NEW YORK CITY
DEPARTMENT OF TRANSPORTATION
DIVISION OF BRIDGES

P.I.N. 84108SIBR330

Contract No. HBR1217

ADMINISTRATIVE REQUIREMENTS

DESIGN/BUILD
REHABILITATION OF RAMP STRUCTURES AT THE ST. GEORGE, STATEN ISLAND FERRY TERMINAL

Together With All Work Incidental Thereto

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SECTION 1.01

NOTICE TO PROPOSERS

For the complete Request for Proposal, including, selection process and submission format, see the Request for Proposal Package.

Proposers must take into consideration all the requirements of Book 1 (Administrative Requirements) and Book 2 (Engineering Requirements) for Statement of Qualification Submission, Technical Proposal Submission and Price Proposal Submission.

This contract is subject to the Rules of the Procurement Policy Board (PPB) of the City of New York, dated July 2005, as amended. In the event of a conflict between said Rules and any provisions of this contract, the Rules shall take precedence. (Not applicable to FAUS and ITF Contracts). Any references in the contract documents to the "Board of Estimate", and any regulations thereof, are hereby superseded by the Rules of the PPB.

CONSTRUCTION NOISE MITIGATION RULE

Please be advised that the New York City Department of Environmental Protection has promulgated a new Construction Noise Mitigation Rule, codified at 15 Rules of the City of New York ("RCNY") Chapter 28-100 et seq. and appendix. This Rule will become effective on July 1, 2007. This rule was promulgated pursuant to the authority of Local Law 113 of 2005, codified in the Administrative Code as Title 24 chapter 2 which also goes into effect on the same date.

The Construction Noise Mitigation Rule requires a Construction Noise Mitigation Plan at each work site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the New York City Department of Environmental Protection. No Contract work may take place at a worksite unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Rule requires that the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties.

The Standard Construction Contract has been amended to incorporate the requirements of the Construction Noise Mitigation Rule. Please see Section 5.3 of Article 5 in the Design Build Contract Agreement Section (1.03 of Book 1), for the text of the changes that were made. Please refer to the contract itself for a full understanding and the actual text of the changes that were made. The text of the revised Standard Construction Contract is the controlling document should there be any discrepancies between this notice and the Standard Construction Contract.

SI FERRY FACILITY SECURITY PLAN / TWIC PROGRAM

In accordance with US Coast Guard regulations and the Staten Island Ferry's approved security plan, all individuals having access to the restricted areas of the Staten Island Ferry Facilities and vessels must be issued an approved NYCDOT photo identification badge.

In addition to the NYCDOT photo identification badge, any persons requiring access to secure areas of the terminals or vessels will be required under new Department of Homeland Security regulations to acquire a Transportation Worker Identification Credential (TWIC). TWIC is an identification credential that will be issued nation-wide to maritime workers who require unescorted access to secure areas of a port. It will be issued after a background check has been conducted that includes a fingerprint-based criminal history records check conducted by the FBI, an immigration status check, and a name-based terrorism watch list check conducted by the Transportation Security Administration (TSA). This cost associated with acquiring TWIC's is to be borne solely by the Company.

For additional information on the TWIC Program refer to Exhibit H – Special Provisions for Construction, Article 29 – Staten Island Ferry Facility Security Plan / TWIC Program in Book 2: Volume 2 – "Engineering Requirements".

NOTICE TO CITY VENDORS
VENDEX PROCEDURES

GENERAL INFORMATION

In an effort to streamline the operation of VENDEX, the Mayor's Office of Contract Services has made some significant changes in the processing of VENDEX forms.

- There are only two Questionnaires; the **Vendor Questionnaire** and the **Principal Questionnaire**.
- Questionnaires are submitted directly to MOCS; Questionnaires will no longer go directly to the agencies.
- Questionnaires are valid for three years from the date of the certifications.
- The new forms are available on line at www.nyc.gov/vendex

CERTIFICATIONS OF NO CHANGE

- Affidavits of no change are no longer accepted. Instead vendors are required to complete under penalty of perjury, a Certification of No Change which states that the information contained in the most recent VENDEX submission/ changed questionnaire is current and accurate, Unlike affidavits of no change, principals are not required to submit individual Certifications of No Change.
- The vendor must execute **TWO ORIGINAL** Certifications of No Change and return them to the agency.
- If the vendor has a parent or controlling entity that is required to submit VENDEX Questionnaires, the parent or controlling entity must also execute 2 original Certifications of No Change. **The Certification of No Change that is executed on behalf of the vendor will not be sufficient to cover the parent or the controlling entity of the vendor.**
- It is recommended that either the individual who signs the contract on behalf of the vendor, or one of the principal officers executes the Certifications of No Change on behalf of the vendor.

HOW TO DETERMINE WHETHER YOU NEED TO FILE NEW FORMS/ MAKE CHANGES/ CERTIFY THAT THERE ARE NO CHANGES

- If the vendor has never completed VENDEX questionnaires, or has not made a complete VENDEX submission in the last 2½ years, the vendor should complete the new forms and return them directly to MOCS, Mayor's Office of Contract Services, VENDEX UNIT, 253 Broadway, 9th Floor, New York, NY 10007. In order to inform the agency that the Questionnaires were sent to MOCS the vendor must complete the **submitted VENDEX memorandum** and return it to the agency. The submitted VENDEX memorandum can also be found on www.nyc.gov/vendex.

- If the vendor has made a complete VENDEX submission in the last 2½years and there have been no changes in information requiring an update of the forms, the vendor should execute a Certification of No Change. Certifications should be included as part of the vendor's response to bids, solicitations or RFP's.

- If the vendor has made a complete VENDEX submission in the last 2½ years and there have been changes in information requiring an update of the forms, the vendor is required to submit full questionnaires using the new forms. **MOCS will not be able to process changed questionnaires using the new forms if they are attempting to update old forms.** The vendor should inform the agency that changed questionnaires were sent to MOCS by returning the **submitted VENDEX memorandum** to the agency as part of their response.

- A changed questionnaire consists of the first page of the questionnaire with a check in the box marked "changed questionnaire," the relevant changed pages, any additional pertinent information and a signed certification page.

VENDOR'S GUIDE TO VENDEX

PREFACE

The City is legally required to use the Vendor Information Exchange System (**VENDEX**), a computerized data system, to help it make decisions regarding vendor responsibility as required by law. A responsible contractor is one which has the capability in all respects to perform fully the contract requirements and the business integrity to justify the award of public tax dollars.

The **VENDEX** Questionnaires consist of the **vendo**r and **principal questionnaires**. This vendor's guide provides instructions to assist in completing and submitting these questionnaires. If further assistance is required, visit the New York City web site (http://www.nyc.gov/vendex) or contact the VENDEX Unit at (212) 341-0933.

