environmental professional (QEP) during all excavations into known or potentially impacted material (remaining contamination). Soil screening will be performed when invasive work is done and will include all excavation and invasive work performed during development, such as excavations for foundations and utility work, after issuance of the No Further Action (NFA) letter.

Soils not exhibiting obvious signs of impacts may be reused on Site as backfill beneath a remedy-compliant cover comprised of at least 12 inches of soil meeting the NYSDEC Title 6 of the New York Codes, Rules and Regulations Part 375 (6 NYCRR 375) Commercial Use Soil Cleanup Objectives (SCOs), a building, or concrete, asphalt, or millings at least 6 inches in thickness. Soils exhibiting visual or olfactory evidence of impacts will be segregated for characterization and potential off-Site disposal.

Further discussion of off-Site disposal of materials and on-Site reuse is provided in Sections E.7 and E.8 of this Appendix.

#### E.4 SOIL STAGING METHODS

Any soils disturbed during excavation will be stockpiled in an on-Site staging area. Soil will be segregated into stockpiles based on screening performed as discussed in Section E.3 of this Appendix. Soil stockpiles will be continuously encircled with a berm and/or silt fence. Hay bales will be used as needed near catch basins, surface waters, and other discharge points.



Stockpiles will be kept covered at all times with appropriately anchored tarps. Stockpiles will be routinely inspected and damaged tarp covers will be promptly replaced. Stockpiles will be inspected at a minimum once each week and after every storm event. Results of inspections will be recorded in a logbook maintained at the Site and will be made available for inspection by NYSDEC upon request.

#### E.5 MATERIALS EXCAVATION AND LOAD-OUT

A QEP or person under their supervision will oversee all invasive work and excavation and load-out of all material not suitable for reuse. The owner or lessee of the property and its contractors are responsible for safe execution of all invasive and other work performed under this EWP.

The presence of utilities and easements on the Site will be investigated by a QEP. It will be determined whether a risk or impediment to the planned work under this SMP is posed by utilities or easements on the Site.

Loaded vehicles leaving the Site will be appropriately lined, tarped, securely covered, manifested, and placarded in accordance with appropriate federal, state, local, and NYSDOT requirements (and all other applicable transportation requirements).

A truck wash will be operated on-Site, as appropriate. The QEP will be responsible for ensuring that all outbound trucks will be washed at the truck wash before leaving the Site until the activities performed under this section are complete. Truck wash waters will be collected and disposed of off-Site in an appropriate manner.

Locations where vehicles enter or exit the Site shall be inspected daily for evidence of off-Site soil tracking. The QEP will be responsible for ensuring that all egress points for truck and equipment transport from the Site are clean of dirt and other materials derived from the Site during intrusive excavation activities. Adjacent streets will be cleaned as needed in order to maintain a clean condition with respect to Site-derived materials.

#### E.6 MATERIALS TRANSPORT OFF-SITE

All materials transport will be performed by licensed haulers in accordance with appropriate federal, state, and local regulations, including 6 NYCRR 364. Haulers will be appropriately licensed and trucks properly placarded.

Material will be transported by trucks equipped with tight-fitting covers. Loose-fitting canvas-type truck covers will be prohibited. If loads contain wet material capable of producing free liquid, truck liners will be used.

Truck transport routes will be developed for each project performed at the Site. This will allow the most efficient truck route with the least disturbance to remaining occupants of the Brooklyn Navy



Yard Industrial Park (BNYIP). All trucks loaded with Site materials will exit the vicinity of the Site using only these approved truck routes. The most appropriate route for each project will take into account: (a) limiting transport through residential areas and past sensitive sites; (b) use of New York City-mapped truck routes; (c) prohibiting off-Site queuing of trucks entering the Site; (d) limiting total distance to major highways; (e) promoting safety in access to highways; and (f) overall safety in transport.

Trucks will be prohibited from stopping and idling in the neighborhood outside the project Site. Off-Site queuing will be prohibited.

#### E.7 MATERIALS DISPOSAL OFF-SITE

All material removed from the Site will be treated as contaminated and regulated material and will be transported and disposed of in accordance with all federal, state (including 6 NYCRR 360), and local regulations. If disposal of material from this Site is proposed for unregulated off-Site disposal (i.e. clean soil removed for development purposes), a formal request, with an associated plan, will be made to NYSDEC. Unregulated off-Site management of materials from this Site will not occur without formal NYSDEC approval.

Off-Site disposal locations for excavated soils will be identified in the pre-excavation notification. This will include estimated quantities and a breakdown of disposal facility by class, if appropriate - i.e., hazardous waste disposal facility, solid waste landfill, petroleum treatment facility, construction/demolition (C/D) recycling facility, etc. Actual disposal quantities and associated documentation will be reported to NYSDEC in the Periodic Review Report (PRR). This documentation will include: waste profiles, test results, facility acceptance letters, manifests, bills of lading, and facility receipts.

Non-hazardous historic fill and impacted soils taken off-Site will be handled, at minimum, as a Municipal Solid Waste per 6 NYCRR 360-1.2. Material that does not meet Part 375 Unrestricted Use SCOs is prohibited from being taken to a New York State recycling facility (6 NYCRR 360-16 Registration Facility).

### E.8 MATERIALS REUSE ON-SITE

Excavated soils will be considered appropriate for reuse as on-Site backfill if the soil does not exhibit obvious signs of impacts. Soils not exhibiting obvious signs of impacts may be reused on Site as backfill beneath a remedy-compliant cover comprised of at least 12 inches of soil meeting the Commercial Use SCOs as set forth in 6 NYCRR 375-6.8(b), a building, or concrete, asphalt, or millings at least 6 inches in thickness. Soils exhibiting obvious signs of impacts must be sampled prior to reuse below the Site-wide cover and must meet the lower of the Commercial Use and Protection of Groundwater SCOs and the Standards, Criteria, and Guidance (SCGs) set forth in Table 5.4(e)4 of DER Technical Guidance for Site Investigation and Remediation (DER-10),



included at the end of this Section. Soil will be stockpiled in accordance with Sections E.3 and E.4 of this EWP.

The QEP will ensure that procedures defined for materials reuse in the SMP are followed and that unacceptable material does not remain on-Site. Impacted on-Site material, including historic fill and impacted soil, that is acceptable for reuse on-Site will be placed below the demarcation layer or impervious surface, and will not be reused within a cover soil layer, within landscaping berms, or as backfill for subsurface utility lines.

Any demolition material proposed for reuse on-Site will be sampled for asbestos and the results will be reported to NYSDEC for acceptance. Concrete crushing or processing on-Site will not be performed without prior NYSDEC approval. Organic matter (wood, roots, stumps, etc.) or other solid waste derived from clearing and grubbing generated during Site redevelopment and/or remedial work will not be reused on Site.

Table 5.4(e)4 Reuse of Soil				
Soil on the Site Meets:	Reuse on the Site:	Off-site Export & Reuse:		
Unrestricted Soil SCGs	Without restrictions	Without restrictions		
Meets the Applicable Use-based and Groundwater Protection SCG and where Appropriate Protection of Ecological Resources Soil SCGs for a Site w/ an Institutional Control (IC) & SMP.	In the soil cover/cap or as backfill within the area of the site subject to the IC.	Not Allowed, unless going to a site with IC subject to a 6 NYCRR 360 Beneficial Use Determination (BUD).		
Meets Site-Specific Background Soil Levels.	Without restrictions. (Does not apply to sites in the BCP.)	Not Allowed, unless going to a site with IC subject to a 6 NYCRR 360 BUD.		
Site-specific cleanup goals for subsurface soil	Placement below the soil cover/cap within the area of the site subject to the IC.	Not Allowed, unless going to a site with IC subject to a 6 NYCRR 360 BUD.		

#### E.9 FLUIDS MANAGEMENT

All liquids to be removed from the Site including, but not limited to, excavation dewatering, decontamination waters, and groundwater monitoring well purge and development waters, will be handled, transported, and disposed of in accordance with applicable federal, state, and local regulations. Dewatering, purge, and development fluids will not be recharged back to the land surface or subsurface of the Site and will be managed off-Site unless prior approval is obtained from NYSDEC.

Impacted water originating from equipment decontamination, excavation dewatering, and monitoring well purging, will be pumped into storage tanks for off-Site disposal. A licensed liquid



waste hauler will remove, transport, and dispose of the liquid in compliance with all applicable regulations.

Discharge of water generated during large-scale construction activities to surface waters (i.e. a local pond, stream or river), if any, will be performed under a State Pollutant Discharge Elimination System (SPDES) permit.

#### **E.10** SITE-WIDE COVER RESTORATION

After the completion of soil removal and any other invasive activities the Site-wide cover will be restored in a manner that complies with the Decision Document. The existing Site-wide cover is comprised of buildings, concrete and asphalt pavement, and millings. A demarcation layer will be placed to provide a visual reference to the top of the zone of remaining contamination, the zone that requires adherence to special conditions for disturbance of remaining impacted soils defined in the SMP. If the type of cover system changes from that which exists prior to the excavation (e.g., the building slab is replaced by soil cover), this will constitute a modification of the cover element of the remedy and the upper surface of the remaining contamination. A figure showing the modified surface will be included in the subsequent PRR and in an updated SMP.

#### E.11 BACKFILL FROM OFF-SITE SOURCES

All materials proposed for import onto the Site will be approved by the QEP and will be in compliance with provisions in the SMP prior to receipt at the Site. A Request to Import/Reuse Fill or Soil form, which can be found at http://www.dec.ny.gov/regulations/67386.html, will be prepared and submitted to the NYSDEC Project Manager, allowing a minimum of five business days for review.

Material from industrial sites, spill sites or other environmental remediation sites, or potentially impacted sites will not be imported to the Site.

All imported soils will meet the backfill and cover soil quality standards established in 6 NYCRR 375-6.7(d). Approval will also be based on an evaluation of the land use, protection of groundwater, and protection of ecological resources criteria. Soils that meet 'exempt' fill requirements under 6 NYCRR 360, but do not meet backfill or cover soil objectives for this Site, will not be imported onto the Site without prior approval by NYSDEC. Solid waste will not be imported onto the Site.

Imported materials will be tested at a rate consistent with Table 5.4(e)10 of DER-10, included at the end of this Section. Samples will analyzed for Target Compound List (TCL) volatile organic compounds (VOCs), TCL semi-volatile organic compounds (SVOCs), TCL pesticides, TCL Aroclors, and Target Analyte List (TAL) metals. Sample collection will be performed in accordance with the Quality Assurance Project Plan (QAPP), included as Appendix G of the SMP.



Trucks entering the Site with imported soils will be securely covered with tight fitting covers. Imported soils will be stockpiled separately from excavated materials and covered to prevent dust releases.

Table 5.4(e)10  Recommended Number of Soil Samples for Soil Imported To or Exported From a Site			
Contaminant	VOCs	SVOCs, Inorganics & PCBs/Pesticides	
Soil Quantity (cubic yards)	Discrete Samples	Composite	Discrete Samples/Composite
0-50	1	1	3-5 discrete samples from different locations in the fill being provided will comprise a
50-100	2	1	
100-200	3	1	
200-300	4	1	
300-400	4	2	
400-500	5	2	composite sample for analysis
500-800	6	2	1
800-1000	7	2	
> 1000	Add an additional 2 VOC and 1 composite for each additional 1000 Cubic yards or consult with DER		

#### **E.12** STORMWATER POLLUTION PREVENTION

Smaller soil disturbances, such as those required for utility maintenance, conducted after issuance of the NFA letter, will likely not require coverage under the SPDES permit system or the preparation of a Stormwater Pollution Prevention Plan (SWPPP) due to the small size of the excavation.

For larger disturbances, such as in the event of a building demolition, a SWPPP and Notice of Intent (NOI) will be required as well as applicable inspections to maintain compliance with the SPDES permit system. Silt fencing or hay bales will be installed around the entire perimeter of the construction area. Barriers and hay bale checks will be installed and inspected once a week and after every storm event. Results of inspections will be recorded in a logbook maintained at the Site and will be made available for inspection by NYSDEC upon request. All necessary repairs shall be made immediately. Accumulated sediments will be removed as required to keep the barriers and hay bale checks functional.

All undercutting or erosion of the silt fence toe anchor shall be repaired immediately with appropriate backfill materials. Manufacturer's recommendations will be followed for replacing silt fencing damaged due to weathering.

Erosion and sediment control measures identified in the SMP shall be observed to ensure that they are operating correctly. Where discharge locations or points are accessible, they shall be inspected to ascertain whether erosion control measures are effective in preventing significant impacts to receiving waters.



#### E.13 CONTINGENCY PLAN

If underground storage tanks (USTs) or other previously unidentified sources for impacts to subsurface media are found during post-remedial subsurface excavations or development-related construction, excavation activities will be suspended until sufficient equipment is mobilized to address the condition.

Sampling will be performed on product and surrounding soils, etc. as necessary to determine the nature of the material and proper disposal method. Analyses will be performed for TCL VOCs, TCL SVOCs, TCL pesticides, TCL Aroclors, and TAL metals unless the Site history and previous sampling results provide a sufficient justification to limit the list of analytes. In this case, a reduced list of analytical parameters will be proposed to NYSDEC for approval prior to sampling.

The NYSDEC Project Manager will be promptly notified in the event that unknown or unexpected impacted media is identified by screening during invasive Site work. Reportable quantities of petroleum product will also be reported to the NYSDEC Spills Hotline. These findings will be also included in the PRR in compliance with the SMP.

#### **E.14** COMMUNITY AIR MONITORING

A Site-specific Community Air Monitoring Plan (CAMP) is contained in the HASP, included as Appendix F to the SMP. CAMP procedures will be implemented for all excavations on Site, regardless of size.

#### **E.15 ODOR CONTROL PLAN**

This odor control plan is capable of controlling emissions of nuisance odors on- and off-Site. Specific odor control methods will be determined for each project to adequately address potential odors specific to that project. If nuisance odors are identified at the Site boundary, or if odor complaints are received, work will be halted and the source of odors will be identified and corrected. Work will not resume until all nuisance odors have been abated. NYSDEC and the New York State Department of Health (NYSDOH) will be notified of all odor events and of any other complaints about the project. Implementation of all odor controls, including the halt of work, is the responsibility of the remedial party's Remediation Engineer, and any measures that are implemented will be discussed in the PRR.

All necessary means will be employed to prevent on- and off-Site nuisances. At a minimum, these measures will include: (a) limiting the area of open excavations and size of soil stockpiles; (b) shrouding open excavations with tarps and other covers; and (c) using foams to cover exposed odorous soils. If odors develop and cannot be otherwise controlled, additional means to eliminate odor nuisances will include: (d) direct load-out of soils to trucks for off-site disposal; (e) use of chemical odorants in spray or misting systems; and (f) use of staff to monitor odors in surrounding neighborhoods.



If nuisance odors develop during intrusive work that cannot be corrected, or where the control of nuisance odors cannot otherwise be achieved due to on-Site conditions or close proximity to sensitive receptors, odor control will be achieved by sheltering the excavation and handling areas in a temporary containment structure equipped with appropriate air venting/filtering systems.

#### E.16 DUST CONTROL PLAN

A dust suppression plan that addresses dust management during invasive on-site work will include, at a minimum, the items listed below:

- Dust suppression will be achieved through the use of a dedicated on-Site water truck for road wetting. The truck will be equipped with a water cannon capable of spraying water directly onto off-road areas including excavations and stockpiles.
- Clearing and grubbing of larger sites will be done in stages to limit the area of exposed, un-vegetated soils vulnerable to dust production.
- Gravel will be used on roadways to provide a clean and dust-free road surface.
- On-Site roads will be limited in total area to minimize the area required for water truck sprinkling.

#### **E.17 OTHER NUISANCES**

A plan for rodent control will be developed and utilized by the contractor for all large excavation work that may be performed.

A plan will be developed and utilized by the contractor for all remedial work to ensure compliance with local noise control ordinances.



APPENDIX F
Health and Safety Plan



# **HEALTH AND SAFETY PLAN Brooklyn Navy Yard Industrial Park**

63 Flushing Avenue Brooklyn, New York 11205 Site No. V00120

## Prepared for:

# BROOKLYN | NAVY | YARD

**Brooklyn Navy Yard Development Corporation** 63 Flushing Avenue, Unit 300 Brooklyn, New York 11205

## Prepared by:



**CORE Environmental Consultants, Inc.** 22-48 119th Street

College Point, New York 11356

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#### **ATTACHMENTS**

Attachment A	Health and Safety Field Meeting Form
Attachment B	NYSDOH Generic Community Air Monitoring Plan
Attachment C	CAMP Monitoring Forms

Attachment D Hospital Route Map/Directions



#### 1.0 INTRODUCTION

The Brooklyn Navy Yard Development Corporation (BNYD) retained CORE Environmental Consultants, Inc. (CORE) to provide environmental consulting services related to the Brooklyn Navy Yard Industrial Park (BNYIP) Site located at 63 Flushing Avenue, Brooklyn, New York. This Site-specific Health and Safety Plan (HASP) establishes health and safety requirements, responsibilities, and procedures to protect workers during implementation of the final remedy at the Site.

#### 1.1 PROJECT DESCRIPTION

The purpose of this HASP is to set forth appropriate health and safety procedures to be followed by CORE personnel and contractors during on-Site remedial activities, including intrusive activities, and soil, groundwater, and sub-slab vapor sampling, if required.

This document will serve not only to explain the chemical and physical hazards associated with working on Site, but will also outline approved measures for dealing with such hazards. The project Health and Safety Officer (HSO) will be responsible for the development and implementation of project Health and Safety protocols. In addition, the contractor(s) will be required to designate a Site HSO for their personnel and to follow, at a minimum, the requirements of this HASP. All personnel who will be involved with sampling on Site must have completed the appropriate Hazardous Waste Operations (HAZWOPER) Site Worker Training - i.e., 24 hour or 40 hour, as required by the Occupational Safety and Health Administration (OSHA) in Title 29 of the Code of Federal Regulations (29 CFR), Part 1910.120(e)(2), 1910.120(e)(3), and 1910.120(e)(8), as applicable, and the required medical surveillance as required by 29 CFR Part 1910.120(f).

The remedy will include:

# Site Walk-throughs

Perform thorough Site-wide walk-throughs to evaluate the presence and condition of the Site-wide cover.

Remedial work may also include:

#### Soil Boring Program

Soil boring programs will involve evaluation of the nature and extent of impacts to soil through the advancement of borings at various locations on Site.

#### **Excavation**

Excavation may be performed during Site redevelopment or Site-wide cover repair. In addition, remediation of polychlorinated biphenyl (PCB)-impacted soil will require excavation.

## Sample Analysis

Soil samples collected to classify impacts in PCB-impacted areas will be analyzed for, at a minimum, Target Compound List (TCL) Aroclors. Samples may also be analyzed for TCL volatile organic compounds (VOCs), TCL semi-volatile organic compounds (SVOCs), TCL pesticides, and Target Analyte List (TAL) metals, depending on the needs of each specific investigation.

## **Community Air Monitoring**

Community air monitoring will be performed in accordance with New York State Department of Health (NYSDOH) guidance to guarantee the safety of both workers and Site occupants during any subsurface intrusive activities such as soil boring installation or excavation. The Site-specific community air monitoring requirements are discussed in Section 7.0.

#### 1.2 SITE DESCRIPTION

The Site is located in Brooklyn, Kings County, New York and is identified as Block 2023, Lot 1 by the New York City Department of Finance. The Voluntary Cleanup Agreement (VCA) parcel is an approximately 150-acre portion of the lot that is bound by the East River to the north, Flushing Avenue to the south, Kent Avenue to the east, and Navy Street and the New York City Department of Environmental Protection (NYCDEP) Red Hook Wastewater Treatment Plant (WWTP) to the west. The Site is zoned M3-1 by the New York City Department of City Planning, indicating that it can be used for light and heavy manufacturing purposes. Site occupants are engaged in commercial and light manufacturing activities.