COMPLETION REQUIREMENTS AND INSTRUCTIONS FOR THE **VENDEX QUESTIONNAIRES**

- The **vendor** and **principal questionnaire(s)** are valid for three (3) years from the date of signature on the certification page(s) of the questionnaires.
- Vendors are required to complete the **VENDEX** questionnaires if they have **contracts** or subcontracts:

1. valued at $100,000 or more;
2. that are sole source contracts valued at $10,000 or more and/or;
3. whose aggregate business with the City in the preceding 12 months totals $100,000 or more;

In addition, vendors are required to complete the **VENDEX** questionnaires if they are:

1. applicants for franchises, regardless of dollar amount or;
2. applicants for concessions which, singly or in combination with other **contracts** held by the vendor, are valued at $100,000 or more.

Contractor Performance Evaluation Provision

The Contractor's performance will be evaluated by the City upon the occurrence of the vouchering of fifty (50%) of the contract price and substantial completion. A copy of the evaluation will be sent to the Contractor not later than fifteen (15) calendar days after the occurrence of these events, and the Contractor may respond in writing to the performance report. Such responses shall be submitted to the Engineer not less that fifteen (15) calendar days after a copy of the evaluation is sent to the Contractor. The response will be affixed to the evaluation. Failure to respond may result in review of the Contractor's performance when a bid is evaluated without the benefit of the Contractor's response to the report.

AFFIRMATION

The undersigned proposer or bidder affirms and declares that said proposer or bidder is not in arrears to the City of New York upon debt, contract or taxes and is not a defaulter, as surety or otherwise, upon obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer or bidder to receive public contracts except

_____

_____.

Full name of Proposer or Bidder _____

Address _____

City _____ State _____ Zip Code _____

CHECK ONE BOX AND INCLUDE APPROPRIATE NUMBER:

☐ A - Individual or Sole Proprietorship *
SOCIAL SECURITY NUMBER

_____

☐ B - Partnership, Joint Venture or other unincorporated organization
EMPLOYER IDENTIFICATION NUMBER

_____

☐ C - Corporation
EMPLOYER IDENTIFICATION NUMBER

_____

By _____
Signature

_____
Title

If a corporation place seal here

Must be signed by an officer or duly authorized representative.

* Under the Federal Privacy Act the furnishing of Social Security Numbers by bidders on City contracts is voluntary. Failure to provide a Social Security Number will not result in a bidder's disqualification. Social Security Numbers will be used to identify bidders, proposers or vendors to ensure theircompliance with laws, to assist the City in enforcement of laws as well as to provide the City a means of identifying of businesses which seek City contracts.

TRAINEE ADDENDUM

The Training Special Provision (Federal Aid) supersedes all references to training requirements in Executive Order No. 50 Construction Rider and in the Construction Employment Report and its instructions.

PLEASE NOTE:

The Training Special Provisions require the Contractor to provide training to at least one minority or woman indentured apprentice or trainee.

EXECUTIVE ORDERS

THE FOLLOWING LAWS, ORDINANCES, PROVISIONS, AND EXECUTIVE ORDERS ARE INCLUDED TO FACILITATE THE CONTRACTOR. HOWEVER, IT IS THE CONTRACTOR'S OBLIGATION TO COMPLY WITH THE LATEST LAWS, ORDINANCES, PROVISIONS, AND EXECUTIVE ORDERS.

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

EXECUTIVE ORDER NO. 50

APRIL 25, 1980

BUREAU OF LABOR SERVICES

By the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Purpose. It is the purpose of this Order to ensure compliance with the equal employment opportunity requirements of City, State and Federal law in City contracting.

§ 2. Bureau Continued. The Bureau of Labor Services shall continue to serve such purposes and to have such responsibilities as restated by this Order.

§ 3. Definitions. Whenever used in this Executive Order, the following terms shall have the following meanings:

(a) Bureau means the Bureau of Labor Services;

(b) construction project means any construction, reconstruction, rehabilitation, alteration, conversion, extension, improvement, repair or demolition of real property contracted by the City;

(c) contract means any written agreement, purchase order or instrument whereby the City is committed to expend or does expend funds in return for work, labor, services, supplies, equipment, materials, or any combination of the foregoing;

(i) Unless otherwise required by law, the term "contract" shall include any City grant, loan, guarantee or other City assistance for a construction project.

(ii) The term "contract" shall not include:

(A) contracts for financial or other assistance between the City and a government or government agency;

(B) contracts, resolutions, indentures, declarations of trust, or other instruments authorizing or relating to the authorization, issuance, award, and sale of bonds, certificates of indebtedness, notes or other fiscal obligations of the City, or consisting thereof; or

(C) employment by the City of its officers and employees which is subject to the equal employment opportunity requirements of applicable law.

(d) contracting agency means any administration, board, bureau, commission, department or other governmental agency of the City of New York, or any official thereof, authorized on behalf of the City to provide for, enter into, award or administer contracts;

(e) contractor means a person, including a vendor, who is a party or a proposed party to a contract with a contracting agency, first-level subcontractors of supply or service contractors, and all levels of subcontractors of construction contractors;

(f) Director means the Director of the Bureau of Labor Services;

(g) economically disadvantaged person means a person who, or a member of a family which, is considered economically disadvantaged under applicable law.

(h) employment report means a report filed by a contractor containing information as to the employment practices, policies and programs, employment statistics and collective bargaining agreements, if any, of the contractor in such form as the Bureau may direct by regulation;

(i) equal employment opportunity means the treatment of all employees and applicants for employment without unlawful discrimination as to race, creed, color, national origin, sex, age, handicap, marital status, sexual orientation or affectional preference in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment except as provided by law;

(j) trainee means an economically disadvantaged person who qualifies for and receives training in one of the construction trades pursuant to a program other than apprenticeship programs, approved by the Bureau and, where required by law, the State Department of Labor or the United States Department of Labor, Bureau of Apprenticeship and Training.

§ 4. Responsibilities of Bureau. The responsibilities of the Bureau shall be as follows:

(a) To implement, monitor compliance with, and enforce this Order and programs established pursuant to City, State and Federal law requiring contractors to provide equal employment opportunity;

(b) To implement, monitor compliance with, and enforce on-the-job training requirements on construction projects;

(c) To monitor compliance by contractors with State and Federal prevailing wage requirements where required;

(d) To advise and assist contractors and labor unions with respect to their obligations to provide equal employment opportunity;

(e) To advise and assist persons in the private sector with respect to employment problems;

(f) To establish advisory committees, including representatives of employers, labor unions, community organizations and others concerned with the enforcement of this Order; and

(g) To serve as the City's principal liaison to Federal, State and local contract compliance agencies.

§ 5. Contract Provisions.

(a) Equal Employment Opportunity. A contracting agency shall include in every contract to which it becomes a party such provisions requiring the contractor to ensure equal employment opportunity as the Bureau may direct by regulation.

(b) On-the-Job Training. A contracting agency shall include in every contract concerning a construction project to which it becomes a party such provisions requiring the contractor to provide on-the-job training for economically disadvantaged persons as the Bureau may direct by regulation.

(c) Subcontractors. A contracting agency shall include in every contract to which it becomes a party such provisions requiring the contractor not to discriminate unlawfully in the selection of subcontractors as the Bureau may direct by regulation.