#### 2.0 KEY PERSONNEL

Personnel responsible for implementation of this Health and Safety Plan are:

Name	Company/Title	Address	Contact Information
Ronald Tramposch	CORE Site HSO	22-48 119th Street College Point, NY 11356	Office: (718) 786-4730 Mobile: (917) 804-8717 Email: RPT@coreenv.com
Shani Leibowitz	BNYDC Sr. Vice President	63 Flushing Avenue Brooklyn, NY 11205	Office: (718) 907-5955 Email: SLeibowitz@bnydc.org

#### SITE HEALTH AND SAFETY OFFICER

The responsibilities of the Site HSO are as follows:

- Implement this HASP on Site;
- Enforce day-to-day health and safety protocols on Site;
- Require that all personnel entering the Site understand the provisions of this HASP;
- Conduct periodic training sessions on use/maintenance of personal protective equipment (PPE) and safety practices;
- Conduct daily health and safety meetings each morning;
- Direct and advise CORE's Site personnel, visitors, and contractor(s) on the specific hazards associated with the Site as well as any changes related to health and safety requirements at the Site;
- Conduct necessary health and safety monitoring;
- Oversee air monitoring program, including monitoring logs;
- Monitor Site conditions and determine if changes in PPE levels are required;
- Execute work stoppages, if required; and
- Report changes in Site conditions and changes in PPE requirements to the Project HSO.

Daily Health and Safety Meeting Forms are included in Attachment A.

## 3.0 MEDICAL SURVEILLANCE REQUIREMENTS

All personnel who engage in waste Site activities for 30 days or more per year will participate in a Medical Surveillance Program. All project personnel involved in on-Site activities in impacted areas will be required to undergo annual medical examinations. This examination must take place not more than one year prior to and one year after the completion of Site work and must be conducted by a physician who is board-certified in occupational medicine. The physician should be familiar with the job-related duties of each worker examined. The physician must certify whether the individual is fit to conduct work on hazardous waste Sites using personal protection, or whether he or she must work within certain restrictions.

Any person exposed to high levels of hazardous substances will be required to undergo a repeat medical exam at, or before, the conclusion of the project to determine possible health impacts. Any person suffering a lost-time injury or illness must receive medical approval prior to returning to work. When employment is terminated for any reason, the employee must receive an exit medical examination.

All medical records will be held by the employer for the period of employment plus at least 30 years, in accordance with OSHA regulations on confidentiality and any other applicable regulations and will be made available to OSHA upon request. The components of Medical Surveillance include:

- Medical and occupational history;
- Physical examination, with particular attention to the cardiopulmonary system, general physical fitness, skin, blood-forming, hepatic, renal, and nervous systems;
- Blood and urine analyses;
- Pulmonary function testing; and
- Additional tests as appropriate, such as x-ray, stress tests, etc.

#### 4.0 SITE HAZARD/RISK ANALYSIS

Physical hazards include the dangers of tripping and falling on uneven ground, operation of heavy equipment such as drill rigs, vehicular traffic, and utilities either above-ground or buried. The following are physical hazards which may be encountered during remedial activities

#### 4.1 HAZARD ANALYSIS

PPE is the initial level of protection based on the activity hazards and Site conditions which have been identified. Upgrades to respiratory protection may be required based on the action levels discussed in Section 7.0. General on-Site provisions will include: extra nitrile, leather, and/or Kevlar gloves, extra protective coveralls, drinking water and electrolyte fluids, reflective vest, first aid kit, fire extinguisher, hearing protection, and washing facilities.

If Site conditions suggest the existence of a situation more hazardous than anticipated, the Site personnel will evacuate the immediate area. The hazard, level of precautions, and PPE will then be reevaluated.

#### 4.2 HANDLING DRUMS AND CONTAINERS

Regulations for handling drums and containers are specified by OSHA in 29 CFR 1910.120(j). Potential hazards associated with handling drums include vapor generation, fire, explosions, and possible physical injury. Handling of drums/containers during remedial activities may be necessary. If drum/container handling is necessary, it will be performed in accordance with applicable regulations.

#### 4.3 ELECTRICAL HAZARDS

#### 4.3.1 Utilities

The Site may have shallow, buried utilities and also overhead utilities in certain areas. It will be necessary for parties disturbing the existing ground surface and conducting operations with heavy equipment having high clearances to exercise caution in performing project-related work with respect to the presence of utilities. Utility companies with active, buried lines in the Site area will be asked by the contractor performing intrusive activities to mark their facilities. Employees will use these data to choose work locations.

#### 4.3.2 Underground Utilities

No excavating, drilling, boring, or other intrusive activities will be performed until an underground utility survey, conducted by knowledgeable persons or agencies, has been made. This survey will identify underground and in-workplace utilities such as the following:

- Electrical lines and appliances;
- Telephone lines;



- Cable television lines;
- Gas lines;
- Pipelines;
- Steam lines;
- Water lines;
- Sewer lines; and/or
- Pressurized air lines.

The location of utilities will be discussed with CORE personnel and contractors during a Site safety briefing. Utilities identified during survey should be marked or access otherwise restricted to avoid chance of accidental contact.

Even when a utility search has been completed, drilling, boring, and excavation should commence with caution until advanced beyond the depth at which such utilities are usually located. Utilities will be considered "live" or active until reliable sources demonstrate otherwise. Geophysical surveys, including ground penetrating radar (GPR) and electromagnetic (EM) survey, if necessary, will be completed in the area of all indoor boring locations to further refine the presence and locations of potential subsurface utilities.

## 4.3.3 Overhead Utilities

CORE does not anticipate performing work in the area of overhead utilities; however, if present, clearances will be adequate for the safe movement of vehicles and for the operation of construction equipment.

Overhead or above-ground electric lines should be considered active until a reliable source has documented them to be otherwise. Elevated work platforms, ladders, scaffolding, man-lifts, and drill or vehicle superstructures will be erected a minimum of 20 feet (the actual distance is dependent upon the voltage of the line) from overhead electrical lines until the line is de-energized, grounded, or shielded so arcing cannot occur between the work location or superstructure.

#### 4.4 PHYSICAL HAZARDS

Drilling and excavation programs pose the greatest potential threat to the safety of Site personnel. The following sections describe specific safety measures to be implemented during specific activities.

#### 4.4.1 Heat Stress

Employees may be exposed to the hazards associated with heat stress when ambient temperatures exceed 70 degrees Fahrenheit (°F). Employees should increase water intake while working in conditions of high heat. Enough water should be available so that each employee can consume one quart of water per hour. In addition, they should increase number of rest breaks and/or rotate employees in shorter work shifts. Employees should rest in cool, dry, shaded areas for at least five minutes. Employees should not wait until they feel sick to cool down. Watch for signs and symptoms of heat exhaustion and fatigue. In the event of heat stroke, bring the victim to a cool environment, call for help, and initiate first aid procedures.

The following prevention, recognition, and treatment strategies will be implemented to protect personnel from heat stress. Personnel will be trained to recognize the symptoms of heat stress, and to apply the appropriate treatment.

#### Prevention

- Provide plenty of liquids. A 50 percent solution of fruit punch (or similar) in water, or plain water to be taken with salted foods such as pretzels will be available in the support zone.
- Buddy system. No individual will attempt to undertake any activity alone.
- Provide cooling devices. A spray hose and a source of water will be provided to reduce body temperature, cool protective clothing, and/or act as a quick-drench shower in case of an exposure incident.
- Adjustment of the work schedule. As is practicable, the most labor intensive tasks should be carried out during the coolest part of the day.

## Recognition and Treatment

Any person who observes any of the following forms of heat stress, either in himself or in another worker, will report this information to the Site HSO as soon as possible.

1. Heat Rash (or prickly heat)

Cause: Continuous exposure to hot and humid air, aggravated by chafing

clothing.

Symptoms: Eruption of red pimples around sweat ducts accompanied by intense

itching and tingling.

*Treatment:* Remove source of irritation and cool skin with water or wet clothes.

2. Heat Cramps (or heat prostration)

Cause: Profuse perspiration accompanied by inadequate replenishment of

body water and electrolytes.



Symptoms: Sudden development of pain and/or muscle spasms in the abdominal

region.

Treatment: Remove the worker to the contamination reduction zone. Provide

fluids orally. Remove protective clothing. Decrease body temperatures and allow a period of rest in cool location.

3. Heat Exhaustion

Cause: Overexertion in a hot environment and profuse perspiration

accompanied by inadequate replenishment of body water and

electrolytes.

Symptoms: Muscular weakness, staggering gait, nausea, dizziness, shallow

breathing, pale and clammy skin, approximately normal body

temperature.

*Treatment:* Perform the following while simultaneously making arrangements for

transport to a medical facility: Remove the worker to the

contamination reduction zone. Remove protective clothing. Lie the worker down on his or her back, in a cool place, and raise the feet 6 to 12 inches. Keep warm, but loosen all clothing. If conscious, provide sips of a salt water solution, using one teaspoon of salt in 12 ounces

of water. Transport the worker to a medical facility.

4. Heat Stroke

Cause: Same as heat exhaustion.

Symptoms: Dry and hot skin, dry mouth, dizziness, nausea, headache, rapid

pulse.

Treatment: Cool worker immediately by immersing or spraying with cool water or

sponge bare skin after removing protective clothing. Transport to

hospital.

#### 4.4.2 Cold Stress

Exposure to cold weather, wet conditions and extreme wind-chill factors may result in excessive loss of body heat (hypothermia) and/or frost bite. To guard against cold exposure and to prevent cold injuries, appropriate warm clothing should be worn, warm shelter must be readily available, rest periods should be adjusted as needed, and the physical conditions of on Site field personnel should be closely monitored. Personnel and supervisors working on Site will be made aware of the signs and symptoms of frost bite and hypothermia such as shivering, reduced blood pressure, reduced coordination, drowsiness, impaired judgment, fatigue, pupils dilated but reactive to light,

and numbing of the toes and fingers. The potential for wetting of protective clothing should be of concern, since wet clothing (from sweat or splashes) will provide poor insulation against the cold.

#### 4.4.3 Noise

Noise is a potential hazard associated with the operation of heavy equipment, power tools, pumps, and generators. Employees who will perform suspected or established high noise tasks and operations for short durations (less than 1 hour) will wear hearing protection. If deemed necessary by the HSO, additional hearing protection may be added and the need to monitor sound levels for Site activities will be determined. Other employees who do not need to be in proximity should distance themselves from the equipment generating the noise.

#### 4.4.4 Hand and Power Tools

In order to complete the various tasks for the project, personnel may use hand and power tools. The use of hand and power tools can present a variety of hazards, including physical harm from being struck by flying objects, being cut or struck by the tool, fire, and electrocution. Work gloves, safety glasses, and hard hats will be worn by the operating personnel when using hand and power tools.

# 4.4.5 Slips, Trips, and Falls

Working in and around the Site may pose slip, trip, and fall hazards due to slippery and uneven surfaces. Personnel will wear proper foot gear and will employ good work practice and housekeeping procedures to minimize the potential for slips, trips, and falls.

#### 4.4.6 Manual Lifting

Manual lifting of objects and equipment may be required. Failure to follow proper lifting technique can result in back injuries and strains. Employees should use a buddy system and/or power equipment to lift heavy loads whenever possible and should evaluate loads before trying to lift them. Carrying heavy loads with a buddy and proper lifting techniques include: 1) make sure footing is solid; 2) make back straight with no curving or slouching; 3) center body over feet; 4) grasp the object firmly and as close to your body as possible; 5) lift with legs; and 6) turn with your feet, don't twist.

#### 4.4.7 Overhead Dangers

Overhead dangers, including but not limited to falling debris and equipment, can occur while operating drill rigs and excavation equipment. CORE personnel will maintain a minimum distance from large overhead operations and proper communication with heavy equipment operators and their handlers, should work necessitate their presence beyond the minimum safety distance. Proper PPE will be worn during these types of activities including steel-toed/shank boots, safety vests, and hard hats.

#### 4.4.8 Cuts and Lacerations

Field activities that involve drilling and sampling activities usually involve contact with various types of machinery. At least one person on Site must be currently certified in first aid and cardiopulmonary resuscitation (CPR) techniques. Personnel trained and certified in first aid should be prepared to take care of cuts and bruises as well as other minor injuries. CORE will have a first aid kit approved by the American Red Cross available during all field activities.

#### 4.4.9 Traffic Hazards

All traffic, vehicular and pedestrian, shall be maintained and protected at all times consistent with local, state, and federal, and agency regulations regarding such traffic and in accordance with direction of the Owners. Traffic hazards will be limited as the remediation project is to be completed primarily on private land and not in public right of way areas.

#### 4.5 CHEMICAL HAZARDS

Chemicals that may potentially be encountered at the Site include SVOCs, primarily polycyclic aromatic hydrocarbons (PAHs), polychlorinated biphenyls (PCBs) and metals. The health/safety characteristics and exposure limits of these compounds are listed in Table 1. The risk of exposure can be by dermal, ingestion, or respiratory routes, depending on the type of compound and intrusive activity being performed.

If during subsurface intrusive activities, the potential for workers to be exposed to particulates and compounds, such as dusts, SVOCs, PCBs, and metals, in soil through inhalation/ingestion/dermal contact routes, workers may need to apply water or an amended water solution to the area to help control the generation of airborne dusts, and particulates. Workers may also use respiratory protection including the use of an air-purifying respirator equipped with approved filter/cartridges. An analysis of the work tasks and potential for chemical exposure should be performed to determine the correct PPE, and/or respirator cartridge(s), if needed. The analysis should include a chemical waste profile to help ensure that PPE specified will be appropriate for the respective chemical hazard(s).

#### 4.6 BIOLOGICAL HAZARDS

There are no anticipated biological hazards associated with the Site.

#### 5.0 SITE CONTROL

In order to keep unauthorized personnel from entering the work areas subsurface intrusive activities without proper protective equipment, and for good control of overall Site safety, two work zones will be established. The two work zones are the support zone and the contamination reduction zone/exclusion zone. Actual zone width will be determined by optimal size of work area and by obstructions, if any. A brief description of the Site work zones follows.

#### 5.1 SUPPORT ZONE

The support zone at the Site will be a mobile unit (automobile) including a cellular telephone for communication. The support zone will be located as near as practicable to the active work areas and decontamination areas.

#### 5.2 CONTAMINATION REDUCTION ZONE/EXCLUSION ZONE

The contamination reduction zone and exclusion zone will be incorporated into one zone at each project-specific location. This zone will be mobile and the location will be dependent upon where active work is being performed. The decontamination of personnel, light equipment, and heavy equipment will be performed prior to leaving the contamination reduction zone.

A temporary storage location will be established at the Site for any stockpiles generated during excavation or construction activities. The location will be situated away from vehicular and pedestrian traffic, and will be secured via fencing or other apparatus.

#### 5.3 SITE VISITATION

It is possible that the Owners or officials from regulating bodies and jurisdiction will visit the Site during operations. It is also possible that an OSHA representative will wish to inspect the Site. All such officials must meet the requirements of occasional Site workers (24 hour OSHA-approved training and Site-specific training) before going into any active contamination reduction zone/exclusion zone. Visitors other than the Owners, NYCDEC, or OSHA representatives will be subject to the additional requirements of having to receive written permission from the Owners to conduct a Site visit. Because of the nature of the work, the work zone will be continually supervised. Signs will be used to prevent the entrance of unauthorized visitors.

All visitors must supply their own PPE and will be directed to appropriate disposal areas for soil or used PPE.

#### 6.0 PERSONAL PROTECTIVE EQUIPMENT

Since personnel working on Site may be exposed to unexpected levels of hazardous airborne chemicals or compounds released during subsurface intrusive activities, or may come in contact with SVOCs, PCBs, and/or metals in soil, various levels of protection will be utilized during field activities. Components of all levels of personal protection that will be available are listed in Table 2. Planned levels of protection for various activities are given in Table 3.

In the event that unexpected levels of organic vapors are encountered, any personnel working at Level D protection will don their respirators at once (upgrade to Level C). The Site HSO will consult with the Project HSO to decide if and when Level D protection may be resumed, or if a higher level of PPE is required. Some modification in safety equipment (e.g., switching from polycoated disposable coveralls to standard disposable coveralls) may be implemented in order to balance concerns for full contaminant protection against concerns for the possibility of heat stress resulting from the need to wear more restrictive PPE. Such modifications may be implemented only if approved in advance by the Site HSO, following consultation with the Project HSO. PPE which fully complies with the requirements of all required levels of protection should be immediately available at all times on the Site.

Level C respiratory protection will be provided using The National Institute for Occupational Safety and Health (NIOSH) -approved half-face respirators, with appropriate NIOSH approved cartridge for removal of organic vapors. All team members will be fit-tested for respirators using irritant smoke. Due to difficulties in achieving a proper seal between face and mask, persons with facial hair will not be allowed to work in areas requiring respiratory protection.

For the fullest protection of on-Site personnel, the supervising field engineer/geologist will conduct organic vapor monitoring at closely spaced intervals during subsurface intrusive activities. Monitoring will be accomplished by real-time monitoring equipment, such as a photoionization detector (PID).

The primary purpose of this monitoring will be to assess the adequacy of respiratory protection and to make it possible to stop work quickly if explosive or hazardous gases are encountered, or if an oxygen-deficient atmosphere is detected. The air monitoring to be carried out during all intrusive activities is summarized below.

Site personnel timesheets with employee and Project Manager signatures will serve to document the amount of time spent on Site by each team member.

#### 7.0 COMMUNITY AIR MONITORING PLAN

Air monitoring will be performed throughout subsurface intrusive activities by trained CORE personnel. Air will be monitored for particulates. Monitoring is restricted to particulates as volatile organic compounds (VOCs) were not identified as constituents of potential concern (COPCs) during previous Site investigations. If VOCs are encountered during excavation activities, monitoring for volatiles utilizing a photoionization detector (PID) should be reevaluated and this Community Air Monitoring Plan (CAMP) updated accordingly. All air monitoring results and meteorological data (e.g., temperature range, wind speed, wind direction, etc.), if applicable, will be recorded on monitoring logs. Air quality monitoring will not be performed during precipitation events.

Community air monitoring will be performed in accordance with NYSDOH guidance to guarantee the safety of both workers and Site occupants. The NYSDOH Generic CAMP is included as Attachment B. Attachment B also includes the New York State Department of Environmental Conservation (NYSDEC) Technical and Administrative Guidance Memorandum (TAGM) #4031 for Fugitive Dust Suppression and Particulate Monitoring at Inactive Hazardous Waste Sites.

The purpose of the CAMP is to protect air quality outside of the project area from any dust or particulates generated during subsurface intrusive activities. This CAMP is applicable during the following activities:

- Drilling activities
- Test pit excavation and/or excavation for Site redevelopment

#### 7.1 METEOROLOGICAL MONITORING

Wind is the primary mechanism for dust and particulate transport outside of the project area. Primary wind direction will be determined prior to the start of each workday, and may be reestablished at any time if a change in wind direction is observed.

#### 7.2 TOTAL VOLATILES

During intrusive activities air monitoring for VOCs will be performed within the work/breathing zone utilizing a PID equipped with a 10.2 eV lamp. When readings up to 1 part per million (ppm) above background in the breathing zone are observed, work activity will continue. Monitoring will be continuous, and recorded at 15-minute intervals.

Levels less than 1 ppm of total volatiles are permissible. If the concentrations of VOCs in ambient air in the work zone area exceed 1 ppm for the 15-minute average, work activity must be temporarily halted. Air monitoring is to remain continuous while work is halted. If vapor levels decrease below 1 ppm, work can resume with continued monitoring. If vapor levels between 1 and 25 ppm are detected, work must be halted, the vapor source identified, abatement actions taken,

and air monitoring continued. If sustained readings from 1 to 25 ppm above background in the breathing zone are observed, work will only be allowed to continue after an upgrade to Level C PPE. Intrusive activities will be shut down if vapor in the work area exceed 25 ppm.