§ 6. Employment Reports.

(a) Submission Requirements. No contracting agency shall enter into a contract with any contractor unless such contractor's employment report is first submitted to the Bureau for its review. Unless otherwise required by law, an employment report shall not be required for the following:

(i) a contract in the amount of $50,000 or less;

(ii) an emergency contract or other exempt contract except as the Bureau may direct by regulation; and

(iii) a contract with a contractor who has received a certificate of compliance with the equal employment opportunity requirements of applicable law from the Bureau, or an appropriate agency of the State of New York or the United States within the preceding twelve months, except as the Bureau may direct by regulation.

(b) Bureau Review. The Bureau shall review all employment reports to determine whether contractors are in compliance with the equal employment opportunity requirements of City, State and Federal law and the provisions of this Order. The contracting agency shall transmit the employment report to the Bureau within ten business days after the selection of a proposed contractor. A contracting agency may thereafter award a contract unless the Bureau gives prior written notice to the contracting agency and the contractor as follows:

(i) If the Bureau notifies the contracting agency and the contractor within five business days after the receipt by the Bureau of the employment report that the contractor has failed to submit a complete employment report, the Director may require the contracting agency to disapprove the contractor unless such deficiency is corrected in a timely manner;

(ii) If the Bureau notifies the contracting agency and the contractor within fifteen business days of the receipt by the Bureau of the completed employment report that the Bureau has found reason to believe that the contractor is not in substantial compliance with applicable legal requirements and the provisions of this Order, the Bureau shall promptly take such action as may be necessary to remedy the contractor's noncompliance as provided by this Order.

Provided that a contracting agency may award a requirements contract or an open market purchase agreement prior to review by the Bureau of the contractor's employment report, but may not make a purchase order against such contract or agreement until it has first transmitted such contractor's employment report to the Bureau and the Bureau has completed its review in the manner provided by this Section.

(c) Employment Program. The Bureau may require a contractor to adopt and adhere to a program designed to ensure equal employment opportunity.

(d) Periodic Reports. Contractors shall file periodic employment reports after the award of a contract in such form and frequency as the Bureau may direct by regulation to determine whether such contractors are in compliance with applicable legal requirements and the provisions of this Order.

§ 7. Training Programs. The Bureau shall monitor the recruitment, training and placement of economically disadvantaged persons in on-the-job training programs on construction projects. Contracting agencies shall require contractors to make a good faith effort to achieve the ratio of one trainee to four journey-level employees of each craft on each construction project.

(a) The Bureau shall determine the number of trainees and hours of training required by each contractor or subcontractor for each construction project.

(b) In the event that a contractor fails to make a good faith effort to train the required number of individuals for the required amount of hours, the Bureau, after consultation with the contracting agency, shall direct such agency to reduce the contractor's compensation by an amount equal to the amount of wages and fringe benefits which the contractor failed to pay to trainees.

(c) On-the-job training of economically disadvantaged persons shall not be required on construction contracts in the amount of $125,000 or less.

§ 8. Compliance Investigations and Hearings. The Bureau shall conduct such investigations and hold such hearings as may be necessary to determine whether contractors are in compliance with the equal employment opportunity requirements of City, State and Federal law and the provisions of this Order.

(a) Voluntary Compliance. The Bureau shall seek to obtain the voluntary compliance of contractors and labor unions with applicable legal requirements and the provisions of this Order.

(b) Noncompliance. Upon receiving a complaint or at its own instance, the Bureau shall determine whether there is reason to believe a contractor is not in compliance with applicable legal requirements and the provisions of this Order.

(c) Hearings. The Bureau shall hold a hearing on prior written notice to a contractor and the contracting agency before any adverse determination is made with respect to such contractor's employment practices or imposing any sanction or remedy for noncompliance with applicable legal requirements and the provisions of this Order. The hearing shall be held before a City hearing officer, or such other person designated by the Director, who shall submit a report containing findings of fact and recommendations to the Director. Based on the record as a whole, the Director shall determine whether a contractor has failed to comply with applicable legal requirements or the provisions of this Order and the appropriate sanctions for noncompliance.

(d) Notices. The Bureau shall give prior notice of any hearing and shall provide a copy of any hearing report and determination of the Director under paragraph (c) of this Section to the contracting agency, the Corporation Counsel and the Comptroller. The Bureau shall notify appropriate City, State and Federal agencies of violations of law and may, with the approval of the Corporation Counsel, initiate proceedings in such agencies.

§ 9. Sanctions and Remedies. After making a determination that a contractor is not complying with applicable legal requirements and the provisions of this Order, the Director may direct that such sanctions as may be permitted by law or contractual provisions be imposed, including the disapproval of a proposed contractor, the suspension or termination of a contract and the reduction of a contractor's compensation, except as follows:

(a) Within five business days of the issuance of a determination by the Director under Section 8(c) a contracting agency head may file with the Director written objections to the sanctions to be imposed. Where such objections have been filed, the Director and the contracting agency head shall jointly determine the appropriate sanctions to be imposed.

(b) In lieu of any of the foregoing sanctions, the Director may require a contractor to adopt and adhere to a program to ensure equal employment opportunity.

§ 10. Public Agencies. Any administration, board, bureau, commission, department or other public agency, not subject to this Order, which imposes by rule, regulation or order equal employment opportunity requirements, may, with the consent of the Mayor, delegate such responsibilities to the Bureau as may be consistent with this Order.

§ 11. Confidentiality. To the extent permitted by law and consistent with the proper discharge of the Bureau's responsibilities under this Order, all information provided by a contractor to the Bureau shall be confidential.

§ 12. Regulations. The Bureau shall promulgate such regulations, subject to the approval of the Mayor, as may be necessary to discharge its responsibilities under this Order, including regulations increasing the dollar amounts referred to in this Order. Any regulations of the Bureau establishing terms and conditions for contractors shall be approved as to form by the Corporation Counsel.

§ 13. Annual Report. The Bureau shall submit an annual report to the Mayor concerning its responsiblities under this Order.

§ 14. Separability. If any provision of this Order or the application thereof is held invalid, the remainder of this Order and the application thereof to other persons or circumstances shall not be affected by such holding and shall remain in full force and effect.

§ 15. Revocation of Prior Orders. Executive Orders No. 71 (1968), No. 20 (1970), No. 23 (1970), No. 27 (1970), No. 31 (1971), No. 74 (1973), No. 7 (1974), and No. 80 (1977) are hereby revoked and the first paragraph of Section 2 of Executive Order No. 4 (1978) is hereby deleted. Nothing in this Order shall be deemed to relieve any person of any obligation not inconsistent with this Order assumed or imposed pursuant to an Order superseded by this Order.

§ 16. Effective Date. This Order shall take effect immediately.