#### 7.3 PARTICULATE MONITORING

For intrusive activities, particulate concentrations will be monitored continuously at the upwind and downwind perimeter boundaries of the work zone. Tri-pod mounted real-time monitoring equipment capable of detecting particulate matter less than 10 micrometers (PM-10) in size will be utilized. Monitoring will be continuous and recorded every minute with 15-minute running averages. Potential fugitive dust migration off Site should also be visually assessed during intrusive activities.

- If the downwind PM-10 level is 100 micrograms per cubic meter (µg/m³) greater than upwind/background concentrations over any 15-minute average period, dust suppression procedures will occur.
- If downwind PM-10 concentrations reach levels of 150 μg/m³ (or more) greater than upwind/background concentrations, work must be halted while additional dust suppression measures are implemented.

#### 7.4 AIR MONITORING EQUIPMENT CALIBRATION

The particulate monitor will be calibrated to  $0 \mu g/m^3$  daily (prior to field activities) and the results will be recorded. Intrusive activities will not begin until all instruments are calibrated and ambient air conditions are recorded. The particulate monitor will be recalibrated throughout the day as necessary.

CAMP monitoring forms are included as Attachment C.

#### 7.5 WORK STOPPAGE RESPONSES

The following responses will be initiated whenever one or more of the action levels necessitating a work stoppage is exceeded:

- The Site HSO will be consulted immediately;
- All personnel will be cleared from the work area until appropriate mitigation techniques have been implemented;
- Monitoring will be continued until the end of the work day; and
- NYSDEC and NYSDOH will be notified as soon as possible.

Any chemical release to air, water, or soil must be reported to the Site HSO at once. Any exposure resulting from protective equipment failure must be immediately reported to the Site HSO and to the Project HSO in writing within 24 hours.

#### 8.0 DECONTAMINATION PROCEDURES

#### 8.1 DECONTAMINATION OF PERSONNEL

Decontamination of personnel will be performed at each contamination reduction zone/exclusion zone. This can be accomplished by washing and rinsing the outer gloves and outer boots over the decontamination trough. Disposable clothing can then be removed and discarded into a 30-gallon trash can with a vinyl liner. If personnel are in Level C protection, the above procedures will be followed and the respirator will be removed, sanitized, and placed in a plastic bag.

#### 8.2 DECONTAMINATION OF EQUIPMENT

#### Heavy Equipment

Decontamination of heavy equipment (such as excavators) will be accomplished by steam cleaning on a decontamination pad constructed of wood and covered with water retaining polyethylene sheeting with a minimum thickness of 6 mil. Washing of heavy equipment will be completed with attention to minimize any overspray of water, debris and/or soil. All wash water and debris will be collected and containerized in Department of Transportation (DOT)-approved 55-gallon drums for later off-Site disposal. The polyethylene sheeting will be examined frequently for any tears or punctures that may cause a leak. The sheeting will be discarded in a municipal trash dumpster.

# Mid-Weight Equipment

Decontamination of mid-weight equipment (such as shovels, augers, etc.) will be accomplished by scrubbing the equipment with a heavy duty bristle brush in a 5-gallon bucket containing water and Alconox® detergent. After washing and scrubbing, the equipment will be rinsed by placing it in a separate bucket of water to remove soap and debris. The wash and rinse water will be containerized in DOT-approved 55-gallon drums for later off-Site disposal.

#### Light Equipment

Decontamination of light equipment (such as tools, containers, monitoring instruments, radios, clipboards, etc.) will be accomplished by wiping equipment off with clean, damp cloths. The cloths can be discarded in the trash can with disposable clothing.

#### 9.0 EMERGENCY PROCEDURES

The most likely incidents for which emergency measures might be required are:

- A sudden release of hazardous gases/vapors during drilling or excavating;
- An explosion or fire occurring during drilling or excavating; and/or
- A heavy equipment-related accident, or other accident resulting in personal injury.

Emergency procedures established to respond to these incidents are covered under the sections that follow.

#### 9.1 COMMUNICATIONS

A portable telephone will be maintained by the Site HSO during the entire project. The phone will be frequently checked to ensure an appropriate signal is available for the phone to work properly.

#### 9.2 FIRE/EXPLOSION

It will be the responsibility of the contractors to have a fire extinguisher available at the drill rig and/or excavation locations. The operator will have further responsibility of taking fire prevention measures such as the continuous removal from the rig of accumulated oil, grease, or other combustible materials.

In the event of a fire that cannot be controlled with available equipment, or in the event of an explosion, the local fire department will be summoned immediately by the Site HSO, who shall apprise them of the situation upon their arrival. The Owners/occupants will also be notified.

#### 9.3 FIRST AID

First aid for personal injuries will be administered by the Site HSO. All accidents, however insignificant, will be reported to the Site HSO. Personnel designated to administer first aid will have received a minimum of eight hours training in first aid and CPR, and be certified by the American Red Cross. If a Site worker should require further treatment, he/she will be transported to the hospital. The on-Site vehicle will carry a copy of the HASP which includes written directions to the hospital, as well as a map showing the route.

The following sections are intended as a "quick guide" to basic first aid only. Effective CPR and first aid require hands-on training that is best accomplished by attending a class in person.

One common formula for performing first aid:

Do a primary scene and patient survey, followed by checking airway, breathing, and circulation (ABCs).

Survey the scene and approach the victim. Determine whether the scene is safe. Look for dangers, such as downed power lines, traffic, unstable vehicles, or accidents. Determine what may have happened, how many victims are involved, and if any bystanders can help. If several persons appear to be injured, perform triage.

Survey the patient and perform an initial assessment. Get consent from a conscious victim (parent/guardian if the victim is a minor) before providing care. If the victim is unconscious, consent is implied. Use infection control precautions and check for signs and symptoms of any life-threatening conditions and care for them. To perform an initial assessment:

- Check the victim for consciousness and obtain consent if the victim is conscious;
- Check the ABCs (airway, breathing and circulation); and
- Check for severe bleeding.

Provide brief care for the conditions. If the patient lacks air or circulation, they may begin to suffer brain damage after approximately four minutes. After ten minutes, they most likely will have some permanent brain damage. To care for breathing and circulation means first clearing the airway, and briefly attempting to restart their breathing or circulation with rescue breathing or CPR (and use of a portable defibrillator, where available). This step is crucial, because an unconscious person's airway can be blocked by a normal, comfortable-looking head position (e.g., on their back with a pillowed head). Often, simply tilting the head back will open the airway and restart their breathing. Likewise, many people recovering from a blocked airway vomit, and if they are unconscious, they can drown in the vomit. The standard prevention for both these issues is to turn a breathing, unconscious patient on their side, turning their head and spine in the same movement to avoid spinal injury, pillowing their head on one of their arms. Do not move casualties unless it is necessary to remove them from danger, or to make treatment possible (such as onto a hard surface for CPR).

#### 1. Call for emergency services

Calling for emergency medical services must take priority over extended care such as long term rescue breathing or extended CPR, since these techniques are intended to gain time for emergency services to arrive as part of the chain of survival. However, if bystanders are available, both can be pursued at the same time. If you ask others to call an ambulance for you, make sure they report back to you once released by the emergency operator to confirm that the call has been made.

2. Do a secondary patient survey, and provide appropriate emergency first aid

The secondary survey is to gather information about conditions or injuries that may not be life threatening, but may become so if not cared for. Perform a secondary survey only if you are sure that the victim has no life-threatening conditions. A properly trained and certified person performs three stages in the secondary survey:

- 1. Interview the victim and include bystanders to supplement info from the patient:
  - Signs and Symptoms Visible indications of injury and patient reported sensations (e.g. pain)
  - Allergies especially those relevant to injury (i.e. allergy to latex, penicillin, etc.)
  - Medications what current or recent medications the patient is taking
  - Past Medical History any related history, or medical conditions that could complicate treatment (e.g. heart condition)
  - Last meal last food and/or drink
  - Events confirm how injury most likely occurred

#### 2. Vitals

- LOC Level of Consciousness description (e.g. alert, aware, disoriented, confused, unresponsive) or AVPU (Alert, Voice, Pain, Unresponsive)
- Breathing Rate Number of breaths per minute. Calculate by counting breaths for ten seconds and multiplying by six, or 15 seconds and multiplying by four.
- Pulse Rate Number of heart beats per minute. Calculate by counting pulse for ten seconds and multiplying by six, or 15 seconds and multiplying by four. Pulse for an unconscious person is taken on the neck (carotid pulse) and on the wrist (radial pulse) for a conscious person.
- Skin Condition Pale vs. normal, cool/cold vs. hot, clammy/sweaty vs. dry

#### 3. Head-to-toe examination

- Perform a head-to-toe examination
- Look for medical alert bracelets or medallions.
- Compare one side of the patient against the other
- Look for pain or deformity



## 9.4 EMERGENCY ASSISTANCE

The following table list telephone numbers of police, fire, hospital, and other agencies whose services might be required, or from whom information might be needed. A hospital route map and directions to The Brooklyn Hospital Center, is included in Attachment D.

Name	Contact Numbers
The Brooklyn Hospital Center 121 DeKalb Avenue Brooklyn, New York 11201	Main Number: (718) 250-8000
NYCDEP	311
Fire Department	911
Police Department	911
Poison Information Center	1-800-222-1222
NYSDEC Emergency Hotline	1-800-457-7362
BNYDC	(718) 852-1441

#### 10.0 SAFETY CONCERNS AND CONTINGENCY MEASURES

Normally, it is subsurface intrusive activities that pose the greatest potential threat to the safety of Site personnel. Subsurface intrusive activities at the Site will be conducted under the OSHA Safety and Health Standards (29 CFR Part 1926/191) relative to heavy equipment operation. The following sections describe specific safety measures to be implemented during specific activities.

#### 10.1 BUDDY SYSTEM

The buddy system is an arrangement in which persons are paired, as for mutual safety or assistance. All field work will be completed by at least a two person team.

#### 10.2 EXCAVATION

An active excavation exclusion sub-zone is established by opening the ground surface. A personal air monitor will be used to monitor in real time in this zone. Action levels will be considered to have been reached when a continuous, steady reading has been observed.

If at any time during subsurface intrusive activities, underground storage tanks (USTs), metal, or concrete are penetrated, excavation activities will cease immediately. After obtaining instrument readings, the project geologist/Site HSO will decide whether to continue or discontinue excavation.

#### 10.3 DECONTAMINATION WATER

Investigation-derived waste (IDW) will be containerized in DOT-approved 55-gallon steel drums. All containers will be labeled with the contents and date, and will be stored at an on-Site staging area for later off-Site transport and disposal.

A waste management firm capable of handling both hazardous and nonhazardous wastes, such as National Response Corporation (NRC) of Great River, New York, will be employed to perform waste analysis and profiling, transport, and disposal for all IDW.

**TABLES** 

TABLE 1
HAZARD CHARACTERISTICS OF SUSPECTED CONTAMINANTS

Substance	Incompatibles/Reactive	Exposure Routes/Target Organs	Standards
Polycyclic aromatic hydrocarbons (PAHs)	Strong oxidizers	Inhalation, ingestion, skin and/or eye contact Respiratory system, skin bladder; lung, kidney, and skin cancers	NIOSH REL: TWA 0.1 mg/m <sup>3</sup> OSHA PEL: 0.2 mg/m <sup>3</sup> TWA
Polychlorinated biphenyls (PCBs)	Strong oxidizers	Inhalation, ingestion, skin and/or eye contact Eyes, skin, liver, reproductive system	NIOSH REL: TWA 0.001 mg/m <sup>3</sup> OSHA PEL: 0.05 mg/m <sup>3</sup> TWA (skin)
Arsenic	Strong oxidizers, bromine azide, hydrogen gas	Inhalation, skin absorption, ingestion, skin and/or eye contact Liver, kidneys, skin, lungs, lymphatic system; lung and lymphatic cancers	NIOSH: 15-min 0.002 mg/m³ OSHA PEL: 0.010 mg/m³ TWA
Copper	Oxidizers, alkalis, sodium azide, acetylene	Inhalation, ingestion, skin and/or eye contact Eyes, skin, respiratory system, liver, kidneys	NIOSH REL: TWA 1 mg/m³ OSHA PEL: 1 mg/m³ TWA

NIOSH = National Institute for Occupational Safety and Health

OSHA = Occupational Safety and Health Administration

REL = NIOSH recommended exposure limits, up to 10 hour work day exposure limit, 40 hours/week.

PEL = OSHA permissible exposure limit, 8 hour exposure limit, 40 hours/week, 29 CFR 1910.1000.

REL, PEL in  $mg/m^3$  = (PEL in ppm x molecular weight) / 24.45.



# TABLE 2 COMPONENTS OF PERSONAL PROTECTION LEVELS

Level D Protection	Level C Protection
Safety glasses with side shields (or goggles)	Hard Hat
Hard Hat	Ploy-coated disposable (or standard disposable) overalls
Face Shield (optional)	Inner gloves of tight-fitting latex or vinyl
Ordinary coveralls	Outer gloves of neoprene or nitrile
Ordinary work gloves	Steel-toe, steel-shank work shoes or boots (chemical resistant)
Steel-toe, steel-shank works shoes or boots (chemical resistant)	Outer boots of neoprene or butyl rubber
Ordinary work gloves	Disposable outer "booties" (optional work shoes or boots)
	Full-face air-purifying respirator (to be worn)**
	Taping of gloves and boots to disposable coveralls

\*\* Respirator to be fitted with NIOSH/MSHA - approved high-efficiency filter (HEPA) combination respirator cartridges approved for organic vapors, particulates, gases, and fumes. Half-face respirator, face shield, and safety glasses with side shields (or goggles) may be substituted with approval of the Site HSO.



TABLE 3
ANTICIPATED LEVELS OF PERSONAL PROTECTION FOR PLANNED ACTIVITIES

Task	PPE Level	Site-Specific Requirements	Respirator		
Mobilization/Demobilization					
Reconnaissance	D	Safety glasses, steel toe/shank safety boot, reflective vest, leather work gloves, hearing protection as needed	D - None		
Mobilization/Demobilization of Equipment and Supplies	D	Hard hat, safety glasses, steel toe/shank safety boot, reflective vest, leather work gloves, hearing protection as needed	D – None		
Establishment of Site Security, Work Zones, and Staging Area	D	Hard hat, safety glasses, steel toe/shank safety boot, reflective vest, leather work gloves, hearing protection as needed	D - None		
Groundwater/Soil Sampling					
Soil Borings, Excavation, Digging Test Pits, Backfilling, Grading Observation, Sampling	D	Hard hat, safety glasses, steel toe/shank safety boot with overboot as needed, reflective vest, leather work gloves as needed, nitrile gloves, hearing protection as needed, Tyvek as needed	Level D – None Level C – If action levels exceeded		



TABLE 4
ACTION LEVELS DURING INTRUSIVE ACTIVITIES

Particulates (µg/m³)	Responses
100 μg/m³ or more above Background (15 minute average)	Implement dust suppression measures  Continued monitoring every 15 minutes
150 μg/m <sup>3</sup> Sustained reading	If action level of 150 μg/m³ is continuously exceeded, work stoppage to implement additional dust suppression measures  Continued monitoring every 15 minutes



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ATTACHMENT A
Health and Safety Field Meeting Forms
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# **HEALTH AND SAFETY FIELD MEETING FORM**

Date:	Ti	me:
Project Name:		
Meeting Conducted by:		
Topics Discussed: Physical Hazards:		
Chemical Hazards:		
Decontamination:		
Special Site Considerations:		
Emergency Information:		
	<u>Attendees</u>	
Name (printed)	Company	Signature
Meeting Conducted by:	Signature	



# HEALTH AND SAFETY FIELD MEETING FORM (cont.)

# **Attendees**

Name (printed)	Company	Signature

Meeting Conducted by:		
,	Signature	

ATTACUMENT D
ATTACHMENT B NYSDOH Generic Community Air Monitoring Plan

# Appendix 1A New York State Department of Health Generic Community Air Monitoring Plan

# Overview

A Community Air Monitoring Plan (CAMP) requires real-time monitoring for volatile organic compounds (VOCs) and particulates (i.e., dust) at the downwind perimeter of each designated work area when certain activities are in progress at contaminated sites. The CAMP is not intended for use in establishing action levels for worker respiratory protection. Rather, its intent is to provide a measure of protection for the downwind community (i.e., off-site receptors including residences and businesses and on-site workers not directly involved with the subject work activities) from potential airborne contaminant releases as a direct result of investigative and remedial work activities. The action levels specified herein require increased monitoring, corrective actions to abate emissions, and/or work shutdown. Additionally, the CAMP helps to confirm that work activities did not spread contamination off-site through the air.

The generic CAMP presented below will be sufficient to cover many, if not most, sites. Specific requirements should be reviewed for each situation in consultation with NYSDOH to ensure proper applicability. In some cases, a separate site-specific CAMP or supplement may be required. Depending upon the nature of contamination, chemical- specific monitoring with appropriately-sensitive methods may be required. Depending upon the proximity of potentially exposed individuals, more stringent monitoring or response levels than those presented below may be required. Special requirements will be necessary for work within 20 feet of potentially exposed individuals or structures and for indoor work with co-located residences or facilities. These requirements should be determined in consultation with NYSDOH.

Reliance on the CAMP should not preclude simple, common-sense measures to keep VOCs, dust, and odors at a minimum around the work areas

# Community Air Monitoring Plan

Depending upon the nature of known or potential contaminants at each site, real-time air monitoring for VOCs and/or particulate levels at the perimeter of the exclusion zone or work area will be necessary. Most sites will involve VOC and particulate monitoring; sites known to be contaminated with heavy metals alone may only require particulate monitoring. If radiological contamination is a concern, additional monitoring requirements may be necessary per consultation with appropriate DEC/NYSDOH staff.

**Continuous monitoring** will be required for all <u>ground intrusive</u> activities and during the demolition of contaminated or potentially contaminated structures. Ground intrusive activities include, but are not limited to, soil/waste excavation and handling, test pitting or trenching, and the installation of soil borings or monitoring wells.

**Periodic monitoring** for VOCs will be required during <u>non-intrusive</u> activities such as the collection of soil and sediment samples or the collection of groundwater samples from existing monitoring wells. "Periodic" monitoring during sample collection might reasonably consist of taking a reading upon arrival at a sample location, monitoring while opening a well cap or

overturning soil, monitoring during well baling/purging, and taking a reading prior to leaving a sample location. In some instances, depending upon the proximity of potentially exposed individuals, continuous monitoring may be required during sampling activities. Examples of such situations include groundwater sampling at wells on the curb of a busy urban street, in the midst of a public park, or adjacent to a school or residence.

# VOC Monitoring, Response Levels, and Actions

Volatile organic compounds (VOCs) must be monitored at the downwind perimeter of the immediate work area (i.e., the exclusion zone) on a continuous basis or as otherwise specified. Upwind concentrations should be measured at the start of each workday and periodically thereafter to establish background conditions, particularly if wind direction changes. The monitoring work should be performed using equipment appropriate to measure the types of contaminants known or suspected to be present. The equipment should be calibrated at least daily for the contaminant(s) of concern or for an appropriate surrogate. The equipment should be capable of calculating 15-minute running average concentrations, which will be compared to the levels specified below.