EDWARD I. KOCH
MAYOR

BUREAU OF LABOR SERVICES
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THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

Executive Order No. 108
December 29, 1986

Amendment of Executive Order No. 50
(April 25, 1980)

BUREAU OF LABOR SERVICES

By the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Prior Order Amended.

a. Section 6(a) of Executive Order No. 50, dated April 25, 1980, is amended to read as follows:

"Submission Requirements. No contracting agency shall enter into a contract with any contractor unless such contractor's employment report is first submitted to the Bureau for its review. Unless otherwise required by law, an employment report shall not be required for the following:

(i) a construction contract in the amount of less than $1 million; a construction subcontract in the amount of less than $750,000; or a supply and service contract in the amount of $50,000 or less or of more than $50,000 in which the contractor employs fewer than 50 employees at the facility or facilities involved in the contract;

(ii) an emergency contract or other exempt contract except as the Bureau may direct by regulation; and

(iii) a contract with a contractor who has received a certificate of compliance with the equal employment opportunity requirements of applicable law from the Bureau within the preceding twenty-four months, or an appropriate agency of the State of New York or of the United States within the preceding twelve months, except as the Bureau may direct by regulation."

b. Section 7(c) of such Order is amended to read as follows:

"On-the-job training of economically disadvantaged persons shall be required on all construction contracts covered by the submission requirements of this Order."

Section 2. Effective Date. This Order shall take effect immediately, but shall have no retrospective effect with respect to the two (2) year approval period provided for in Section 1(a) of this Order, amending Section 6(a) (iii) of Executive Order No. 50, dated April 25, 1980.

Edward I. Koch
MAYOR

THE CITY OF NEW YORK
OFFICE OF THE MAYOR
NEW YORK, N.Y. 10007

Executive Order No. 94
June 20, 1986

Amendment of Executive Order No. 50
(April 25, 1980)

BUREAU OF LABOR SERVICES

By the power vested in me as Mayor of the City of New York, it is hereby ordered:

Section 1. Prior Order Amended.

a. Section 1 of Executive Order No. 50. dated April 25, 1980, is amended to read as follows:

> "Purpose. It is the purpose of this Order to esure equal employment opportunity in City contracting."

b. Section 3(i) of such Order is amended to read as follows:

> "equal employment opportunity means the treatment of all employees and applicants for employment without unlawful discrimination as to race, creed, color, national origin, sex, age, disability, marital status or sexual orientation in all employment decisions, including but not limited to recruitment, hiring, compensation, training and apprenticeship, promotion, upgrading, demotion, downgrading, transfer, lay-off and termination, and all other terms and conditions of employment;"

c. Section 3(i) of such Order is amended to read as follows:

> "Equal Employment Opportunity. A contracting agency shall include in every

contract to which it becomes a party such provisions requiring the contractor to ensure equal employment opportunity as the Bureau may direct, consistent with this Order."

d. Section 12 of such Order is amended to read as follows:

"Regulations. The Bureau shall promulgate such regulations, subject to the approval of the Mayor, as may be necessary to discharge its responsibilities under this Order, including regulations increasing the dollar amounts and number of employees referred to in this Order. Any regulations of the Bureau establishing terms and conditions for contractors shall be approved as to form by the Corporation Counsel.

Nothing contained herein shall be construed to bar any religious or denominational institution or organization, or any organization operated for charitable or educational purposes, which is operated, supervised or controlled by or in connection with a religious organization, from limiting employment or giving preference to persons of the same religion or denomination or from making such selection as is calculated by such organization to promote the religious principles for which it is established or maintained. The regulations shall set forth this exemption for religiously sponsored organizations and provide for the discharge of the Bureau's responsibilities in a manner consistent with such exemption."

Section 2. Effective Date. This Order shall take effect immediately.

Edward I. Koch
MAYOR

OFFICE OF LABOR SERVICES
INSTRUCTIONS FOR COMPLETING
CONSTRUCTION DIVISION EMPLOYMENT REPORT
APRIL 11, 1991

A. WHO MUST FILE AN EMPLOYMENT REPORT

An Employment Report (ER) must be filed with the Office of Labor Services if you are:

- a general contractor or construction manager selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of $1,000,000 or more; or

- a general contractor or construction manager selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of $10,000 or over; or

- a general contractor or construction manager selected to perform work on a construction project benefiting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of $1,000,000 or more; or

- a subcontractor selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of $1,000,000 or over; or

- a subcontractor selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of $1,000,000 or over; or

- a subcontractor selected to perform work on a construction project benefitting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of $1,000,000.

- non construction trade contractors who are contracting with a developer to perform work on a construction project benefitting from any city operated real estate tax abatement program.

B. WHERE TO FILE

- If you are a contractor or subcontractor on a City funded construction project, the ER must be filed with the contracting agency which will award the contract to the prime contractor.

- If you are a contractor or subcontractor who will be working for a private developer in receipt of funding or assistance from the City, the ER must be filed with the City agency with jurisdiction over the developer's project.

- If you are a contractor or subcontractor who will be working for an applicant pursuant to the Industrial and Commercial Development Incentive Program, the ER must be filed with:

The Department of Finance
Real Property Assessment Bureau
Room 946
Municipal Building
New York, NY 10007

C. REQUIRED ATTACHMENTS

- Employment Application
- Most Current EEO-1 and EEO-3 reports filed with EEOC
- Employee manual/handbook
- Collective Bargaining Agreement(s)
- Equal Employment Opportunity Policy Statement

D. PART I - CONTRACT INFORMATION

This part must be completed by all contractors and subcontractors and developers specified in Section A above.

E. PART II - EMPLOYMENT POLICIES AND PRACTICES

This part must be completed by all contractors and subcontractors specified in Section A above unless:

- You have an aggregate workforce of less than 50 employees; or

- You have completed a revised employment report within the last 12 months and have received notification of unconditional approval and have attached a copy of such approval letter to the Employment Report.

RACE/ETHNIC IDENTIFICATION

You may acquire the race/ethnic information necessary for this report either by visual surveys of the work force, or from post-employment records as to the identity of employees. Eliciting information on the race/ethnic identity of an employee by direct inquiry is not encouraged.

Where records are maintained, it is recommended that they be kept separately from the employee's basic personnel file or other records available to those responsible for personnel decisions.

Since visual surveys are permitted, the fact that race/ethnic identifications are not present on employment records is not an excuse for failure to provide the required data.

Please note that conducting a visual survey and keeping post-employment records of the race/ethnic identity of employees is legal in all jurisdictions and under all Federal and State Laws.

Race/ethnic designations as used by the Equal Employment Opportunity Commission do not denote scientific definitions of anthropological origins. For the purposes of this report, an employee may be included in the group to which he or she appears to belong, identifies with, or is regarded in the community as belonging. However, no person should be counted in more than one race/ethnic group.

Moreover, the fact that employees may be located at different addresses does not provide an acceptable reason for failure to comply with the reporting requirements. In such cases, it is recommended that visual surveys be conducted for the employer by persons such as supervisors who are responsible for the work of the employees or to whom the employees report for instructions or otherwise.

AMERICAN INDIAN OR ALASKAN NATIVES

A person with origins in any of the original peoples of North America and who maintain cultural identification through tribal affiliation of community recognition.

ASIAN OR PACIFIC ISLANDERS

A person with origins in any of the original peoples of the Far East, Southeast Asia, the Indian Subcontinent, or the Pacific Islands, including for example, China, Japan, Korea, the Philippines, and Samoa.

BLACK, NOT OF HISPANIC ORIGIN

A person with origins in any of the Black racial groups of Africa who is also not of Hispanic origin.

HISPANIC

A person of Mexican, Puerto Rican, Cuban, South American or other non-European Spanish Culture regardless of race.

WHITE, NOT OF HISPANIC ORIGIN

A person with origins in any of the original peoples of Europe, North Africa, or the Middle East who is not of Hispanic origin or Black racial group origin.

F. PART III

The next part of the Employment Report (ER) provides information pertinent to the review of the proposed contract. Your company must provide the following information:

PART III-A: USE OF SUBCONTRACTORS: Your projections for the utilization of subcontractors on the proposed contract are to be provided in this section. Information is to be provided to the extent known at the time the ER is filed for review by the Bureau.

A chart has been provided for the identification of subcontractors. Under "subcontractor's name", if this is unknown, so state. Under "ownership", if the contractor is to be utilized under the City's Locally Based Enterprise program, enter the appropriate code. If the contract is federally funded or assisted and the subcontractor is being utilized in accordance with applicable federal requirements with respect to minority business enterprise or woman business enterprise requirements, enter the appropriate code. This will also apply to state funded contracts with similar requirements for minority and female owned businesses.

PART III-B: ALL WORK PERFORMED BY THE CONTRACTOR IN NEW YORK CITY: This section requires a listing of all work currently being performed in the New York City area, within the last four (4) payroll weeks of the time the ER is filed. List all work being performed for: The City of New York, The State of New York, federal agencies, and private developers (private for profit and private not for profit).

PART III-C: CURRENT WORKFORCE FOR ALL WORK PERFORMED IN NEW YORK CITY: This part requires a report of all workers in the construction trades employed by your company within the last four (4), full payroll, pay weeks of the time the ER is filed. The report must reflect work on all contracts listed in Part III-B.

NOTE: In order to assist in the determination of your company's compliance with equal employment opportunity requirements, you must provide information concerning your company's current workforce on all contracts currently held by the company within the five (5) boroughs of the City. THE CURRENT WORKFORCE DATA MUST REFLECT ALL WORKERS ON ANY ACTIVE CONTRACTS REGARDLESS OF WHETHER OR NOT THEY ARE CITY FUNDED OR ASSISTED. THESE INCLUDE CONTRACTORS THAT MAY BE PRIVATELY FUNDED OR FUNDED BY OTHER GOVERNMENT ENTITIES.

THE CITY OF NEW YORK
DEPARTMENT OF BUSINESS SERVICES
DIVISION OF LABOR SERVICES
CONTRACT COMPLIANCE UNIT
110 WILLIAM STREET - 2nd Floor
NEW YORK, NY 10038
PHONE: (212) 513-6433
FAX: (212) 618-8899

INSTRUCTIONS FOR THE CONSTRUCTION CONTRACTOR'S EMPLOYMENT REPORT

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DEPARTMENT OF BUSINESS SERVICES
DIVISION OF LABOR SERVICES
INSTRUCTIONS FOR COMPLETING
CONSTRUCTION EMPLOYMENT REPORT

I. WHO MUST FILE AN EMPLOYMENT REPORT

An Employment Report (ER) must be filed if you are:

Applicant, General contractor, Construction Manager, Developer

1. an applicant benefitting from the Industrial and Commercial Incentive Program (ICIP) with a construction contract value of $1,000,000 or more; or

2. a general contractor or construction manager selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of $1,000,000 or more; or

3. a general contractor selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of $10,000 or more; and

4. a general contractor or construction manager selected to perform work on a construction project benefitting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of $1,000,000 or more.

Subcontractor, Supplier or Service Provider

1. a subcontractor selected to perform work on a construction project funded or assisted by the City of New York with a proposed contract value of $750,000 or more; or

2. a subcontractor selected to perform work on a construction project funded (in whole or in part) by the federal government with a proposed contract value of $10,000 or more; or

3. a subcontractor selected to perform work on a construction project benefitting from the Industrial and Commercial Incentive Program (ICIP) with a contract value of $750,000 or more.

II. WHO MUST FILE A "LESS THAN $750,000 SUBCONTRACTOR CERTIFICATE"

1. If your organization negotiates a subcontract (first and second tier) on this project and the subcontract value is less than $750,000, you need to complete the "Less Than $750,000 Subcontractor Certificate" for each subcontract below that amount.

III. WHERE TO FILE

1. If you are a contractor or subcontractor on a City funded construction project, the ER must be filed with the contracting agency which will award the contract to the prime contractor.

2. If you are a contractor or subcontractor who will be working for a private developer in receipt of funding or assistance from the City, the ER must be filed with the City agency with jurisdiction over the developer's project.

3. If you are a contractor or subcontractor who will be working for an applicant pursuant to the Industrial and Commercial Development Incentive Program. The ER must be filed with:

   Department of Business Services/
   Division of Labor Services
   110 William Street, 2nd Floor
   New York, NY 10038
   Attention: Helen Wilson

4. If you are a contractor or subcontractor on a federal government funded construction project, the Employment Report must be filed with the City contracting agency which will award the contract.

IV. WHO REVIEWS THE EMPLOYMENT REPORT

The contracting agency and/or DLS reviews the ER for completeness. If any portion is incomplete you will be notified.

Upon receipt of a completed ER, it is reviewed by DLS to ensure that your firm or organization is in compliance with the City's equal employment opportunity requirements.

V. THE DIVISION OF LABOR SERVICES' REVIEW PROCESS

In accordance with E.O. 50, upon receipt by DLS of a completed ER, DLS conducts a review of the contractor's current employment policies, practices and procedures, as well as perform a statistical analysis of the contractor's workforce, if necessary. The process is as follows:

1. Within five (5) business days DLS will review the ER for completeness and accuracy. If any information is omitted or incorrect, or if necessary documents are not submitted, the submission shall be deemed incomplete and DLS will inform the contractor. The substantive compliance review does not commence until the submission is complete. An incomplete submission will delay the review process and may preclude or interrupt the contract approval.

2. If the ER submission is complete the compliance review will proceed, resulting in one of the following:

   a) A Conditional Certificate of Compliance, valid for 1 month;

   b) Certificate of Approval, valid for 12 months;

   c) Continued Approval Certificate, good for the applicable contract if a Certificate of Approval has been issued; or

   d) A Compliance Review Analysis Report. If the analysis yields a finding of underutilization of minorities and/or women resulting from policies or procedures that may have a discriminatory effect, or other employment policies or practices mitigating against equal employment opportunity, the contractor will be asked to attend a conference to present a legal and/or factual explanation, or to develop an Employment Program.

   Any firm or organization making good faith efforts to take necessary corrective actions to change policies found to have a disparate effect on women and minorities may be issued a Conditional Certificate of Compliance.