- 1. If the ambient air concentration of total organic vapors at the downwind perimeter of the work area or exclusion zone exceeds 5 parts per million (ppm) above background for the 15-minute average, work activities must be temporarily halted and monitoring continued. If the total organic vapor level readily decreases (per instantaneous readings) below 5 ppm over background, work activities can resume with continued monitoring.
- 2. If total organic vapor levels at the downwind perimeter of the work area or exclusion zone persist at levels in excess of 5 ppm over background but less than 25 ppm, work activities must be halted, the source of vapors identified, corrective actions taken to abate emissions, and monitoring continued. After these steps, work activities can resume provided that the total organic vapor level 200 feet downwind of the exclusion zone or half the distance to the nearest potential receptor or residential/commercial structure, whichever is less but in no case less than 20 feet, is below 5 ppm over background for the 15-minute average.
- 3. If the organic vapor level is above 25 ppm at the perimeter of the work area, activities must be shutdown.
- 4. All 15-minute readings must be recorded and be available for State (DEC and NYSDOH) personnel to review. Instantaneous readings, if any, used for decision purposes should also be recorded.

# Particulate Monitoring, Response Levels, and Actions

Particulate concentrations should be monitored continuously at the upwind and downwind perimeters of the exclusion zone at temporary particulate monitoring stations. The particulate monitoring should be performed using real-time monitoring equipment capable of measuring particulate matter less than 10 micrometers in size (PM-10) and capable of integrating over a period of 15 minutes (or less) for comparison to the airborne particulate action level. The equipment must be equipped with an audible alarm to indicate exceedance of the action level. In addition, fugitive dust migration should be visually assessed during all work activities.

- 1. If the downwind PM-10 particulate level is 100 micrograms per cubic meter (mcg/m³) greater than background (upwind perimeter) for the 15-minute period or if airborne dust is observed leaving the work area, then dust suppression techniques must be employed. Work may continue with dust suppression techniques provided that downwind PM-10 particulate levels do not exceed 150 mcg/m³ above the upwind level and provided that no visible dust is migrating from the work area.
- 2. If, after implementation of dust suppression techniques, downwind PM-10 particulate levels are greater than 150 mcg/m³ above the upwind level, work must be stopped and a re-evaluation of activities initiated. Work can resume provided that dust suppression measures and other controls are successful in reducing the downwind PM-10 particulate concentration to within 150 mcg/m³ of the upwind level and in preventing visible dust migration.
- 3. All readings must be recorded and be available for State (DEC and NYSDOH) and County Health personnel to review.

December 2009

## Appendix 1B Fugitive Dust and Particulate Monitoring

A program for suppressing fugitive dust and particulate matter monitoring at hazardous waste sites is a responsibility on the remedial party performing the work. These procedures must be incorporated into appropriate intrusive work plans. The following fugitive dust suppression and particulate monitoring program should be employed at sites during construction and other intrusive activities which warrant its use:

- 1. Reasonable fugitive dust suppression techniques must be employed during all site activities which may generate fugitive dust.
- 2. Particulate monitoring must be employed during the handling of waste or contaminated soil or when activities on site may generate fugitive dust from exposed waste or contaminated soil. Remedial activities may also include the excavation, grading, or placement of clean fill. These control measures should not be considered necessary for these activities.
- 3. Particulate monitoring must be performed using real-time particulate monitors and shall monitor particulate matter less than ten microns (PM10) with the following minimum performance standards:
  - (a) Objects to be measured: Dust, mists or aerosols;
  - (b) Measurement Ranges: 0.001 to 400 mg/m3 (1 to 400,000 :ug/m3);
- (c) Precision (2-sigma) at constant temperature: +/- 10 :g/m3 for one second averaging; and +/- 1.5 g/m3 for sixty second averaging;
  - (d) Accuracy: +/- 5% of reading +/- precision (Referred to gravimetric calibration with SAE fine test dust (mmd= 2 to 3 :m, g= 2.5, as aerosolized);
    - (e) Resolution: 0.1% of reading or 1g/m3, whichever is larger;
    - (f) Particle Size Range of Maximum Response: 0.1-10;
    - (g) Total Number of Data Points in Memory: 10,000;
- (h) Logged Data: Each data point with average concentration, time/date and data point number
- (i) Run Summary: overall average, maximum concentrations, time/date of maximum, total number of logged points, start time/date, total elapsed time (run duration), STEL concentration and time/date occurrence, averaging (logging) period, calibration factor, and tag number;
- (j) Alarm Averaging Time (user selectable): real-time (1-60 seconds) or STEL (15 minutes), alarms required;
  - (k) Operating Time: 48 hours (fully charged NiCd battery); continuously with charger;
  - (1) Operating Temperature: -10 to 50° C (14 to 122° F);
- (m) Particulate levels will be monitored upwind and immediately downwind at the working site and integrated over a period not to exceed 15 minutes.
- 4. In order to ensure the validity of the fugitive dust measurements performed, there must be appropriate Quality Assurance/Quality Control (QA/QC). It is the responsibility of the remedial party to adequately supplement QA/QC Plans to include the following critical features: periodic instrument calibration, operator training, daily instrument performance (span) checks, and a record keeping plan.
  - 5. The action level will be established at 150 ug/m3 (15 minutes average). While conservative,

this short-term interval will provide a real-time assessment of on-site air quality to assure both health and safety. If particulate levels are detected in excess of 150 ug/m3, the upwind background level must be confirmed immediately. If the working site particulate measurement is greater than 100 ug/m3 above the background level, additional dust suppression techniques must be implemented to reduce the generation of fugitive dust and corrective action taken to protect site personnel and reduce the potential for contaminant migration. Corrective measures may include increasing the level of personal protection for on-site personnel and implementing additional dust suppression techniques (see paragraph 7). Should the action level of 150 ug/m3 continue to be exceeded work must stop and DER must be notified as provided in the site design or remedial work plan. The notification shall include a description of the control measures implemented to prevent further exceedances.

- 6. It must be recognized that the generation of dust from waste or contaminated soil that migrates off-site, has the potential for transporting contaminants off-site. There may be situations when dust is being generated and leaving the site and the monitoring equipment does not measure PM10 at or above the action level. Since this situation has the potential to allow for the migration of contaminants off-site, it is unacceptable. While it is not practical to quantify total suspended particulates on a real-time basis, it is appropriate to rely on visual observation. If dust is observed leaving the working site, additional dust suppression techniques must be employed. Activities that have a high dusting potential-such as solidification and treatment involving materials like kiln dust and lime--will require the need for special measures to be considered.
- 7. The following techniques have been shown to be effective for the controlling of the generation and migration of dust during construction activities:
  - (a) Applying water on haul roads;
  - (b) Wetting equipment and excavation faces;
  - (c) Spraying water on buckets during excavation and dumping;
  - (d) Hauling materials in properly tarped or watertight containers;
  - (e) Restricting vehicle speeds to 10 mph;
  - (f) Covering excavated areas and material after excavation activity ceases; and
  - (g) Reducing the excavation size and/or number of excavations.

Experience has shown that the chance of exceeding the 150ug/m3 action level is remote when the above-mentioned techniques are used. When techniques involving water application are used, care must be taken not to use excess water, which can result in unacceptably wet conditions. Using atomizing sprays will prevent overly wet conditions, conserve water, and provide an effective means of suppressing the fugitive dust.

8. The evaluation of weather conditions is necessary for proper fugitive dust control. When extreme wind conditions make dust control ineffective, as a last resort remedial actions may need to be suspended. There may be situations that require fugitive dust suppression and particulate monitoring requirements with action levels more stringent than those provided above. Under some circumstances, the contaminant concentration and/or toxicity may require additional monitoring to protect site personnel and the public. Additional integrated sampling and chemical analysis of the dust may also be in order. This must be evaluated when a health and safety plan is developed and when appropriate suppression and monitoring requirements are established for protection of health and the environment.



### TECHNICAL AND ADMINISTRATIVE GUIDANCE MEMORANDUM #4031

## FUGITIVE DUST SUPPRESSION AND PARTICULATE MONITORING PROGRAM AT INACTIVE HAZARDOUS WASTE SITES

TO: Regional Hazardous Waste Remediation Engrs., Bur. Directors & Section

Chiefs

**FROM:** Michael J. O'Toole, Jr., Director, Division of Hazardous Waste Remediation

SUBJECT: DIVISION TECHNICAL AND ADMINISTRATIVE GUIDANCE

MEMORANDUM -- FUGITIVE DUST SUPRESSION AND PARTICULATE MONITORING PROGRAM AT INACTIVE

HAZARDOUS WASTE SITES

**DATE:** Oct 27, 1989

Michael J. O'Toole, Jr. (signed)

### 1. Introduction

Fugitive dust suppression, particulate monitoring, and subsequent action levels for such must be used and applied consistently during remedial activities at hazardous waste sites. This guidance provides a basis for developing and implementing a fugitive dust suppression and particulate monitoring program as an element of a hazardous waste site's health and safety program.

### 2. Background

Fugitive dust is particulate matter--a generic term for a broad class of chemically and physically diverse substances that exist as discrete particles, liquid droplets or solids, over a wide range of sizes--which becomes airborne and contributes to air quality as a nuisance and threat to human health and the environment.

On July 1, 1987, the United States Environmental Protection Agency (USEPA) revised the ambient air quality standard for particulates so as to reflect direct impact on human health by setting the standard for particulate matter less than ten microns in diameter (PM<sub>10</sub>); this involves fugitive dust whether contaminated or not. Based upon an examination of air quality composition, respiratory tract deposition, and health effects, PM<sub>10</sub> is considered conservative for the primary standard—that requisite to protect public health with an adequate margin of safety. The primary standards are 150 ug/m³ over a 24-hour averaging time and 50 ug/m³ over an annual averaging time. Both of these standards are to be averaged arithmetically.

There exists real-time monitoring equipment available to measure  $PM_{10}$  and capable of integrating over a period of six seconds to ten hours. Combined with an adequate fugitive dust suppression program, such equipment will aid in preventing the off-site migration of contaminated soil. It will also protect both on-site personnel from exposure to high levels of dust and the public around the site from any exposure to any dust. While specifically intended for the protection of on-site personnel as well as the public, this program is not meant to replace long-term monitoring which may be required given the contaminants inherent to the site and its air quality.

### 3. Guidance

A program for suppressing fugitive dust and monitoring particulate matter at hazardous waste sites can be developed without placing an undue burden on remedial activities while still being protective of health and environment. Since the responsibility for implementing this program ultimately will fall on the party performing the work, these procedures must be incorporated into appropriate work plans. The following fugitive dust suppression and particulate monitoring program will be employed at hazardous waste sites during construction and other activities which warrant its use:

- 1. Reasonable fugitive dust suppression techniques must be employed during all site activities which may generate fugitive dust.
- 2. Particulate monitoring must be employed during the handling of waste or contaminated soil or when activities on site may generate fugitive dust from exposed waste or contaminated soil. Such activities shall also include the excavation, grading, or placement of clean fill, and control measures therefore should be considered.
- 3. Particulate monitoring must be performed using real-time particulate monitors and shall monitor particulate matter less than ten microns (PM<sub>10</sub>) with the following minimum performance standards:

Object to be measured: Dust, Mists, Aerosols

Size range: <0.1 to 10 microns

Sensitivity: 0.001 mg/m<sup>3</sup> Range: 0.001 to 10 mg/m<sup>3</sup>

Overall Accuracy:  $\pm 10\%$  as compared to gravimetric analysis of stearic acid or

reference dust

Operating Conditions:

Temperature: 0 to 40°C

Humidity: 10 to 99% Relative Humidity

Power: Battery operated with a minimum capacity of eight hours continuous operation

Automatic alarms are suggested.

Particulate levels will be monitored immediately downwind <u>at</u> the working site and integrated over a period not to exceed 15 minutes. Consequently, instrumentation

- shall require necessary averaging hardware to accomplish this task; the P-5 Digital Dust Indicator as manufactured by MDA Scientific, Inc. or similar is appropriate.
- 4. In order to ensure the validity of the fugitive dust measurements performed, there must be appropriate Quality Assurance/Quality Control (QA/QC). It is the responsibility of the entity operating the equipment to adequately supplement QA/QC Plans to include the following critical features: periodic instrument calibration, operator training, daily instrument performance (span) checks, and a record keeping plan.
- 5. The action level will be established at 150 ug/m³ over the integrated period not to exceed 15 minutes. While conservative, this short-term interval will provide a real-time assessment of on-site air quality to assure both health and safety. If particulate levels are detected in excess of 150 ug/m³, the upwind background level must be measured immediately using the same portable monitor. If the working site particulate measurement is greater than 100 ug/m³ above the background level, additional dust suppression techniques must be implemented to reduce the generation of fugitive dust and corrective action taken to protect site personnel and reduce the potential for contaminant migration. Corrective measures may include increasing the level of personal protection for on-site personnel and implementing additional dust suppression techniques (see Paragraph 7). Should the action level of 150 ug/m³ be exceeded, the Division of Air Resources must be notified in writing within five working days; the notification shall include a description of the control measures implemented to prevent further exceedences.
- 6. It must be recognized that the generation of dust from waste or contaminated soil that migrates off-site, has the potential for transporting contaminants off-site. There may be situations when dust is being generated and leaving the site and the monitoring equipment does not measure PM<sub>10</sub> at or above the action level. Since this situation has the potential to migrate contaminants off-site, it is unacceptable. While it is not practical to quantify total suspended particulates on a real-time basis, it is appropriate to rely on visual observation. If dust is observed leaving the working site, additional dust suppression techniques must be employed. Activities that have a high dusting potential--such as solidification and treatment involving materials like kiln dust and lime--will require the need for special measures to be considered.
- 7. The following techniques have been shown to be effective for the controlling of the generation and migration of dust during construction activities:
  - 1. Applying water on haul roads.
  - 2. Wetting equipment and excavation faces.
  - 3. Spraying water on buckets during excavation and dumping.
  - 4. Hauling materials in properly targed or watertight containers.
  - 5. Restricting vehicle speeds to 10 mph.
  - 6. Covering excavated areas and material after excavation activity ceases.
  - 7. Reducing the excavation size and/or number of excavations.

Experience has shown that utilizing the above-mentioned dust suppression techniques, within reason as not to create excess water which would result in

unacceptable wet conditions, the chance of exceeding the 150 ug/m<sup>3</sup> action level at hazardous waste site remediations is remote. Using atomizing sprays will prevent overly wet conditions, conserve water, and provide an effective means of suppressing the fugitive dust.

8. If the dust suppression techniques being utilized at the site do not lower particulates to an acceptable level (that is, below 150 ug/m<sup>3</sup> and no visible dust), work must be suspended until appropriate corrective measures are approved to remedy the situation. Also, the evaluation of weather conditions will be necessary for proper fugitive dust control--when extreme wind conditions make dust control ineffective, as a last resort remedial actions may need to be suspended.

There may be situations that require fugitive dust suppression and particulate monitoring requirements with action levels more stringent than those provided above. Under some circumstances, the contaminant concentration and/or toxicity may require appropriate toxics monitoring to protect site personnel and the public. Additional integrated sampling and chemical analysis of the dust may also be in order. This must be evaluated when a health and safety plan is developed and when appropriate suppression and monitoring requirements are established for protection of health and the environment.

ATTACHMENT C	
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CAMP Monitoring Forms	
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FIELD INSTRUMENT CALIBRATION Page \_\_1\_\_ of \_\_\_\_ Date: Project Name: Project Address: Site Inspector: Calibration #1 Instrument Make and Model No: Time: \_\_\_\_\_ Calibration standard: Instrument reading: Calibration #2 Instrument Make and Model No:\_\_\_\_\_ Time: \_\_\_\_\_ Calibration standard:\_\_\_\_\_ Instrument reading: Calibration #3 Instrument Make and Model No:\_\_\_\_\_ Time: \_\_\_\_\_ Calibration standard: Instrument reading: \_\_\_\_\_ Calibration #4 Instrument Make and Model No:\_\_\_\_\_ Time: \_\_\_\_\_ Calibration standard: Instrument reading: Calibration #5 Instrument Make and Model No:\_\_\_\_\_ Time: \_\_\_\_\_ Calibration standard: Instrument reading: Calibration #6 Instrument Make and Model No:\_\_\_\_\_ Time: \_\_\_\_\_ Calibration standard: Instrument reading: \_\_\_\_\_

<b>CORE</b>
ENVIRONMENTAL CONSULTANTS

PARTICULATE MONITORING		age <u>1</u>	of
Project Name:	Date:		
Project Address:	Weather:		
Site Inspector:	Wind Speed/Direction:		

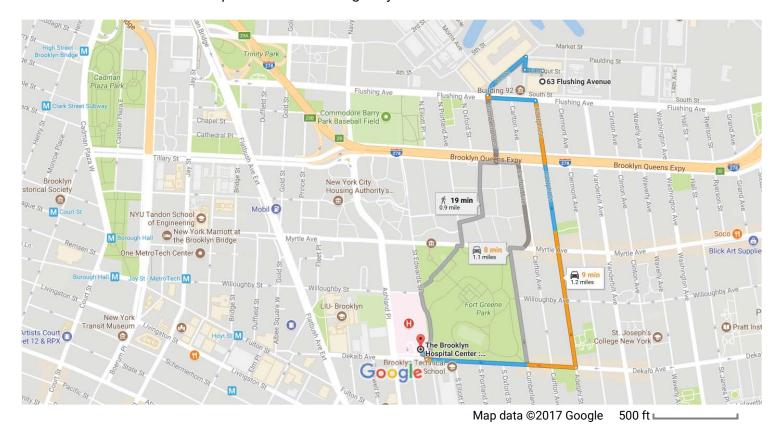
All concentrations in  $\mu g/m^3$ 

Time	Upwind	Time	Downwind

ATTACHMENT D
Hospital Route Map/Directions



### 63 Flushing Avenue, Brooklyn, NY to The Brooklyn Hospital Center : Emergency Room



### 63 Flushing Ave

Brooklyn, NY 11205

t	1.	Head west on Farragut St toward 7th Ave  ⚠ Restricted usage road	
Ļ	2.	Turn right onto 7th Ave  ⚠ Restricted usage road	— 203 ft
41	3.	Turn left onto 6th St  ⚠ Restricted usage road	— 148 ft
4	4.	Turn left onto Flushing Ave	— 0.1 mi
Ļ	5.	Turn right onto Adelphi St	— 0.1 mi — 0.6 mi
Ļ	6.	Turn right onto Dekalb Ave	— 0.3 mi
Ļ	7.	Turn right  1 Destination will be on the right	0.01111
			95 ft



Building 77 141 Flushing Ave, Suite 801 Brooklyn, NY 11205

# EXHIBIT K SITE MANAGEMENT PLAN (SMP)

This project is located within the Voluntary Cleanup Agreement (VCA) area of the Brooklyn Navy Yard (BNY) site. Therefore, the Bidder must comply with all BNY Site Management Plan (SMP) requirements.

A copy of the BNY Site Management Plan (SMP) can be accessed by using the link below:

https://brooklynnavyyard-my.sharepoint.com/:b:/g/personal/rneal\_bnydc\_org/EbJx7KNS6r5IvYpXQEyV5QQBc0ca\_w2ZEHYB8XP\_DzfqRgw?e=PnmLJb

## UNIFORM FEDERAL CONTRACT PROVISIONS RIDER FOR FEDERALLY FUNDED PROCUREMENT CONTRACTS

(Version 01.20.2021)

[Instructions to Agencies: This Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts ("Rider") must be attached to all federally funded procurement contracts (of any dollar amount) that are subject to 2 CFR Part 200 (Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards). This Rider does not apply to subrecipient or subaward agreements. Procurement contracts funded by HUD's CDBG Program, CDBG-DR Program, or by FEMA must also include the program-specific rider.]

- **A.** *Definitions.* As used in this Rider:
  - (1) "Awarding Entity" means the entity awarding the Contract. The Awarding Entity may be the City or a contractor at any tier.
  - (2) "City" means the City of New York.
  - (3) "Commissioner" means the head of the City agency entering into this Contract.
  - (4) "Construction" means the building, rehabilitation, alteration, conversion, extension, demolition, painting or repair of any improvement to real property.
  - (5) "Contract" refers to the contract or the agreement between the Awarding Entity and the Contractor.
  - (6) "Contractor" means the entity performing the services pursuant to a Contract.
  - (7) "Federal Agency" means the U.S. agency or agencies funding this Contract in whole or in part.
  - (8) "Government" means the U.S. government.
  - (9) "Rider" means this Uniform Federal Contract Provisions Rider.
- **B.** Termination and Remedies for Breach of Contract. The following provisions concerning remedies for breach of contract and termination apply to Contracts between the City and the City's Contractor.
  - (1) **Remedies for Breach of Contract.** If the Contractor violates or breaches the Contract, the City may avail itself of any or all of the remedies provided for elsewhere in this Contract. If there are no remedies provided for elsewhere in this Contract, the City may avail itself of any or all of the following remedies.

After declaring the Contractor in default pursuant to the procedures in paragraph (a) of subdivision (2) of this section (B) below, the City may (i) withhold payment for unsatisfactory services, (ii) suspend or terminate the Contract in whole or in part; and/or (iii) have the services under this Contract completed by such means and in such manner, by contract procured with or without competition, or otherwise, as the City may deem advisable in accordance with all applicable Contract provisions and law. After

completion of the services under this Contract, the City shall certify the expense incurred in such completion, which shall include the cost of procuring that contract. Should the expense of such completion, as certified by the City, exceed the total sum which would have been payable under the Contract if it had been completed by the Contractor, any excess shall be promptly paid by the Contractor upon demand by the City. The excess expense of such completion, including any and all related and incidental costs, as so certified by the City may be charged against and deducted out of monies earned by the Contractor.

- (2) **Termination.** The City shall have the right to terminate the Contract in whole or in part for cause, for convenience, due to force majeure, or due to reductions in federal funding. If the Contract does not include termination provisions elsewhere, the following termination provisions apply:
  - a. **Termination for Cause**. The City shall have the right to terminate the Contract, in whole or in part, for cause upon a determination that the Contractor is in default of the Contract. Unless a shorter time is determined by the City to be necessary, the City shall effect termination according to the following procedure:
    - i. Notice to Cure. The City shall give written notice of the conditions of default signed by the Commissioner, setting forth the ground or grounds upon which such default is declared ("Notice to Cure"). The Contractor shall have ten (10) days from receipt of the Notice to Cure or any longer period that is set forth in the Notice to Cure to cure the default. The Commissioner may temporarily suspend services under the Contract pending the outcome of the default proceedings pursuant to this section.
    - ii. Opportunity to be Heard. If the conditions set forth in the Notice to Cure are not cured within the period set forth in the Notice to Cure, the Commissioner may declare the Contractor in default. Before the Commissioner may exercise his or her right to declare the Contractor in default, the Contractor must be given an opportunity to be heard upon not less than five (5) business days' notice. The Commissioner may, in his or her discretion, provide for such opportunity to be in writing or in person. Such opportunity to be heard shall not occur prior to the end of the cure period but notice of such opportunity to be heard may be given prior to the end of the cure period and may be given contemporaneously with the Notice to Cure.
    - iii. Notice of Termination. After an opportunity to be heard, the Commissioner may terminate the Contract, in whole or in part, upon finding the Contractor in default. The Commissioner shall give the Contractor written notice of such termination ("Notice of Termination"), specifying

the applicable provision(s) under which the Contract is terminated and the effective date of termination. If no date is specified in the Notice of Termination, the termination shall be effective either 10 calendar days from the date the notice is personally delivered or 15 calendar days from the date Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope.

- iv. *Grounds for Default*. The City shall have the right to declare the Contractor in default:
  - 1. Upon a breach by the Contractor of a material term or condition of this Contract, including unsatisfactory performance of the services;
  - 2. Upon insolvency or the commencement of any proceeding by or against the Contractor, either voluntarily or involuntarily, under the Bankruptcy Code or relating to the insolvency, receivership, liquidation, or composition of the Contractor for the benefit of creditors;
  - 3. If the Contractor refuses or fails to proceed with the services under the Contract when and as directed by the Commissioner;
  - 4. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are indicted or convicted after execution of the Contract under any state or federal law of any of the following:
    - a. a criminal offense incident to obtaining or attempting to obtain or performing a public or private contract;
    - b. fraud, embezzlement, theft, bribery, forgery, falsification, or destruction of records, or receiving stolen property;
    - c. a criminal violation of any state or federal antitrust law;
    - d. violation of the Racketeer Influence and Corrupt Organization Act, 18 U.S.C. § 1961 et seq., or the Mail Fraud Act, 18 U.S.C. § 1341 et seq., for acts in connection with the submission of bids or proposals for a public or private contract;

- e. conspiracy to commit any act or omission that would constitute grounds for conviction or liability under any statute described in subparagraph (d) above; or
- f. an offense indicating a lack of business integrity that seriously and directly affects responsibility as a City vendor.
- 5. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities are subject to a judgment of civil liability under any state or federal antitrust law for acts or omissions in connection with the submission of bids or proposals for a public or private contract; or
- 6. If the Contractor or any of its officers, directors, partners, five percent (5%) or greater shareholders, principals, or other employee or person substantially involved in its activities makes or causes to be made any false, deceptive, or fraudulent material statement, or fail to make a required material statement in any bid, proposal, or application for City or other government work.
- v. Basis of Settlement. The City shall not incur or pay any further obligation pursuant to this Contract beyond the termination date set by the City in its Notice of Termination. The City shall pay for satisfactory services provided in accordance with this Contract prior to the termination date. In addition, any obligation necessarily incurred by the Contractor on account of this Contract prior to receipt of notice of termination and falling due after the termination date shall be paid by the City in accordance with the terms of this Contract. In no event shall such obligation be construed as including any lease or other occupancy agreement, oral or written, entered into between the Contractor and its landlord.
- b. **Termination for Convenience**. The City shall have the right to terminate the Contract for convenience, by providing written notice ("Notice of Termination") according to the following procedure. The Notice of Termination shall specify the applicable provision(s) under which the Contract is terminated and the effective date of termination, which shall be not less than 10 calendar days from the date the notice is personally delivered or 15 days from the date the Notice of Termination is sent by another method. The Notice of Termination shall be personally delivered, sent by certified mail return receipt requested, or sent by fax and deposited in a post office box regularly maintained by the United States Postal Service in a postage pre-paid envelope. The basis of

settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.

### c. Termination due to Force Majeure

- i. For purposes of this Contract, a force majeure event is an act or event beyond the control and without any fault or negligence of the Contractor ("Force Majeure Event"). Force Majeure Events may include, but are not limited to, fire, flood, earthquake, storm or other natural disaster, civil commotion, war, terrorism, riot, and labor disputes not brought about by any act or omission of the Contractor.
- ii. In the event the Contractor cannot comply with the terms of the Contract (including any failure by the Contractor to make progress in the performance of the services) because of a Force Majeure Event, then the Contractor may ask the Commissioner to excuse the nonperformance and/or terminate the Contract. If the Commissioner, in his or her reasonable discretion, determines that the Contractor cannot comply with the terms of the Contract because of a Force Majeure Event, then the Commissioner shall excuse the nonperformance and may terminate the Contract. Such a termination shall be deemed to be without cause.
- iii. If the City terminates the Contract due to a Force Majeure Event, the basis of settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.

### d. Termination due to Reductions in Federal Funding

i. This Contract is funded in whole or in part by funds secured from the Federal government. Should the Federal government reduce or discontinue such funds, the City shall have, in its sole discretion, the right to terminate this Contract in whole or in part, or to reduce the funding and/or level of services of this Contract caused by such action by the Federal government, including, in the case of the reduction option, but not limited to, the reduction or elimination of programs, services or service components; the reduction or elimination of contract-reimbursable staff or staff-hours, and corresponding reductions in the budget of this Contract and in the total amount payable under this Contract. Any reduction in funds pursuant to this paragraph shall be accompanied by an appropriate reduction in the services performed under this Contract.

- ii. In the case of the reduction option referred to in subparagraph (i), above, any such reduction shall be effective as of the date set forth in a written notice thereof to the Contractor, which shall be not less than 30 calendar days from the date of such notice. Prior to sending such notice of reduction, the City shall advise the Contractor that such option is being exercised and afford the Contractor an opportunity to make within seven calendar days any suggestion(s) it may have as to which program(s), service(s), service component(s), staff or staff-hours might be reduced or eliminated, provided, however, that the City shall not be bound to utilize any of the Contractor's suggestions and that the City shall have sole discretion as to how to effectuate the reductions.
- iii. If the City reduces funding pursuant to this paragraph (d), the basis of settlement shall be as provided for in subparagraph (v) of paragraph (a) of subdivision (2) of this section (B), above.
- **C. Standard Provisions.** The Contractor shall comply with, include in its subcontracts, and cause its subcontractors to comply with the following provisions, as applicable:
  - (1) *Reporting*. Contractor shall be required to produce and deliver such reports relating to the services performed under the Contract as may be required by the Awarding Entity, City or any other State or Federal governmental agency with jurisdiction.
  - (2) *Non-Discrimination*. Contractor shall not violate any Federal, State, or City law prohibiting discrimination concerning employment, the provision of services, and, if applicable, housing, funded by this Contract.
  - (3) Environmental Protection. If the Contract is in excess of \$150,000, the Contractor shall comply with all applicable standards, orders, or regulations issued under the Clean Air Act (42 U.S.C. § 7401-7671q), Federal Water Pollution Control Act as amended (33 U.S.C. §§ 1251-1387), Section 508 of the Clean Water Act (33 U.S.C. § 1368), Executive Order 11738, and Environmental Protection Agency regulations (provisions of 40 CFR Part 50 and 2 CFR Part 1532 related to the Clean Air Act and Clean Water Act). Violations must be reported to the Federal Agency and the Regional Office of the Environmental Protection Agency (EPA). The Contractor shall include this provision in all subcontracts.
  - (4) *Energy Efficiency*. The Contractor shall comply with mandatory standards and policies relating to energy efficiency that are contained in the New York State energy conservation plan issued in compliance with the Energy Policy Conservation Act (Pub. L. 94-163).
  - (5) Debarment. The Contractor certifies that neither it nor its principals or affiliates are currently in a state of debarment, suspension, exclusion, disqualification, or other ineligible status as a result of prior performance, failure, fraud, or violation of City or New York State laws. The Contractor further certifies that neither it nor its principals or affiliates are debarred, suspended, excluded, disqualified, or otherwise ineligible for participation in Federal assistance programs. The City reserves the right to terminate this

Contract if knowledge of debarment, suspension, exclusion, disqualification or other ineligibility has been withheld by the Contractor.

- (6) Lobbying. The Contractor certifies, to the best of its knowledge and belief, that:
  - (a) No Federal appropriated funds have been paid or will be paid, by or on behalf of it, to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with 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;
  - (b) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, it will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," (which is available on the HUD website or here: https://www.hudexchange.info/resources/documents/HUD-Form-Sflll.pdf) in accordance with its instructions; and
  - (c) It will require that the language of this Section (C)(6) be included in the award documents for all subcontracts at all tiers.
  - (d) 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. 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.
- (7) Solid Waste Disposal Act. Pursuant to 2 CFR § 200.323, Contractor must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR Part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$ 10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$ 10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.
- (8) Prohibition on certain telecommunications and video surveillance services or equipment.
  - (a) The Contractor is prohibited from obligating or expending loan or grant funds to:
    - (1) Procure or obtain;
    - (2) Extend or renew a contract to procure or obtain; or
    - (3) Enter into a contract (or extend or renew a contract) to procure or obtain equipment, services, or systems that uses covered

telecommunications equipment or services as a substantial or essential component of any system, or as critical technology as part of any system. As described in Public Law 115–232, section 889, covered telecommunications equipment is telecommunications equipment produced by Huawei Technologies Company or ZTE Corporation (or any subsidiary or affiliate of such entities).

- (i) For the purpose of public safety, security of government facilities, physical security surveillance of critical infrastructure, and other national security purposes, video surveillance and telecommunications equipment produced by Hytera Communications Corporation, Hangzhou Hikvision Digital Technology Company, or Dahua Technology Company (or any subsidiary or affiliate of such entities).
- (ii) Telecommunications or video surveillance services provided by such entities or using such equipment.
- (iii) Telecommunications or video surveillance equipment or services produced or provided by an entity that the Secretary of Defense, in consultation with the Director of the National Intelligence or the Director of the Federal Bureau of Investigation, reasonably believes to be an entity owned or controlled by, or otherwise connected to, the government of a covered foreign country.
- (b) In implementing the prohibition under Public Law 115–232, section 889, subsection (f), paragraph (1), heads of executive agencies administering loan, grant, or subsidy programs shall prioritize available funding and technical support to assist affected businesses, institutions and organizations as is reasonably necessary for those affected entities to transition from covered communications equipment and services, to procure replacement equipment and services, and to ensure that communications service to users and customers is sustained.
- (c) The Contractor's attention is directed to Public Law 115–232, section 889 for additional information.
- (d) The Contractor's attention is directed to § 200.471.
- (9) Domestic preferences for procurements.
  - (a) As appropriate and to the extent consistent with law, the Contractor should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
  - (b) For purposes of this section:
    - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.

- (2) "Manufactured products" means items and construction materials composed in whole or in part of nonferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.
- (10) Documentation of Costs. All costs shall be supported by properly executed payrolls, time records, invoices, or vouchers, or other official documentation evidencing in proper detail the nature and propriety of the charges. All checks, payrolls, invoices, contracts, vouchers, orders or other accounting documents, pertaining in whole or in part to the Agreement, shall be clearly identified and regularly accessible.
- (11) Records Retention. The Contractor shall retain all books, documents, papers, and records relating to the services performed under the Contract in accordance with 2 C.F.R. §200.334.
- (12) Records Access. The Contractor shall grant access to the City, State or any other pass-through entity, the Federal Agency, Inspectors General, and/or the Comptroller General of the United States, or any of their duly authorized representatives, to any books, documents, papers, and/or records of the Contractor that are pertinent to the Contract for the purpose of making audits, examinations, excerpts, and transcripts. The right also includes timely and reasonable access to the Contractor's personnel for the purpose of interview and discussion related to such documents. The rights of access in this section are not limited to the required retention period but last as long as the records are retained.
- (13) Small Firms, M/WBE Firms, and Labor Surplus Area Firms. Contractor shall take the following affirmative steps in the letting of subcontracts, if subcontracts are to be let, in order to ensure that minority firms, women's business enterprises, and labor surplus area firms are used when possible:
  - a. Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - b. Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - d. Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises; and
  - e. Using the services and assistance of the Small Business Administration, and the Minority Business Development Agency of the Department of Commerce.

### (14) *Intangible Property.*

- a. Pursuant to 2 CFR § 200.315, the Government reserves a royalty-free, non-exclusive, and irrevocable right to obtain, reproduce, publish, or otherwise use, and to authorize others to use, for Government purposes: (a) the copyright in any work developed under the Contract or subcontract; and (b) any rights of copyright to which a Contractor purchases ownership with grant support.
- b. Any reports, documents, data, photographs, deliverables, and/or materials produced pursuant to the Contract ("Copyrightable Materials"), and any and all drafts and/or other preliminary materials in any format related to such items produced pursuant to the contract, shall upon their creation become the exclusive property of the City. The Copyrightable Materials shall be considered "work-made-for-hire" within the meaning and purview of Section 101 of the United States Copyright Act, 17 U.S.C. § 101, and the City shall be the copyright owner thereof and of all aspects, elements and components thereof in which copyright protection might exist. To the extent that the Copyrightable Materials do not qualify as "work-made-for-hire," the Contractor hereby irrevocably transfers, assigns and conveys exclusive copyright ownership in and to the Copyrightable Materials to the City, free and clear of any liens, claims, or other encumbrances. The Contractor shall retain no copyright or intellectual property interest in the Copyrightable Materials. The Copyrightable Materials shall be used by the Contractor for no purpose other than in the performance of this Contract without the prior written permission of the City. The City may grant the Contractor a license to use the Copyrightable Materials on such terms as determined by the City and set forth in the license.
- c. The Contractor acknowledges that the City may, in its sole discretion, register copyright in the Copyrightable Materials with the United States Copyright Office or any other government agency authorized to grant copyright registrations. The Contractor shall fully cooperate in this effort, and agrees to provide any and all documentation necessary to accomplish this.
- d. The Contractor represents and warrants that the Copyrightable Materials: (i) are wholly original material not published elsewhere (except for material that is in the public domain); (ii) do not violate any copyright law; (iii) do not constitute defamation or invasion of the right of privacy or publicity; and (iv) are not an infringement, of any kind, of the rights of any third party. To the extent that the Copyrightable Materials incorporate any non-original material, the Contractor has obtained all necessary permissions and clearances, in writing, for the use of such non-original material under this Contract, copies

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- of which shall be provided to the City upon execution of this Contract.
- e. The Contractor shall promptly and fully report to the City any discovery or invention arising out of or developed in the course of performance of this Contract and the Contractor shall promptly and fully report to the Government to make a determination as to whether patent protection on such invention shall be sought and how the rights in the invention or discovery, including rights under any patent issued thereon, shall be disposed of and administered in order to protect the public interest.
- f. If the Contractor publishes a work dealing with any aspect of performance under this Agreement, or with the results of such performance, the City shall have a royalty-free, non-exclusive irrevocable license to reproduce, publish, or otherwise use such work for City governmental purposes.
- **D.** Special Provisions for Construction Contracts. If this Contract involves Construction work, design for Construction, or Construction services, all such work or services performed by the Contractor and its subcontractors shall be subject to the following requirements in addition to those set forth above in paragraphs (A), (B), and (C):
  - (1) Federal Labor Standards. The Contractor will comply with the following:
    - a. The Davis-Bacon Act (40 U.S.C. §§ 3141-3148): If required by the federal program legislation, in Construction contracts involving an excess of \$2000, and subject to any other federal program limitations, all laborers and mechanics must be paid at a rate not less than those determined by the Secretary of Labor to be prevailing for the City, which rates are to be provided by the City. These wage rates are a federally mandated minimum only, and will be superseded by any State or City requirement mandating higher wage rates. The Contractor also agrees to comply with Department of Labor Regulations pursuant to the Davis-Bacon Act found in 29 CFR Parts 1, 3, 5 and 7 which enforce statutory labor standards provisions.
    - b. If required by the federal program legislation and subject to any other federal program limitations, Sections 103 and 107 of the Contract Work Hours and Safe Standards Act (40 U.S.C. §§ 3701-3708), which provides that no laborer or mechanic shall be required or permitted to work more than eight hours in a calendar day or in excess of forty hours in any workweek, unless such laborer or mechanic is paid at an overtime rate of 1½ times his/her basic rate of pay for all hours worked in excess of these limits, under any Construction contract costing in excess of \$2000. In the event of a violation of this provision, the Contractor shall not only be liable to any affected employee for

his/her unpaid wages, but shall be additionally liable to the United States for liquidated damages.

- c. Copeland Anti-Kickback Act: If required by the federal program legislation and subject to any other federal program limitations: (i) the Contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. Part 3 as may be applicable, which are incorporated by reference into this Contract; (ii) The Contractor or subcontractor shall insert in any subcontracts the language contained in (i) of this subsection and also a clause requiring the subcontractors to include the language in subsection (i) in any lower tier subcontracts. The Contractor shall be responsible for the compliance by any subcontractor or lower tier subcontractor of this subsection; and (iii) A breach of this subsection may be grounds for termination of the Contract, and for debarment as a contractor or subcontractor as provided in 29 C.F.R. § 5.12.
- d. If this Contract involves Construction work, design for Construction, or Construction services, a more complete detailed statement of Federal Labor Standards annexed hereto as FEDERAL EXHIBIT 2. If there is a conflict between the provisions of this Article D and FEDERAL EXHIBIT 2, the stricter standard shall be controlling.
- (2) Equal Employment Opportunity. Executive Order 11246, as amended, and as supplemented in Department of Labor regulations (41 CFR chapter 60) for Construction contracts or subcontracts in excess of \$10,000. The Contractor shall include the notice found at FEDERAL EXHIBIT I in all Construction subcontracts. For the purposes of the Equal Opportunity Construction Contract Specifications and Clause below, the term "Construction Work" means the construction, rehabilitation, alteration, conversion, extension, demolition or repair of buildings, highways, or other changes or improvements to real property, including facilities providing utility services. The term also includes the supervision, inspection, and other onsite functions incidental to the actual construction.