VI. WHO MUST SIGN THE EMPLOYMENT REPORT

The signatory of this and all other documents submitted to DLS must be an official of the firm, authorized to enter into binding legal agreements.

NOTE: DLS WILL ONLY ACCEPT ORIGINAL SIGNATURES. COPIES WILL BE REJECTED.

VII. HOW TO COMPLETE THE EMPLOYMENT REPORT

A. General Information

1. Check the appropriate contractual relationship (contractor or subcontractor) you will have with the City as a result of this contract. If you are a subcontractor, you must state the name of the contractor for whom you are providing the construction services.

2. You must provide your Employer Identification or Federal Tax Number.

3. You must indicate the number of employees. (This number should include the number of current workers for all work performed in New York City.)

4. You must check the entry corresponding with the description of your firm's ownership.

5. Identify your firm's industry code (see Appendix A)

NOTE: READ BEFORE COMPLETING B. PART I

1. Companies With Prior DLS Approval

   You have a valid Certificate of Approval issued by DLS within the past 12 months for the company performing on this contract.

2. You Have Prior Approval From OFCCP

   The facility(ies) involved in the performance of this contract has within the past 24 months undergone an audit and received approval by the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and is in compliance with all other requirements of E.O. 50 and its implementing Rules.

B. PART I - CONTRACTOR/SUBCONTRACTOR INFORMATION

1. State the name of your company.

2. State the full address of the company's principal place of business and/or NYC Office.

3. Identify the Chief Operating Officer of the company. Please provide a telephone number.

4. Please provide the name and business telephone of designated Equal Opportunity Compliance Officer.

5. State the name of the prime contractor and contact person, if it is not your company.

6. State the following information, respectively:

   (a) the NYC contracting agency with which your company (or the prime contractor) has the construction contract;
   (b) identify the (sub)contract value;
   (c) identify the Project Developer (applicable to Industrial Commercial Incentive Program (ICIP) contracts only);
   (d) state the project/contract number which applies to the overall contract (applicable to federal and City-funded contracts only);
   (e) state the lot and block number for the project (applicable to ICIP contracts only);
   (f) state the projected commencement date for your company's participation on this project; and
   (g) state the projected completion date for your company's participation on this project.

7. Provide a trade description of the work you will perform on this project and address where the work will be performed.

NOTE: SUBCONTRACTORS - THIS INFORMATION CAN BE OBTAINED FROM THE CONTRACT YOU HAVE WITH THE PRIME CONTRACTOR.

8a. This question refers to whether your company's particular facility locations that have been reviewed and/or certified by DLS within the past 12 months.

8b. If all of the facilities are involved in this proposed contract then you may complete and submit only Parts I and IV of the Employment Report for each operating facility. Be certain to identify the date on which you submitted DLS completed Employment Report, the name of the City contracting agency with which the contract was made, and the name and telephone number of the person to whom the Employment Report was submitted.

9. Was an approval issued in the last 24 months pursuant to an OFCCP Audit of the facility for which this Employment Report is being submitted? When answering this question, be careful to consider only those locations which the OFCCP actually audited. DLS will not consider OFCCP approvals and certifications for facility locations which were not audited.

(a) Identify the reviewing OFCCP office by its name and address;

(b) Was an unconditional certificate of compliance issued within the past 24 months by the OFCCP. If yes, attach a copy of the certificate in lieu of completing Employment Report Parts II and III; and

(c) If applicable, provide a copy of all stated OFCCP findings. Include copies of all corrective actions and documentation of OFCCP's performance.

10. Please provide a copy of any Collective Bargaining Agreement(s) which is negotiated through an employer trade association on behalf of your organization or any of its affiliates.

C. PART II - EMPLOYMENT POLICIES AND PRACTICES

REMEMBER TO LABEL ALL DOCUMENTS WITH THE QUESTION NUMBER FOR WHICH THEY ARE SUBMITTED.

Questions
11a. - j. You must respond to the questions as to whether or not your firm has documents reflecting written policies, benefits and procedures. If so, then you must identify by name each document in which the policy(ies), procedure(s) and benefit(s) is located and submit copies of all of the document(s).

If your firm follows unwritten practices or procedures, then you must explain in writing how they operate.

Questions 12a. and b. — There are two parts to this question. Part (a) concerns the manner/methods by which you comply with the requirements of the Immigration Reform and Control Act of 1986 (IRCA).

Part (b) inquires into where and how I-9 forms are maintained and stored.

Questions 13a. and b. — Part (a) requirement that an applicant or employee be subjected to a medical examination at any given time.

Part (b) submission of medical information questionnaires used by the company.

Questions 14a and b. — For part (a) indicate the existence and location of all statements of your firm's Equal Employment Opportunity policy and to attach a copy of each statement.

For part (b) submit your current Affirmative Action Plan(s).

Questions 15a and b. — If your firm or collective bargaining agreement has an internal grievance procedure, for (a), indicate this and submit a copy of the policy and procedure.

If unwritten, for (b), explain its nature and operation. Explain how your firm's procedure addresses EEO complaints.

Question 16. — If your employees have used the procedure in the last three (3) years, please submit an explanation in the format indicated below:

Number the Complaint(s) (e.g. 1, 2, 3 ..)	Nature of the Complaint(s)	Position(s) of Complainant(s)	Investigation Conducted Yes/No, Type	Current Status/ Dispositio

Question 17. — Indicate whether in the past three (3) years complaints have been filed with a court of law or administrative agency, naming your company as a defendant (or respondent) in a complaint alleging violation of any anti-discrimination or affirmative action laws. If yes, develop and submit a log to show, for each administrative/and or judicial action filed, the following information:

Name(s) of Complainant(s)	Administrative agency or court in which action was filed	Nature of the Complaint(s)	Current Status	If not pending, the Complaint's Disposition

Question 18. Identify each job for which a physical qualification exists. Identify and explain the physical qualification(s) for each stated job. Submit job descriptions for each job and the reasons for the qualifications.

Question 19. Identify each job for which there exists any qualification related to age, race, color, national origin, sex, creed, disability, marital status, sexual orientation or citizenship status. Identify and explain the specific related qualification for each job stated. Submit job descriptions for each job and the reasons for the qualifications.

D. PART III: CONTRACT BID INFORMATION AND PROJECTED AND CURRENT WORKFORCE FORMS

FORM A. CONTRACT BID INFORMATION - USE OF SUBCONTRACTORS/TRADES

FORM B. CURRENT WORKFORCE FOR WORK TO BE PERFORMED ON THIS PROJECT.

FORM C. PROJECTED WORKFORCE FOR WORK TO BE PERFORMED ON THIS PROJECT.

PART III-A: CONTRACT BID INFORMATION REGARDING USE OF SUBCONTRACTORS

Your projections for the utilization of subcontractors on the proposed contract are to be provided in this section. Information is to be provided to the extent known at the time the ER is filed for review by DLS.