## Standard Federal Equal Employment Opportunity Construction Contract Specifications for Contracts and Subcontracts in Excess of \$10,000.

- 1. As used in these specifications:
- a. "Covered area" means the geographical area described in the solicitation from which this Contract resulted;
- b. "Director" means Director, Office of Federal Contract Compliance Programs, United States Department of Labor, or any person to whom the Director delegates authority;
- c. "Employer identification number" means the Federal Social Security number used on the Employer's Quarterly Federal Tax Return, U.S. Treasury Department Form 941.
  - d. "Minority" includes:
  - (i) Black (all persons having origins in any of the Black African racial groups not of Hispanic origin);

- (ii) Hispanic (all persons of Mexican, Puerto Rican, Cuban, Central or South American or other Spanish Culture or origin, regardless of race);
- (iii) Asian and Pacific Islander (all persons having origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands); and
- (iv) American Indian or Alaskan Native (all persons having origins in any of the original peoples of North America and maintaining identifiable tribal affiliations through membership and participation or community identification).
- 2. Whenever the Contractor, or any subcontractor at any tier, subcontracts a portion of the work involving any Construction trade, it shall physically include in each subcontract in excess of \$10,000 the provisions of these specifications and the Notice which contains the applicable goals for minority and female participation and which is set forth in the solicitations from which this Contract resulted.
- 3. If the Contractor is participating (pursuant to 41 CFR 60-4.5) in a Hometown Plan approved by the U.S. Department of Labor in the covered area either individually or through an association, its affirmative action obligations on all work in the Plan area (including goals and timetables) shall be in accordance with that Plan for those trades which have unions participating in the Plan. Contractors must be able to demonstrate their participation in and compliance with the provisions of any such Hometown Plan. Each Contractor or subcontractor participating in an approved Plan is individually required to comply with its obligations under the EEO clause, and to make a good faith effort to achieve each goal under the Plan in each trade in which it has employees. The overall good faith performance by other Contractors or subcontractors toward a goal in an approved Plan does not excuse any covered Contractor's or subcontractor's failure to take good faith efforts to achieve the Plan goals and timetables.
- 4. The Contractor shall implement the specific affirmative action standards provided in paragraphs 7 a through p of these specifications. The goals set forth in the solicitation from which this Contract resulted are expressed as percentages of the total hours of employment and training of minority and female utilization the Contractor should reasonably be able to achieve in each Construction trade in which it has employees in the covered area. Covered Construction Contractors performing Construction Work in geographical areas where they do not have a Federal or federally assisted Construction contract shall apply the minority and female goals established for the geographical areas where the work is being performed. Goals are published periodically in the Federal Register in notice form, and such notices may be obtained from any Office of Federal Contract Compliance Programs office or from Federal procurement contracting officers. The Contractor is expected to make substantially uniform progress in meeting its goals in each craft during the period specified.
- 5. Neither the provisions of any collective bargaining agreement, nor the failure by a union with whom the Contractor has a collective bargaining agreement, to refer either minorities or women shall excuse the Contractor's obligations under these specifications, Executive Order 11246 as amended, or the regulations promulgated pursuant thereto.
- 6. In order for the nonworking training hours of apprentices and trainees to be counted in meeting the goals, such apprentices and trainees must be employed by the Contractor during the training period, and the Contractor must have made a commitment to employ the apprentices and trainees at the completion of their training, subject to the

availability of employment opportunities. Trainees must be trained pursuant to training programs approved by the U.S. Department of Labor.

- 7. The Contractor shall take specific affirmative actions to ensure equal employment opportunity. The evaluation of the Contractor's compliance with these specifications shall be based upon its effort to achieve maximum results from its actions. The Contractor shall document these efforts fully, and shall implement affirmative action steps at least as extensive as the following:
- a. Ensure and maintain a working environment free of harassment, intimidation, and coercion at all sites, and in all facilities at which the Contractor's employees are assigned to work. The Contractor, where possible, will assign two or more women to each Construction project. The Contractor shall specifically ensure that all foremen, superintendents, and other on-site supervisory personnel are aware of and carry out the Contractor's obligation to maintain such a working environment, with specific attention to minority or female individuals working at such sites or in such facilities.
- b. Establish and maintain a current list of minority and female recruitment sources, provide written notification to minority and female recruitment sources and to community organizations when the Contractor or its unions have employment opportunities available, and maintain a record of the organization's responses.
- c. Maintain a current file of the names, addresses and telephone numbers of each minority and female off-the-street applicant and minority or female referral from a union, a recruitment source or community organization and of what action was taken with respect to each such individual. If such individual was sent to the union hiring hall for referral and was not referred back to the Contractor by the union or, if referred, not employed by the Contractor, this shall be documented in the file with the reason therefor, along with whatever additional actions the Contractor may have taken.
- d. Provide immediate written notification to the Director when the union or unions with which the Contractor has a collective bargaining agreement has not referred to the Contractor a minority person or woman sent by the Contractor, or when the Contractor has other information that the union referral process has impeded the Contractor's efforts to meet its obligations.
- e. Develop on-the-job training opportunities and/or participate in training programs for the area which expressly include minorities and women, including upgrading programs and apprenticeship and trainee programs relevant to the Contractor's employment needs, especially those programs funded or approved by the Department of Labor. The Contractor shall provide notice of these programs to the sources compiled under 7b above.
- f. Disseminate the Contractor's EEO policy by providing notice of the policy to unions and training programs and requesting their cooperation in assisting the Contractor in meeting its EEO obligations; by including it in any policy manual and collective bargaining agreement; by publicizing it in the company newspaper, annual report, etc.; by specific review of the policy with all management personnel and with all minority and female employees at least once a year; and by posting the company EEO policy on bulletin boards accessible to all employees at each location where Construction Work is performed.
- g. Review, at least annually, the company's EEO policy and affirmative action obligations under these specifications with all employees having any responsibility

for hiring, assignment, layoff, termination or other employment decisions including specific review of these items with on-site supervisory personnel such as Superintendents, General Foremen, etc., prior to the initiation of Construction Work at any job site. A written record shall be made and maintained identifying the time and place of these meetings, persons attending, subject matter discussed, and disposition of the subject matter.

- h. Disseminate the Contractor's EEO policy externally by including it in any advertising in the news media, specifically including minority and female news media, and providing written notification to and discussing the Contractor's EEO policy with other Contractors and subcontractors with whom the Contractor does or anticipates doing business.
- i. Direct its recruitment efforts, both oral and written, to minority, female and community organizations, to schools with minority and female students and to minority and female recruitment and training organizations serving the Contractor's recruitment area and employment needs. Not later than one month prior to the date for the acceptance of applications for apprenticeship or other training by any recruitment source, the Contractor shall send written notification to organizations such as the above, describing the openings, screening procedures, and tests to be used in the selection process.
- j. Encourage present minority and female employees to recruit other minority persons and women and, where reasonable, provide after school, summer and vacation employment to minority and female youth both on the site and in other areas of a Contractor's work force.
- k. Validate all tests and other selection requirements where there is an obligation to do so under 41 CFR Part 60-3.
- l. Conduct, at least annually, an inventory and evaluation at least of all minority and female personnel for promotional opportunities and encourage these employees to seek or to prepare for, through appropriate training, etc., such opportunities.
- m. Ensure that seniority practices, job classifications, work assignments and other personnel practices, do not have a discriminatory effect by continually monitoring all personnel and employment related activities to ensure that the EEO policy and the Contractor's obligations under these specifications are being carried out.
- n. Ensure that all facilities and company activities are non-segregated except that separate or single-user toilet and necessary changing facilities shall be provided to assure privacy between the sexes.
- o. Document and maintain a record of all solicitations of offers for subcontracts from minority and female Construction contractors and suppliers, including circulation of solicitations to minority and female Contractor associations and other business associations.
- p. Conduct a review, at least annually, of all supervisor's adherence to and performance under the Contractor's EEO policies and affirmative action obligations.
- 8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7a through p). The efforts of a Contractor association, joint Contractor-union, Contractor-community, or other similar group of which the Contractor is a member and participant, may be asserted

- as fulfilling any one or more of its obligations under 7a through p of these specifications provided that the Contractor actively participates in the group, makes every effort to assure that the group has a positive impact on the employment of minorities and women in the industry, ensures that the concrete benefits of the Program are reflected in the Contractor's minority and female work force participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's noncompliance.
- 9. A single goal for minorities and a separate single goal for women have been established. The Contractor, however, is required to provide equal employment opportunity and to take affirmative action for all minority groups, both male and female, and all women, both minority and non-minority. Consequently, the Contractor may be in violation of the Executive Order if a particular group is employed in a substantially disparate manner (for example, even though the Contractor has achieved its goals for women generally, the Contractor may be in violation of the Executive Order if a specific minority group of women is underutilized).
- 10. The Contractor shall not use the goals and timetables or affirmative action standards to discriminate against any person because of race, color, religion, sex, sexual orientation, gender identity, or national origin.
- 11. The Contractor shall not enter into any Subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246 or suspended or is otherwise excluded from or ineligible for participation in federal assistance programs.
- 12. The Contractor shall carry out such sanctions and penalties for violation of these specifications and of the Equal Opportunity Clause, including suspension, termination and cancellation of existing subcontracts as may be imposed or ordered pursuant to Executive Order 11246, as amended, and its implementing regulations, by the Office of Federal Contract Compliance Programs. Any Contractor who fails to carry out such sanctions and penalties shall be in violation of these specifications and Executive Order 11246, as amended.
- 13. The Contractor, in fulfilling its obligations under these specifications, shall implement specific affirmative action steps, at least as extensive as those standards prescribed in paragraph 7 of these specifications, so as to achieve maximum results from its efforts to ensure equal employment opportunity. If the Contractor fails to comply with the requirements of the Executive Order, the implementing regulations, or these specifications, the Director shall proceed in accordance with 41 CFR 60-4.8.
- 14. The Contractor shall designate a responsible official to monitor all employment related activity to ensure that the company EEO policy is being carried out, to submit reports relating to the provisions hereof as may be required by the Government and to keep records. Records shall at least include for each employee the name, address, telephone numbers, Construction trade, union affiliation if any, employee identification number when assigned, social security number, race, sex, status (e.g., mechanic, apprentice trainee, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and locations at which the work was performed. Records shall be maintained in an easily understandable and retrievable form; however, to the degree that existing records satisfy this requirement, Contractors shall not be required to maintain separate records.

- 15. Nothing herein provided shall be construed as a limitation upon the application of other laws which establish different standards of compliance or upon the application of requirements for hiring of local or other areas residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).
- (3) <u>Equal Opportunity Clause</u> (for contracts for Construction Work) required by 41 CFR § 60-1.4(b).

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

(1) The Contractor will not discriminate against any employee or applicant for employment because of race, color, religion, sex, sexual orientation, gender identity, or national origin. The Contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment without regard to their race, color, religion, sex, sexual orientation, gender identity, or national origin. Such action shall include, but not be limited to the following:

Employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. The Contractor agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided setting forth the provisions of this nondiscrimination clause.

- (2) The Contractor will, in all solicitations or advertisements for employees placed by or on behalf of the Contractor, state that all qualified applicants will receive consideration for employment without regard to race, color, religion, sex, sexual orientation, gender identity, or national origin.
- (3) The Contractor will not discharge or in any other manner discriminate against any employee or applicant for employment because such employee or applicant has inquired about, discussed, or disclosed the compensation of the employee or applicant or another employee or applicant. This provision shall not apply to instances in which an employee who has access to the compensation information of other employees or applicants as a part of such employee's essential job functions discloses the compensation of such other employees or applicants to individuals who do not otherwise have access to such information, unless such disclosure is in response to a formal complaint or charge, in furtherance of an investigation, proceeding, hearing, or action, including an investigation conducted by the employer, or is consistent with the Contractor's legal duty to furnish information.
- (4) The Contractor will send to each labor union or representative of workers with which he has a collective bargaining agreement or other contract or understanding, a notice to be provided advising the said labor union or workers' representatives of the Contractor's commitments under this section, and shall post copies of the notice in conspicuous places available to employees and applicants for employment.
- (5) The Contractor will comply with all provisions of Executive Order 11246 of September 24, 1965, and of the rules, regulations, and relevant orders of the Secretary of Labor.
- (6) The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by rules, regulations, and orders of the Secretary of Labor, or pursuant thereto, and will permit access to his books, records, and accounts by

the administering agency and the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations, and orders.

- (7) In the event of the Contractor's noncompliance with the nondiscrimination clauses of this contract or with any of the said rules, regulations, or orders, this contract may be canceled, terminated, or suspended in whole or in part and the Contractor may be declared ineligible for further Government contracts or federally assisted construction contracts in accordance with procedures authorized in Executive Order 11246 of September 24, 1965, and such other sanctions may be imposed and remedies invoked as provided in Executive Order 11246 of September 24, 1965, or by rule, regulation, or order of the Secretary of Labor, or as otherwise provided by law.
- (8) The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraphs (1) through (8) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor issued pursuant to section 204 of Executive Order 11246 of September 24, 1965, so that such provisions will be binding upon each subcontractor or vendor. The Contractor will take such action with respect to any subcontract or purchase order as the administering agency may direct as a means of enforcing such provisions, including sanctions for noncompliance:

Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or vendor as a result of such direction by the administering agency, the Contractor may request the United States to enter into such litigation to protect the interests of the United States.

## E. Rights to Inventions. [Special Provisions For Contracts Involving Experimental, Developmental, or Research Work.]

- (1) If this Contract involves the performance of experimental, developmental, or research work by the Contractor or its subcontractors, and the entity performing such work is a Nonprofit Organization or Small Business Firm as defined below, the following provisions apply in addition to those set forth above in paragraphs (a), (b ad (c), unless the Contract specifically states that this provision is superseded:
  - a. Definitions. The following definitions apply to this section (D).
    - i. "Invention" means any invention or discovery which is or may be patentable or otherwise protectable under Title 35 of the United States Code, or any novel variety of plant which is or may be protected under the Plant Variety Protection Act (7 U.S.C. § 2321 et seq.).
    - ii. "Subject invention" means any invention of the Contractor conceived or first actually reduced to practice in the performance of work under this Contract, provided that in the case of a variety of plant, the date of determination (as defined in section 41(d) of the Plant Variety Protection Act, 7 U.S.C. 2401(d)) must also occur during the period of Contract performance.
    - iii. "Practical Application" means to manufacture in the case of a composition or product, to practice in the case of a

process or method, or to operate in the case of a machine or system; and, in each case, under such conditions as to establish that the invention is being utilized and that its benefits are, to the extent permitted by law or government regulations, available to the public on reasonable terms.

- iv. "Made" when used in relation to any invention means the conception or first actual reduction to practice of such invention.
- v. "Small Business Firm" means a small business concern as defined at section 2 of Pub. L. 85-536 (15 U.S.C. 632) and implementing regulations of the Administrator of the Small Business Administration. For the purpose of this clause, the size standards for small business concerns involved in government procurement and subcontracting at 13 CFR 121.3-8 and 13 CFR 121.3-12, respectively, will be used.
- vi. "Nonprofit Organization" means a university or other institution of higher education or an organization of the type described in section 501(c)(3) of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) and exempt from taxation under section 501(a) of the Internal Revenue Code (25 U.S.C. 501(a)) or any nonprofit scientific or educational organization qualified under a state nonprofit organization statute.
- vii. "Statutory period" means the one-year period before the effective filing date of a claimed invention during which exceptions to prior art exist per 35 U.S.C. 102(b), as amended by the Leahy-Smith America Invents Act, Public Law 112-29.
- viii. The "contractor" means any person, small business firm or nonprofit organization, or as set forth in section 1, paragraph (b)(4) of Executive Order 12591, as amended, any business firm regardless of size, which is a party to a funding agreement.
- b. Allocation of Principal Rights. The Contractor may retain the entire right, title, and interest throughout the world to each subject invention subject to the provisions of this clause and 35 U.S.C. 203. With respect to any subject invention in which the Contractor retains title, the Federal government shall have a nonexclusive, nontransferable, irrevocable, paid-up license to practice or have practiced for or on behalf of the United States the subject invention throughout the world.

- c. Invention Disclosure Election of Title and Filing of Patent Application by Contractor.
  - i. The Contractor will disclose each subject invention to the City and the Federal Agency within two months after the inventor discloses it in writing to Contractor personnel responsible for patent matters. Such disclosure shall be in the form of a written report and shall identify the contract under which the invention was made and the inventor(s). It shall be sufficiently complete in technical detail to convey a clear understanding to the extent known at the time of the disclosure, of the nature, purpose, operation, and the physical, chemical, biological or electrical characteristics of the invention. The disclosure shall also identify any publication, on sale or public use of the invention and whether a manuscript describing the invention has been submitted for publication and, if so, whether it has been accepted for publication at the time of disclosure. In addition, after such disclosure, the Contractor will promptly notify the City and the Federal Agency of the acceptance of any manuscript describing the invention for publication or of any on sale or public use planned by the Contractor.
  - ii. The Contractor will elect in writing whether or not to retain title to any such invention by notifying the City and the Federal Agency within two years of disclosure to the City and the Federal Agency. However, in any case where a patent, a printed publication, public use, sale, or other availability to the public has initiated the one year statutory period wherein valid patent protection can still be obtained in the United States, the period for election of title may be shortened by the Federal Agency to a date that is no more than 60 days prior to the end of the statutory period.
  - iii. The Contractor will file its initial patent application on a subject invention to which it elects to retain title within one year after election of title or, if earlier, prior to the end of any statutory period wherein valid patent protection can be obtained in the United States after a publication, on sale, or public use. If the Contractor files a provisional application as its initial patent application, it shall file a non-provisional application within 10 months of the filing of the provisional application. The Contractor will file patent applications in additional countries or international patent offices within earlier ten months of the first filed patent application or six months from the date permission is granted by the Commissioner of Patents to file foreign patent

- applications where such filing has been prohibited by a Secrecy Order.
- iv. For any subject invention with Federal agency and contractor co-inventors, where the Federal agency employing such co-inventor determines that it would be in the interest of the government, pursuant to 35 U.S.C. 207(a)(3), to file an initial patent application on the subject invention, the Federal agency employing such co-inventor, at its discretion and in consultation with the contractor, may file such application at its own expense, provided that the contractor retains the ability to elect title pursuant to 35 U.S.C. 202(a).
- v. Requests for extension of the time for disclosure, election, and filing under paragraphs (i), (ii), and (iii) of this clause may, at the discretion of the Federal agency, be granted. When a contractor has requested an extension for filing a non-provisional application after filing a provisional application, a one-year extension will be granted unless the Federal agency notifies the contractor within 60 days of receiving the request.
- d. Conditions When the Government May Obtain Title

The Contractor will convey to the Federal Agency, upon written request, title to any subject invention --

- i. If the Contractor fails to disclose or elect title to the subject invention within the times specified in (c) of this clause, or elects not to retain title., .
- ii. In those countries in which the Contractor fails to file patent applications within the times specified in paragraph (c) of this clause; provided, however, that if the Contractor has filed a patent application in a country after the times specified in (c) of this clause, but prior to its receipt of the written request of the Federal Agency, the Contractor shall continue to retain title in that country.
- iii. In any country in which the Contractor decides not to continue the prosecution of any non-provisional patent application for, to pay a maintenance annuity or renewal fee on, or to defend in a reexamination or opposition proceeding on, a patent on a subject invention.
- e. Minimum Rights to Contractor and Protection of the Contractor Right to File

- i. The Contractor will retain a nonexclusive royalty-free license throughout the world in each subject invention to which the Government obtains title, except if the Contractor fails to disclose the invention within the times specified in (c), above. The Contractor's license extends to its domestic subsidiary and affiliates, if any, within the corporate structure of which the Contractor is a party and includes the right to grant sublicenses of the same scope to the extent the Contractor was legally obligated to do so at the time the Contract was awarded. The license is transferable only with the approval of the Federal Agency except when transferred to the successor of that party of the Contractor's business to which the invention pertains.
- ii. The Contractor's domestic license may be revoked or modified by the funding Federal Agency to the extent necessary to achieve expeditious practical application of the subject invention pursuant to an application for an exclusive license submitted in accordance with applicable provisions at 37 CFR Part 404 and agency licensing regulations (if any). This license will not be revoked in that field of use or the geographical areas in which the Contractor has achieved practical application and continues to make the benefits of the invention reasonably accessible to the public. The license in any foreign country may be revoked or modified at the discretion of the funding Federal Agency to the extent the Contractor, its licensees, or the domestic subsidiaries or affiliates have failed to achieve practical application in that foreign country.
- iii. Before revocation or modification of the license, the funding Federal Agency will furnish the Contractor a written notice of its intention to revoke or modify the license, and the Contractor will be allowed thirty days (or such other time as may be authorized by the funding Federal Agency for good cause shown by the Contractor) after the notice to show cause why the license should not be revoked or modified. The Contractor has the right to appeal, in accordance with applicable regulations in 37 CFR Part 404 and Federal Agency regulations (if any) concerning the licensing of Government-owned inventions, any decision concerning the revocation or modification of the license.

### f. Contractor Action to Protect the Government's Interest

i. The Contractor agrees to execute or to have executed and promptly deliver to the Federal Agency all instruments necessary to (i) establish or confirm the rights the Government has throughout the world in those subject inventions to which the Contractor elects to retain title, and (ii) convey title to the Federal Agency when requested under paragraph (d) above and to enable the Government to obtain patent protection throughout the world in that subject invention.

- ii. The Contractor agrees to require, by written agreement, its employees, other than clerical and nontechnical employees, to disclose promptly in writing to personnel identified as responsible for the administration of patent matters and in a format suggested by the Contractor each subject invention made under contract in order that the Contractor can comply with the disclosure provisions of paragraph (c), of this clause, to assign to the Contractor the entire right, title and interest in and to each subject invention made under Contract, and to execute all papers necessary to file patent applications on subject inventions and to establish the Government's rights in the subject inventions. This disclosure format should require, as a minimum, the information required by paragraph (c)(1) of this clause. The Contractor shall instruct such employees through employee agreements or other suitable educational programs on the importance of reporting inventions in sufficient time to permit the filing of patent applications prior to U.S. or foreign statutory bars.
- iii. For each subject invention, the contractor will, no less than 60 days prior to the expiration of the statutory deadline, notify the Federal agency of any decision: Not to continue the prosecution of a non-provisional patent application; not to pay a maintenance, annuity or renewal fee; not to defend in a reexamination or opposition proceeding on a patent, in any country; to request, be a party to, or take action in a trial proceeding before the Patent Trial and Appeals Board of the U.S. Patent and Trademark Office, including but not limited to post-grant review, review of a business method patent, inter partes review, and derivation proceeding; or to request, be a party to, or take action in a non-trial submission of art or information at the U.S. Patent and Trademark Office, including but not limited to a preissuance submission, a post-issuance submission, and supplemental examination..
- iv. The Contractor agrees to include, within the specification of any United States patent applications and any patent issuing thereon covering a subject invention, the following statement, "This invention was made with government support under (identify the

contract) awarded by (identify the Federal Agency). The government has certain rights in the invention."

#### g. Subcontracts

- i. The Contractor will include this clause, suitably modified to identify the parties, in all subcontracts, regardless of tier, for experimental, developmental or research work to be performed by a subcontractor. The subcontractor will retain all rights provided for the Contractor in this clause, and the Contractor will not, as part of the consideration for awarding the subcontract, obtain rights in the subcontractor's subject inventions.
- ii. The Contractor will include in all other subcontracts, regardless of tier, for experimental developmental or research work the patent rights clause required by 2 CFR § 200.315(c) and Appendix II to 2 CFR Part 200.
- iii. In the case of subcontracts, at any tier, when the prime award with the Federal Agency was a contract (but not a grant or cooperative agreement), the Agency, subcontractor, and the Contractor agree that the mutual obligations of the parties created by this clause constitute a contract between the subcontractor and the Federal Agency with respect to the matters covered by the clause; provided, however, that nothing in this paragraph is intended to confer any jurisdiction under the Contract Disputes Act in connection with proceedings under paragraph (j) of this clause.
- h. Reporting on Utilization of Subject Inventions. The Contractor agrees to submit on request periodic reports no more frequently than annually on the utilization of a subject invention or on efforts at obtaining such utilization that are being made by the Contractor or its licensees or assignees. Such reports shall include information regarding the status of development, date of first commercial sale or use, gross royalties received by the Contractor, and such other data and information as the Federal Agency may reasonably specify. The Contractor also agrees to provide additional reports as may be requested by the Federal Agency in connection with any march-in proceeding undertaken by the Federal Agency in accordance with paragraph (j) of this clause. As required by 35 U.S.C. § 202(c)(5), the Federal Agency agrees it will not disclose such information to persons outside the Government without permission of the Contractor.
- i. Preference for United States Industry. Notwithstanding any other provision of this clause, the Contractor agrees that neither it nor any assignee will grant to any person the exclusive right to use or sell any subject inventions in the United States unless such

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person agrees that any products embodying the subject invention or produced through the use of the subject invention will be manufactured substantially in the United States. However, in individual cases, the requirement for such an agreement may be waived by the Federal Agency upon a showing by the Contractor or its assignee that reasonable but unsuccessful efforts have been made to grant licenses on similar terms to potential licensees that would be likely to manufacture substantially in the United States or that under the circumstances domestic manufacture is not commercially feasible.

- j. March-in Rights. The Contractor agrees that with respect to any subject invention in which it has acquired title, the Federal Agency has the right in accordance with the procedures in 37 CFR § 401.6 and any supplemental regulations of the Federal Agency to require the Contractor, an assignee or exclusive licensee of a subject invention to grant a nonexclusive, partially exclusive, or exclusive license in any field of use to a responsible applicant or applicants, upon terms that are reasonable under the circumstances, and if the Contractor, assignee, or exclusive licensee refuses such a request the Federal Agency has the right to grant such a license itself if the Federal Agency determines that:
  - i. Such action is necessary because the Contractor or assignee has not taken, or is not expected to take within a reasonable time, effective steps to achieve practical application of the subject invention in such field of use.
  - ii. Such action is necessary to alleviate health or safety needs which are not reasonably satisfied by the Contractor, assignee or their licensees;
  - iii. Such action is necessary to meet requirements for public use specified by Federal regulations and such requirements are not reasonably satisfied by the Contractor, assignee or licensees; or
  - iv. Such action is necessary because the agreement required by paragraph (i) of this clause has not been obtained or waived or because a licensee of the exclusive right to use or sell any subject invention in the United States is in breach of such agreement.
- k. *Special Provisions for Contracts with Nonprofit Organizations.* If the Contractor is a nonprofit organization, it agrees that:
  - Rights to a subject invention in the United States may not be assigned without the approval of the Federal Agency, except where such assignment is made to an organization which has as one of its primary functions

- the management of inventions, provided that such assignee will be subject to the same provisions as the Contractor;
- ii. The Contractor will share royalties collected on a subject invention with the inventor, including Federal employee co-inventors (when the Federal Agency deems it appropriate) when the subject invention is assigned in accordance with 35 U.S.C. § 202(e) and 37 CFR § 401.10;
- iii. The balance of any royalties or income earned by the Contractor with respect to subject inventions, after payment of expenses (including payments to inventors) incidental to the administration of subject inventions, will be utilized for the support of scientific research or education; and
- iv. It will make efforts that are reasonable under the circumstances to attract licensees of subject invention that are Small Business Firms and that it will give a preference to a Small Business Firm when licensing a subject invention if the Contractor determines that the Small Business Firm has a plan or proposal for marketing the invention which, if executed, is equally as likely to bring the invention to practical application as any plans or proposals from applicants that are not Small Business Firms; provided, that the Contractor is also satisfied that the Small Business Firm has the capability and resources to carry out its plan or proposal. The decision whether to give a preference in any specific case will be at the discretion of the Contractor. However, the Contractor agrees that the Federal Aency may review the Contractor's licensing program and decisions regarding Small Business applicants, and the Contractor will negotiate changes to its licensing policies, procedures, or practices with the Federal Agency when the Federal Agency's review discloses that the Contractor could take reasonable steps to implement more effectively the requirements of this paragraph (k)(iv). In accordance with 37 CFR 401.7, the Federal agency or the contractor may request that the Secretary review the contractor's licensing program and decisions regarding small business applicants.
- 1. *Communication*. The central point of contact at the Federal Agency for communications on matters relating to this clause may be obtained from the City upon request.

#### NOTICE TO BIDDERS

#### NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246, as amended) FOR ALL CONSTRUCTION CONTRACTS AND SUB-CONTRACTS IN EXCESS OF \$10,000.

- 1. The Offeror's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment Opportunity Construction Contract Specifications" set forth herein.
- 2. The goals and timetables for minority and female participation, expressed in percentage terms for the Contractor's aggregate workforce in each trade on all Construction Work in the covered area, are as follows:

#### Goals and Timetables for Minorities

		Goa	<u>l</u>
<u>Trade</u>	<u>(</u>	perce	ent)
Electricians	9.0	to	10.2
Carpenters	27.6	to	32.0
Steamfitters	12.2	to	13.5
Metal Lathers	24.6	to	25.6
Painters	28.6	to	26.0
Operating Engineers	25.6	to	26.0
Plumbers	12.0	to	14.5
Iron Workers (structural)	25.9	to	32.0
Elevator Constructors	5.5	to	6.5
Bricklayers	13.4	to	15.5
Asbestos Workers	22.8	to	28.0
Roofers	6.3	to	7.5
Iron Workers (ornamental)	22.4	to	23.0
Cement Masons	23.0	to	27.0
Glazers	. 16.0	to	20.0
Plasterers	15.8	to	18.0
Teamsters	. 22.0	to	22.5
Boilermakers	13.0	to	15.5
All Other	16.4	to	17.5

#### Goals and Timetables for Women

6.9 

These goals are applicable to all the Contractor's Construction Work (whether or not it is Federal or federally assisted) performed in the covered area. If the Contractor performs Construction Work in a geographical area located outside of the covered area, it shall apply the goals established for such geographical area where the work is actually performed. With regard to this second area, the Contractor also is subject to the goals for both its federally involved and nonfederally involved Construction.

Uniform Federal Contract Provisions Rider 2021 01 2 0 FINAL - (# Legal 11435275) - (# Legal

The Contractor's compliance with the Executive Order and the regulations in 41 CFR Part 60-4 shall be based on its implementation of the Equal Opportunity Clause, specific affirmative action obligations required by the specifications set forth in 41 CFR 60-4.3(a), and its efforts to meet the goals. The hours of minority and female employment and training must be substantially uniform throughout the length of the contract, and in each trade, and the Contractor shall made a good faith effort to employ minorities and women evenly on each of its projects. The transfer of minority or female employees or trainees from Contractor to Contractor or from project to project for the sole purpose of meeting the Contractor's goals shall be a violation of the contract, the Executive Order and the regulations in 41 CFR Part 60-4. Compliance with the goals will be measured against the total work hours performed.

- 3. The Contractor shall provide written notification to the Director of the Office of Federal Contract Compliance Programs within 10 working days of award of any Construction subcontract in excess of \$10,000 at any tier for Construction Work under the contract resulting from this solicitation. The notification shall list the name, address and telephone number of the subcontractor; employer identification number of the subcontractor; estimated dollar amount of the subcontract; estimated starting and completion dates of the subcontract; and the geographical area in which the contract is to be performed.
  - 4. As used in this Contract, the "covered area" is the City of New York.

# Federal Labor Standards Provisions (<u>Non-Davis Bacon</u>)<sup>1</sup> Federal Emergency Management Agency (10/27/2015)

**Applicability:** The Project or Program to which the construction work covered by this contract pertains is being assisted by the United States of America and the following Federal Labor Standards Provisions are included in this Contract pursuant to the provisions applicable to such Federal assistance.

#### A. Compliance with the Copeland "Anti-Kickback" Act.

- 1. **Contractor.** The contractor shall comply with 18 U.S.C. § 874, 40 U.S.C. § 3145, and the requirements of 29 C.F.R. pt. 3 as may be applicable, which are incorporated by reference into this contract.
- 2. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clause in paragraph 1 above and such other clauses as the FEMA 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 of these contract clauses.
- 3. **Breach.** A breach of the contract clauses above may be grounds for termination of the contract, and for debarment as a contractor and subcontractor as provided in 29 C.F.R. § 5.12.
- B. <u>Compliance with the Contract Work Hours and Safety Standards Act</u>. The provisions of this Section B are applicable where the amount of the prime contract exceeds \$100,000.
  - 1. 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-halftimes the basic rate of pay for all hours worked in excess of forty hours in such workweek.
  - 2. Violation; liability for unpaid wages; liquidated damages. In the event of any violation of the clause set forth in paragraph (1) of this Section B the contractor and any subcontractor responsible therefor shall be liable for the unpaid wages. In

<sup>&</sup>lt;sup>1</sup> This version of Exhibit 2 applies to contracts funded by FEMA Grant and Cooperative Agreement Programs, including the Public Assistance Program. Do not use this version of Exhibit 2 in connection with FEMA programs that are subject to the Davis-Bacon Act; such programs are the Emergency Management Preparedness Grant Program, the Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program.

addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory), 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 (1) 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 (1) of this section.

- 3. Withholding for unpaid wages and liquidated damages. The City of New York 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 (2) of this section.
- 4. **Subcontracts.** The contractor or subcontractor shall insert in any subcontracts the clauses set forth in paragraphs (1) through (4) of this Section B 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 (1) through (4) of this section B.
- C. <u>Health and Safety</u>. The provisions of this paragraph C are applicable where the amount of the prime contract exceeds \$100,000.
  - 1. No laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous, or dangerous to his health and safety as determined under construction safety and health standards promulgated by the Secretary of Labor by regulation.
  - 2. The Contractor shall comply with all regulations issued by the Secretary of Labor pursuant to Title 29 Part 1926 and failure to comply may result in imposition of sanctions pursuant to the Contract Work Hours and Safety Standards Act, (Public Law 91-54, 83 Stat 96). 40 USC 3701 et seq.
  - 3. The contractor shall include the provisions of this paragraph in every subcontract so that such provisions will be binding on each subcontractor. The contractor shall take such action with respect to any subcontractor as FEMA or the Secretary of Labor shall direct as a means of enforcing such provisions.

### FEDERAL EMERGENCY MANAGEMENT AGENCY ("FEMA") RIDER (1/20/2021)

### For use with contracts funded by the FEMA Grant and Cooperative Agreement Programs, including the Public Assistance Program

(This Rider should not be used with contracts funded by the following FEMA Programs: Emergency Management Preparedness Grant Program, Homeland Security Grant Program, Nonprofit Security Grant Program, Tribal Homeland Security Grant Program, Port Security Grant Program, and Transit Security Grant Program. This Rider should be accompanied by the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts.)

- 1. <u>Suspension and Debarment</u>. Section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is supplemented with the following provisions:
  - (a) This contract is a covered transaction for purposes of 2 C.F.R. Parts 180 and 3000. As such, the Contractor is required to verify that none of the Contractor, its principals (defined at 2 C.F.R. § 180.995), or its affiliates (defined at 2 C.F.R. § 180.905) are excluded (defined at 2 C.F.R. § 180.940) or disqualified (defined at 2 C.F.R. § 180.935). By entering into this contract, the Contractor certifies that it is in compliance with 2 C.F.R. Parts 180 and 3000.
  - (b) The Contractor must comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C during the term of this contract and must include a requirement to comply with these regulations in any lower tier covered transaction it enters into.
  - (c) The certification in paragraph (a), above, and section C(5) of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts is a material representation of fact relied upon by the City of New York. If it is later determined that the Contractor did not comply with 2 C.F.R. Part 180, subpart C and 2 C.F.R. Part 3000, subpart C, in addition to remedies available to the City of New York and, if applicable, the State of New York, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment.
- 2. <u>Davis-Bacon Act</u>. For the purposes of Section D(1)(a) of the Uniform Federal Contract Provisions Rider, compliance with the Davis-Bacon Act (40 U.S.C. §§ 3141-3148) is not required of the Contractor pursuant to FEMA regulations. However, if this Contract is funded by another federal funding source (e.g., the U.S. Department of Housing and Urban Development CDBG or CDBG-DR programs), compliance with the Davis-Bacon Act is required to the extent required by law and as set forth in the contract documents.
- 3. Rights to Inventions Made Under a Contract or Agreement. Section E of the Uniform Federal Contract Provisions Rider for Federally Funded Procurement Contracts does not apply to the following FEMA Programs: Public Assistance Program, Hazard Mitigation Grant Program, Fire Management Assistance Grant Program, Crisis Counseling Assistance and Training Grant Program, Disaster Case Management Program, and Federal Assistance to Individuals and Households Other Needs Assistance Grant Program.

- 4. <u>Copeland "Anti-Kickback" Act.</u> The Contractor shall comply with provisions of the Copeland "Anti-Kickback" Act (18 U.S.C. § 874) as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (A).
- 5. <u>Contract Work Hours and Safety Standards Act</u>. The Contractor shall comply with the provisions of the Contract Work Hours and Safety Standards Act as delineated in the Uniform Federal Contract Provisions Rider, FEMA Exhibit 2, Section (B).

#### 6. Access to Records.

- (a) The Contractor agrees to provide the City of New York, the FEMA 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.
- (b) The Contractor agrees to permit any of the foregoing parties to reproduce said documents by any means or to copy excerpts and transcriptions as reasonably needed.
- (c) The Contractor agrees to provide the FEMA Administrator or his/her authorized representative access to construction or other work sites pertaining to the work being completed under the contract.
- (d) In compliance with the Disaster Recovery Act of 2018, the City of New York and the Contractor acknowledge and agree that no language in this contract is intended to prohibit audits or internal reviews by the FEMA Administrator or the Comptroller General of the United States.
- 7. <u>Logos</u>. The Contractor shall not use DHS seal(s), logos, crests, or reproductions of flags or likenesses of DHS agency officials without specific FEMA pre-approval.
- 8. <u>Compliance with Law.</u> The Contractor acknowledges that FEMA financial assistance will be used to fund all or a portion of the contract. The Contractor will comply with all applicable federal law, regulations, executive orders, FEMA policies, procedures, and directives.
- 9. <u>Federal Government not a Party</u>. The Contractor acknowledges and understands that the Federal Government is not a party to this contract and is not subject to any obligations or liabilities to the City, Contractor or any other party pertaining to any matter resulting from the contract.
- 10. <u>False Claims</u>. The Contractor acknowledges that 31 U.S.C. Chap. 38 applies to the Contractor's actions pertaining to this contract.