A chart has been provided for the identification of subcontractors. If "subcontractor's name" is unknown, so state. Under "ownership", enter the appropriate race/ethnic and gender code. If the contract is federally funded or assisted and the subcontractor is being utilized in accordance with applicable federal requirements with respect to Minority Business Enterprise or Woman Business Enterprise requirements, enter the appropriate code. This will also apply to state funded contracts with similar requirements for minority and female owned businesses.

SIGNATURE PAGE (See page 7 of the ER)

The signatory of this Employment Report and all other documents submitted to DLS must be an official authorized to enter into a binding legal agreement.

THE SIGNATURE PAGE MUST BE COMPLETED IN ITS ENTIRETY AND NOTARIZED. ONLY ORIGINAL SIGNATURES WILL BE ACCEPTED.

REV. 12/94

THE CITY OF NEW YORK
DEPARTMENT OF BUSINESS SERVICES
DIVISION OF LABOR SERVICES
CONTRACT COMPLIANCE UNIT
110 WILLIAM STREET - 3RD FLOOR
NEW YORK, NY 10038
PHONE: (212) 513-6433
FAX: (212) 618-8899

CONSTRUCTION

EMPLOYMENT

REPORT

THE CITY OF NEW YORK
DEPARTMENT OF BUSINESS SERVICES
DIVISION OF LABOR SERVICES
110 WILLIAM STREET, 3RD FLOOR
NEW YORK, NEW YORK 10038
PHONE: (212) 513-6433
FAX: (212) 618-8899

CONSTRUCTION EMPLOYMENT REPORT

A. GENERAL INFORMATION:

1. Your contractual relationship in this contract is:

   a. Contractor _____ Construction Manager _____

   b. Subcontractor ____ (Supplier ____ Service Provider ____)

   This ER is for Headquarters _____ Operating Facility _____

2. Employer Identification Number or Federal Tax I.D.: _____

3. Number of Employees at this facility (location): _____

4. This firm is a :____ Minority Owned Business
   ____ Minority/Woman Own Business
   ____ Woman Own Business
   ____ Locally-Based Enterprise
   ____ Other, explain: _____

B. PART I. CONTRACTOR/SUBCONTRACTOR INFORMATION

1. _____
   Company Name

2. _____
   Address and Zip Code

3. _____
   Chief Operating Officer and Business Telephone

4. _____
   Name and Business Telephone of Designated Equal Opportunity Compliance Officer (If same as Item #3, write "same")

5. _____
   Name, Address and Contact Person of Prime Contractor (If same as Item #1, write "same")

6. (a)_____ Contracting Agency or Agency Administering the Project

   (b)_____ Contract Amount

   (c)_____ Project Developer (If applicable)

   (d)_____ Project/Contract Number (If applicable)

(e)_____ (f)_____
Lot and Block Number (If applicable) Projected Commencement Date

(g)_____
Projected Completion Date

7. Description and Location of Proposed Contract.

_____

_____

8a. Has the Division of Labor Services (DLS) within the past twelve (12) months reviewed and issued a Certificate of Approval. Yes ___ No ___.

8b. Has DLS within the past month reviewed an ER submission for your organization and issued a Conditional Certificate of Approval. Yes ____ No ____.

If yes to 8a or b, ATTACH A COPY OF THE CERTIFICATE.

NOTE: DLS WILL NOT ISSUE A CONTINUED CERTIFICATE OF APPROVAL IN CONNECTION WITH THIS CONTRACT UNLESS THE REQUIRED CORRECTIVE ACTIONS IN PRIOR CONDITIONAL CERTIFICATES OF APPROVAL HAVE BEEN TAKEN.

8c. Has an ER already been submitted for a different contract for which you have not yet received compliance approval? Yes _____ No _____

Date submitted: _____ Agency to which submitted: _____

Contract No: _____

Name of Agency Person: _____

Telephone: _____

9. Has your company in the past twelve (12) months, been audited by the U.S. Department of Labor, Office of Federal Contract Compliance Programs (OFCCP)? Yes _____ No _____

If yes,

(a) Provide the name and address and contact person of the OFCCP office.

_____

_____

_____

(b) Were any deficiencies found?
Yes ____ No ____ (ATTACH A COPY OF SUCH FINDINGS)

(c) Were any corrective actions required or agreed to?
Yes ____ No ____ (ATTACH A COPY OF SUCH REQUIREMENTS OR AGREEMENT)

(d) Was a Certificate of Equal Employment Compliance issued?
Yes ____ No ____ (ATTACH A COPY OF SUCH CERTIFICATE)

10. Is your company or its affiliates a member or members of an employers' trade association which is responsible for negotiating collective bargaining agreements (CBA) which affect construction site hiring?
Yes ____ No ____

If yes, attach a list of such associations and all applicable CBA's.

C. PART II: EMPLOYMENT POLICIES & PROCEDURES (DOCUMENTS REQUIRED)

THE DOCUMENTS LISTED BELOW MUST BE SUBMITTED WITH THIS EMPLOYMENT REPORT. These documents may be in the form of printed booklets, brochures, manuals, memoranda, etc. Please make certain that you submit the MOST CURRENT DOCUMENT(S), including all applicable amendments to the plans, procedures or policies.

11. Please submit the following documents or policies. If the policy(ies) are unwritten, attach a full explanation of the practices. List and submit each document and/or unwritten practice explanation and label it according to the question to it which it corresponds (e.g. 11a, 11b, etc.)

PLEASE ANSWER YES OR NO

____ a) health benefit coverage/description(s) for all management, nonunion and union employees (whether company or union administered) _____

____ b) disability, life, other insurance coverage/description

_____

____ c) employee policy/handbook _____

____ d) personnel policy/manual _____

____ e) supervisor's policy/manual _____

____ f) pension plan or 401k coverage/description for all management, nonunion and union employees (whether company or union administered) _____

____ g) collective bargaining agreement(s) _____

____ h) employment application(s) _____

____ i) employee evaluation policy/form(s) _____

____ j) Does your firm have medical and/or non-medical (i.e. education, military, personal, pregnancy, child care) leave policy?

_____

12a. To comply with the Immigration Reform and Control Act of 1986 when and of whom does your firm require the completion of an I-9 Form?

a) prior to job offer	Yes ____	No ____	e) to some applicants	Yes ____	No ____
b) after a conditional job offer	Yes ____	No ____	f) to all applicants	Yes ____	No ____
c) after a job offer	Yes ____	No ____	g) to some employees	Yes ____	No ____
d) within the first three days on the job	Yes ____	No ____	h) to all employees	Yes ____	No ____

12b. Explain where and how completed I-9 Forms, with supporting documentation, are maintained and made accessible. _____

_____

13a. Does your firm or any of its collective bargaining agreements require job applicants to take a medical examination? Yes ____ No ____ If yes, is the medical examination given:

1) prior to a job offer	Yes ____	No ____
2) after a conditional job offer	Yes ____	No ____
3) after a job offer	Yes ____	No ____
4) to all applicants	Yes ____	No ____
5) only to some applicants	Yes ____	No ____

If yes, for which applicants

_____

13b. Attach copies of all medical examination or questionnaire forms and instructions utilized for these examinations.