## **EXHIBIT M Project Specification Documents**

The project specification documents are comprised of <u>Exhibits M.1</u>, <u>M.2</u>, <u>M.3</u> and <u>M.4</u> (the "Project Specification Documents") and are available at the following Link:

 $https://brooklynnavyyard.sharepoint.com/:f:/s/external\_sharing/dnc/ElaeDQ23QhJMt5PKBRw52dkB0BJqKVeER83BWpAmwXAnhA?e=hy87Dz$ 



## EXHIBIT N ADDITIONAL M/WBE PROVISIONS

#### A. Pre-award waiver of the Participation Goals.

- A Bidder may seek a pre-award full or partial waiver of the Participation Goals in accordance
  with Section 6-129, which requests that BNYDC change the Participation Goal on the
  grounds that the Participation Goal is unreasonable in light of the availability of certified
  firms to perform the services required, or by demonstrating that it has legitimate business
  reasons for proposing a lower level of subcontracting in its M/WBE Utilization Plan.
- 2. To apply for a full or partial waiver of the Participation Goal, a bidder must complete Part B of Exhibit O and submit such request no later than seven (7) calendar days prior to the date and time the bids are due, in writing to the BNYDC by email at <a href="mailto:bid@bnydc.org">bid@bnydc.org</a> and <a href="mailto:mwbe@bnydc.org">mwbe@bnydc.org</a>. Full or partial waiver requests that are received later than seven (7) calendar days prior to the date and time the bids are due may be rejected as untimely. Bidders who have submitted timely requests will receive a BNYDC response by no later than two (2) calendar days prior to the due date for bids; provided, however, that if that date would fall on a weekend or holiday, a BNYDC response will be provided by close-of-business on the business day before such weekend or holiday date.
- 3. If BNYDC determines that the Participation Goal is unreasonable in light of the availability of certified firms to perform the services required, it shall revise the solicitation and extend the deadline for bids.
- 4. BNYDC may grant a full or partial waiver of the Participation Goal to a bidder who demonstrates—before submission of the bid— that it has legitimate business reasons for proposing the level of subcontracting in its M/WBE Utilization Plan. In making its determination, BNYDC shall consider factors that shall include, but not be limited to, whether the bidder has the capacity and the bona fide intention to perform the Contract without any subcontracting, or to perform the Contract without awarding the amount of subcontracts represented by the Participation Goal. In making such determination, BNYDC may consider whether the M/WBE Utilization Plan is consistent with past subcontracting practices of the bidder whether the bidder has made efforts to form a joint venture with a certified firm, and whether the bidder has made good faith efforts to identify other portions of the Contract that it intends to subcontract.

#### B. Modification of M/WBE Utilization Plan.

1. A Contractor may request a modification of its M/WBE Utilization Plan (a "Modification") after award of this Contract. BNYDC may grant a request for Modification of a Contractor's M/WBE Utilization Plan if it determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the Participation Goal. In making such determination, BNYDC shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

- a. The Contractor advertised opportunities to participate in the Contract, where appropriate, in general circulation media, trade and professional association publications and small business media, and publications of minority and women's business organizations;
- b. The Contractor provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organizations;
- c. The Contractor sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs or WBEs that their interest in the Contract was solicited;
- d. The Contractor made efforts to identify portions of the work that could be substituted for portions originally designated for participation by MBEs and/or WBEs in the M/WBE Utilization Plan, and for which the Contractor claims an inability to retain MBEs or WBEs;
- e. The Contractor held meetings with MBEs and/or WBEs prior to the date their bids were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids were solicited;
- f. The Contractor made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts, or act as suppliers or service providers;
- g. Timely written requests for assistance made by the Contractor to BNYDC's M/WBE liaison officer at mwbe@bnydc.org and to DSBS and DMWBD;
- h. Description of how recommendations made by DSBS, DMWBD and BNYDC were acted upon and an explanation of why action upon such recommendations did not lead to the desired level of participation of MBEs and/or WBEs.

BNYDC's M/WBE liaison officer shall provide written notice to the Contractor of the determination.

2. BNYDC may modify the Participation Goal when the scope of the work has been changed by BNYDC in a manner that affects the scale and types of work that the Contractor indicated in its M/WBE Utilization Plan would be awarded to subcontractors.

#### C. Substitutions

Substitutions to the MBEs and/or WBEs that Contractor identified as firms they intended to use in connection with the performance of the Contract may only be made with the approval of BNYDC, which shall only be given when the Contractor has proposed to use a firm that would satisfy the Participation Goal to the same extent as the firm previously identified, unless BNYDC determines that the Contractor has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts. In making such determination, BNYDC shall require evidence of the efforts listed in Section B(1) above, as applicable, along with any other relevant factors.

#### **D. Indefinite Quantity Contracts**

If this Contract is for an indefinite quantity of construction or is a requirements type contract and the Contractor has submitted an M/WBE Utilization Plan and has committed to subcontract work to



MBEs and/or WBEs in order to meet the Participation Goal, the Contractor will not be deemed in violation of the M/WBE Program requirements for this Contract with regard to any work which was intended to be subcontracted to an MBE and/or WBE to the extent that BNYDC has determined that such work is not needed.

#### E. Progress Review, Evaluation and Assessment

At least once annually during the term of the Contract, BNYDC shall review the Contractor's progress toward attainment of its M/WBE Utilization Plan, including but not limited to, by reviewing the percentage of work the Contractor has actually awarded to MBE and/or WBE subcontractors and the payments the Contractor made to such subcontractors.

BNYDC shall evaluate and assess the Contractor's performance in meeting those goals, and such evaluation and assessment shall become part of the Contractor's overall contract performance evaluation.

#### F. Miscellaneous Provisions

- 1. The Contractor shall take notice that the resulting contract may be audited. Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with its M/WBE Utilization Plan.
- 2. DSBS and DMWBD are available to assist contractors and potential contractors in determining the availability of MBEs and/or WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and/or WBEs in contracts.
- 3. Prospective contractors are encouraged to enter into qualified joint venture agreements with MBEs and/or WBEs as defined by Section 6-129(c)(30).
- 4. By submitting a bid the Contractor hereby acknowledges its understanding of the M/WBE Program requirements set forth herein, and if awarded this Contract, the Contractor hereby agrees to comply with the M/WBE Program requirements of this Contract, all of which shall be deemed to be material terms of this Contract. The Contractor hereby agrees to make all reasonable, good faith efforts to solicit and obtain the participation of MBEs and/or WBEs to meet the required Participation Goals.

#### **G.** Enforcement

- 1. If BNYDC determines that a bidder has, in relation to this procurement, violated the M/WBE Program requirements of this Contract, BNYDC may disqualify such bidder from competing for this Contract and BNYDC may revoke such bidder's prequalification status, if applicable.
- 2. Whenever BNYDC believes that the Contractor or a subcontractor is not in compliance with the M/WBE Program or its M/WBE Utilization Plan, BNYDC shall send a written notice to the Contractor describing the alleged noncompliance and offering the Contractor an opportunity to be heard. BNYDC shall then conduct an investigation to determine whether such Contractor or subcontractor is in compliance.
- 3. In the event that the Contractor has been found to have violated the M/WBE Program or

its M/WBE Utilization Plan, BNYDC may determine that one of the following actions should be taken:

- a. entering into an agreement with the Contractor allowing the Contractor to cure the violation;
- b. revoking the Contractor's pre-qualification to bid for future contracts;
- c. making a finding that the Contractor is in default of the Contract;
- d. terminating the Contract;
- e. declaring the Contractor to be in breach of Contract;
- f. withholding payment or reimbursement;
- g. determining not to renew the Contract;
- h. assessing actual and consequential damages;
- i. assessing liquidated damages or reducing fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the M/WBE Program, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative costs of investigation and enforcement, or other factors set forth in the Contract;
- j. exercising rights under the Contract to procure goods, services or construction from another contractor and charge the cost of such contract to the Contractor that has been found to be in noncompliance; or
- k. taking any other appropriate remedy.
- 4. If the Contractor has been found to have failed to fulfill its Participation Goals contained in its M/WBE Utilization Plan or the Participation Goal as modified by BNYDC pursuant to Section B of this Exhibit N, BNYDC may assess liquidated damages in the amount of ten percent (10%) of the difference between the dollar amount of work required to be awarded to MBE and/or WBE firms to meet the Participation Goal and the dollar amount the Contractor actually awarded and paid, and/or credited, to MBE and/or WBE firms. In view of the difficulty of accurately ascertaining the loss which BNYDC will suffer by reason of Contractor's failure to meet the Participation Goal, the foregoing amount is hereby fixed and agreed as the liquidated damages that BNYDC will suffer by reason of such failure, and not as a penalty. BNYDC may deduct and retain out of any monies which may become due under this Contract the amount of any such liquidated damages; and in case the amount which may become due under this Contract shall be less than the amount of liquidated damages suffered by BNYDC, the Contractor shall be liable to pay the difference.
- 5. Whenever BNYDC has reason to believe that an MBE and/or WBE is not qualified for certification, or is participating in a contract in a manner that does not serve a commercially useful function (as defined in Section 6-129(c)(8)), BNYDC shall notify the Commissioner of DSBS or DMWBD, as applicable, who shall determine whether the certification of such business enterprise should be revoked.



- 6. Statements made in any instrument submitted to BNYDC pursuant to the M/WBE Program shall be submitted under penalty of perjury and any false or misleading statement or omission shall be grounds for the application of any applicable criminal and/or civil penalties for perjury. The making of a false or fraudulent statement by an MBE and/or WBE in any instrument submitted pursuant the M/WBE Program shall, in addition, be grounds for revocation of its certification.
- 7. The Contractor's record in implementing its M/WBE Utilization Plan shall be a factor in the evaluation of its performance. Whenever BNYDC determines that a Contractor's compliance with an M/WBE Utilization Plan has been unsatisfactory, BNYDC shall, after consultation with the BNYDC M/WBE liaison officer, file an advice of caution form for inclusion in PASSPort as caution data.

#### **EXHIBIT O**

#### M/WBE Utilization Plan

(To be completed by the bidder/proposer unless granted a full waiver, which must be submitted with the bid/proposal in lieu of this form)

Berths 8, 9 and 10 Electrical and Mechanical Restoration **Project name:** FEMA PW-4272 (Berths 8, 8A and 8B), PW-4582 (Berths 9 and 9A), PW-4583 (Berths 10 and 10A) **Total MWBE Participation Goal for this Project:** 8% **PART A Section 1: Prime Contractor Contact Information** Tax ID# \_\_\_\_\_ FMS Vendor ID# Business Name Business Name Contact Person \_\_\_\_\_ Business Address City State ZIP Telephone Email Section 2: M/WBE Utilization Goal Calculation Prime Contractor Adopting M/WBE Participation Goals For Prime Contractors (including Qualified Joint Ventures and M/WBE firms) adopting M/WBE Participation Goals. Total Bid/Proposal Value \$ \_\_\_\_\_ multiplied by x Total Participation Goal 8% for this IFB Calculated M/WBE Participation Amount \$

#### Section 3: Contractor M/WBE Utilization Plan

Please review the IFB for more information on how to obtain credit for M/WBE participation. Check applicable box. The Proposer of Bidder will fulfill the M/WBE Participation Goals:
☐ As an M/WBE Prime Contractor that will self-perform and/or subcontract to other M/WBE firms a portion of the contract the value of which is at least the Calculated M/WBE Participation Amount set forth in Section 2. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.
Please check all that apply to Prime Contractor:   MBE WBE  As a Qualified Joint Venture with an M/WBE partner, in which the value of the M/WBE partner's participation and/or the value of any work subcontracted to other M/WBE firms is at least the Calculated M/WBE Participation Amount set forth in Section 2. The value of any work subcontracted to non-M/WBE firms will not be credited towards fulfillment of M/WBE Participation Goals.
☐ As a non-M/WBE Prime Contractor that will enter into subcontracts with M/WBE firms the value of which is at least the Calculated M/WBE Participation Amount set forth in Section 2.

#### **Section 4: General Contract Information**

Enter a brief description of the type(s) and dollar value of subcontracts for all services you plan to subcontract if awarded this contract, along with the anticipated start and end dates for such subcontracts. For each item, indicate whether the work is designated for participation by an M/WBE. For all M/WBE subcontractors listed below, please also include as attachments to this M/WBE Utilization Plan, a printout of the certification by DSBS or DMWBD given to such subcontractor.

What is the expected per	centage of the total contract dollar value that you expect to award in subcontracts for services, regard	dless of
M/WBE status?	<u>%</u>	

	Description of Work	Start Date	End Date	Planned	_	nated for WBE?	Vendor Name	Address	Telephone
		(MM/YY)	(MM/YY)	\$ Amount	Υ	N			
1				\$					
2				\$					
3				\$					
4				\$					
5				\$					
6				\$					
7				\$					,
8				\$					
9				\$					
10				\$					

#### **Section 5: Vendor Certification and Required Affirmations**

I hereby:

- 1. acknowledge my understanding of the M/WBE participation requirements as set forth herein and the pertinent provisions of Section 6-129 of the Administrative Code of the City of New York ("Section 6-129"), and the rules promulgated thereunder;
- 2. affirm that the information supplied in support of this M/WBE Utilization Plan is true and correct;
- 3. agree, if awarded this Contract, to comply with the M/WBE participation requirements of this Contract, the pertinent provisions of Section 6-129, and the rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract;
- 4. agree and affirm that it is a material term of this Contract that the Vendor will award the total dollar value of the M/WBE Participation Goals to certified MBEs and/or WBEs, unless a full waiver is obtained or such Goals are modified by BNYDC; and
- 5. agree and affirm, if awarded this Contract, to make all reasonable, good faith efforts to meet the M/WBE Participation Goals, or If a partial waiver is obtained or such Goals are modified by BNYDC, to meet the modified Participation Goals by soliciting and obtaining the participation of certified MBE and/or WBE firms.

Signature	Date	
Print Name	Title	

#### REQUEST OF WAIVER OF M/WBE PARTICIPATION REQUIREMENTS

PART B – To be completed ONLY if requesting a full or partial waiver of the M/WBE Participation requirements. This waiver request must be submitted at least 7 calendar days prior to the Bid Submission Deadline.

Section 1. Contractor Contact Information	
Tax ID#	
FMS Vendor ID#	
Business Name	
Business Name Contact Person	
Business Address	CityState ZIP
Telephone	Email
Bid Due Date	
Section 2. Basis for Waiver Request	
Check appropriate box & explain in detail belo	ow (attach additional pages if needed)
☐ Vendor does not subcontract services, and has work itself with its own employees.	s the capacity and good faith intention to perform all such
<del></del>	k but at a lower % than bid/solicitation describes, and has the this contract. Identify your subcontracting plan in Section 4,
☐ Vendor has other legitimate business reasons	for proposing the M/WBE Participation Goal requested here.
Explain below (or on additional pages, as needed	1)

#### **Section 3. Vendor Contract History**

Vendor Contract History	ty work) performed within the last 3 years b	valou (attach additional
•	quested information for each contract.	Delow (attach additional
pages if fleeded, and provide the rec	questeu information for each contract.	
		<del></del>
· •	e reference information below for the 5 mos	
· · · · · · · · · · · · · · · · · · ·	York City or any other entity) to the bid or p	·
	ide the requested information for each subo	contract awarded during the
life of the listed reference contract.		
Please make sure to highlight the 5 r	eference contracts provided below among t	he comprehensive list of all your
contract awards.		,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,,
Reference 1		
		Contract #
Reference Contact	Telephone	Email

Contract Start Date		Contract End Da	ate		_ Total Contract Value \$_	
Prime Contract descripti	on					
Did the vendor perform a	as a Prime Contractor or as a	Subcontractor?		□ Prime Contractor	Subcontractor	
Was the Prime Contract	subject to any Goals?	☐ City M/WBE 0	Goals	State Goals	☐ Federal Goals	☐ No Applicable Goals
Did the Prime Contractor	meet Goal requirements?	☐ Yes	No	□ N/A		
If the Prime Contractor did	not meet Goal requirements	or contract is still o	ngoing, pleas	e explain		
If you performed as						\$
the Prime Contractor, please provide a						\$
description and						\$
value of all work						\$
subcontracted to other vendors.						\$
outer vertuers.						\$
						\$
						\$
			· ·		racted to other vendors	
if you performed as the	Subcontractor, please provide	de a description and	a value of wor	к areas you seit-perтorr	nea.	\$
Reference 2						<b>Y</b>
					Contract #	
Reference Contact		Т	elephone		Email	
Contract Start Date		Contract End Da	ate		_ Total Contract Value \$	
Prime Contract descripti	on					
Did the vendor perform a	as a Prime Contractor or as a	Subcontractor?		☐ Prime Contractor	☐ Subcontractor	
Was the Prime Contract		☐ City M/WBE 0	Goals	☐ State Goals	 ☐ Federal Goals	☐ No Applicable Goals
Did the Prime Contractor	meet Goal requirements?	Yes	No	□ N/A		
If the Prime Contractor did	not meet Goal requirements	or contract is still o	ongoing, pleas	e explain		
If you performed as						\$
the Prime Contractor,						\$

please provide a						\$
description and value of all work						\$
subcontracted to						\$
other vendors.						\$
						\$
						\$
						\$
		Pe	rcentage of	total contract value subcon	tracted to other vendors	%
If you performed as the S	Subcontractor, please provi	de a description	and value o	f work areas you self-perfor	med.	
						_ \$
Reference 3						
Agency/Organization					Contract #	
Reference Contact			_ Telephone	e	Email	
Contract Start Date		Contract End	Date		Total Contract Value	\$
Prime Contract description	on					
Did the vendor perform as	s a Prime Contractor or as a	Subcontractor?		□ Prime Contractor	☐ Subcontractor	
Was the Prime Contract s	subject to any Goals?	☐ City M/WB	E Goals	State Goals	☐ Federal Goals	☐ No Applicable Goals
Did the Prime Contractor	meet Goal requirements?	☐ Yes	☐ No	□ N/A		
If the Prime Contractor d	id not meet Goal requireme	nts or contract is	still ongoing	յ, please explain		
If you performed as						\$
the Prime Contractor,						\$
please provide a description and						\$
value of all work						\$
subcontracted to						\$
other vendors.						\$
						\$
						\$
						\$
		Pe	rcentage of	total contract value subcon	tracted to other vendors	%

#### If you performed as the Subcontractor, please provide a description and value of work areas you self-performed.

				\$
Reference 4				
Agency/Organization				
Reference Contact				
Contract Start Date	Contract End Date		Total Contract Value S	\$
Prime Contract description				
Did the vendor perform as a Prime Contractor or as a Was the Prime Contract subject to any Goals? Did the Prime Contractor meet Goal requirements?	☐ City M/WBE Goals	☐ Prime Contractor ☐ State Goals ☐ N/A	<ul><li>☐ Subcontractor</li><li>☐ Federal Goals</li></ul>	☐ No Applicable Goal
If the Prime Contractor did not meet Goal requirement	_	please explain		
If you performed as				\$
the Prime Contractor,				\$
please provide a description and				\$
value of all work				\$
subcontracted to other vendors.				\$
				\$
	Percentage of t	otal contract value subcon	tracted to other vendors	%
If you performed as the Subcontractor, please provi	ide a description and value of	work areas you self-perior	meu.	-
Agency/Organization			Contract #	
Reference Contact	Telephone		Email	
Contract Start Date				
Prime Contract description	Contract End Date		Total Contract Value (	Ψ
Did the vendor perform as a Prime Contractor or as a Was the Prime Contract subject to any Goals? Did the Prime Contractor meet Goal requirements?	☐ City M/WBE Goals	☐ Prime Contractor ☐ State Goals ☐ N/A	Subcontractor Federal Goals	☐ No Applicable Goal
If the Prime Contractor did not meet Goal requirement	ents or contract is still ongoing,	please explain		
If you performed as				\$
the Prime Contractor, please provide a				\$
——————————————————————————————————————				\$

description and value of all work subcontracted to other vendors.			\$\$ \$\$	
If you performed as the	Subcontractor, please provide a description and value of work at	ntract value subcontracted to other vendors reas you self-performed.	\$	
Section 4. Vendor Co	ertification			•
Identify/list all the wo	ork areas you intend on subcontracting on the current	t anticipated contract for which you	are submitting this	
affirm that the work	the information supplied in support of this waiver requ that I did not list as work that will be subcontracted o past contracts and will not subcontract if awarded the	on this contract for which I am submi		
Signature		_		
Date		_		
Print Name		Title		