14a. Do you have a written equal employment opportunity (EEO) policy? Yes ____ No ____ If yes, list the document(s) and page number(s), etc. where these written policies are located. If the EEO Policy is contained in a document(s) other than that submitted in Part II of the Employment Report, ATTACH A COPY OF EACH DOCUMENT.

_____

14b. Does the operating facility(ies) have a current affirmative action plan(s) (AAP) developed pursuant to U.S. Executive Order No. 11246 or other Federal law. Yes ____ No ____ If yes, ATTACH A COPY(IES) OF THE AAP(S) and check the appropriate box(es) indicating which protected group(s) are covered by the AAP.

☐ Minorities and Women ☐ Individuals with Handicaps ☐ Other (specify) _____

15. a) Does your firm or collective bargaining agreements have an internal grievance procedure with respect to EEO complaints?
Yes ____ No ____ If yes, please attach a copy of this policy.

b) If no, ATTACH a report detailing your firm's unwritten procedure for handling EEO complaints.

16. Has an employee(s), within the past three years, filed a complaint pursuant to an internal grievance procedure with any official of your firm with respect to equal employment opportunity?
Yes ____ No ____

If the answer to question 16 is "Yes", attach an internal complaint log summarizing the nature of the complaints (e.g. allegation of failure to promote based on race, sexual harassment, etc.), positions of the complainant(s), whether investigations were made and dispositions, if any. You need not submit the names of the complainants (if deemed necessary, DLS may require submission of the name(s)).

17. Has your firm or affiliate union(s), within the past three years, been named as a defendant (or respondent) in any administrative or judicial action where the complainant (plaintiff) alleged violation of any anti-discrimination or affirmative action laws? (i.e. Title VII of the 1964 Civil Rights Act; Age Discrimination in Employment Act; Rehabilitation Act of 1973; Americans with Disabilities Act of 1990; Executive Order No. 11246; Civil Rights Act of 1866 (42 U.S.C. §1981); state or local fair employment practices laws) Yes ____ No ____

If the answer to question 17 is "Yes" attach a log, including the name(s) of the complainant, the administrative agency or court in which the action was filed, the nature and current status or disposition. ATTACH A COPY(IES) OF ANY ORDER, CONSENT DECREE OR DECISION resulting from any action explained by this response.

18. Are there any jobs for which there are physical qualifications or written tests? Yes ____ No ____ If yes, list the job(s), submit a job description and state the reason(s) for the qualification(s) or written test(s).

_____

19. Are there any jobs for which there are age, race, color, national origin, sex, creed, disability, marital status, sexual orientation or citizenship status qualifications? Yes ____ No ____ If yes, list the job(s), submit a job description(s), and state the reason(s) for the qualification.

_____

PART III

FORM A. CONTRACT BID INFORMATION: USE OF SUBCONTRACTORS/TRADES

1. Do you plan to subcontract work on this contract?
   Yes ____ No ____

2. If yes, complete the chart below.

   NOTE: ALL PROPOSED SUBCONTRACTORS WITH A SUBCONTRACT IN EXCESS OF $750,000 MUST COMPLETE AN EMPLOYMENT REPORT FOR REVIEW AND APPROVAL BEFORE THE CONTRACT MAY BE AWARDED AND WORK COMMENCES.

SUBCONTRACTOR'S NAME*	OWNERSHIP (ENTER APPROPRIATE CODE LETTERS BELOW)	WORK TO BE PERFORMED BY SUBCONTRACTOR	TRADE PROJECTED FOR USE BY SUBCONTRACTOR	PROJECTED DOLLAR VALUE OF SUBCONTRACT

*If subcontractor is presently unknown, please enter the trade (craft name).

Ownership Codes

W: White
B: Black
H: Hispanic
A: Asian
N: Native American
F: Female

FORM B. PROJECTED WORKFORCE FOR WORK TO BE PERFORMED ON THIS PROJECT

TRADE CLASSIFICATION CODES

(J) JOURNEYLEVEL WORKERS (A) APPRENTICE
(H) HELPER (TRN) TRAINEE
(TOT) TOTAL BY COLUMN

FOR EACH TRADE TO BE ENGAGED BY YOUR COMPANY FOR THIS PROJECT, ENTER THE PROJECTED WORKFORCE FOR MALES AND FEMALES BY TRADE CLASSIFICATION ON THE CHARTS BELOW.

Trade: _____

Union Affiliation, If Applicable: _____

	MALES						FEMALES				
	(1) White (Hisp.)	(2) Black (Non-Hisp.)	(3) (Non-Hisp. Asian	(4) Amer.	(5) Native-		(6) White (Non-Hisp.)	(7) Black (Non-Hisp.)	(8) (Non-Hisp. Asian	(9) Amer.	(10) Native-
J											
H											
A											
TRN											
TOT											

Total (Col. # 1-10): _____

Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10): _____

Total Female (Col #6-10): _____

What are the recruitment sources for your projected hires (i.e., unions, government employment office, job tap center, community outreach)?

_____

_____

Trade: _____

Union Affiliation, If Applicable: _____

		MALES					FEMALES				
		(1) White (Hisp.)	(2) Black (Non-Hisp.)	(3) (Non-Hisp. Asian	(4) Amer.	(5) Native-Hisp.	(6) White (Non-Hisp.)	(7) Black (Non-Hisp.	(8) Asian	(9) Amer.	(10) Native-
Total (Col. # 1-10): _____	J										
	H										
Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10): _____	A										
	TRN										
Total Female (Col #6-10): _____	TOT										

Trade: _____

Union Affiliation, If Applicable: _____

		MALES					FEMALES				
		(1) White (Hisp.)	(2) Black (Non-Hisp.)	(3) (Non-Hisp. Asian	(4) Amer.	(5) Native-Hisp.	(6) White (Non-Hisp.)	(7) Black (Non-Hisp.	(8) Asian	(9) Amer.	(10) Native-
Total (Col. # 1-10): _____	J										
	H										
Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10): _____	A										
	TRN										
Total Female (Col #6-10): _____	TOT										

NOTE: Make as many copies of this form as you require for each trade category

FORM C. CURRENT WORKFORCE

TRADE CLASSIFICATION CODES

(J) JOURNEYLEVEL WORKERS (A) APPRENTICE
(H) HELPER (TRN) TRAINEE
(TOT) TOTAL BY COLUMN

FOR EACH TRADE TO BE ENGAGED BY YOUR COMPANY FOR THIS PROJECT, ENTER THE PROJECTED WORKFORCE FOR MALES AND FEMALES BY TRADE CLASSIFICATION ON THE CHARTS BELOW.

Trade: _____

Union Affiliation, If Applicable: _____

Total (Col. # 1-10): ____

Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10): ____

Total Female (Col #6-10): ____

	MALES					FEMALES				
	(1) White (Non-Hisp.)	(2) Black (Non-Hisp.)	(3) (Non-Hisp. Asian	(4) Amer	(5) Native-Hisp.	(6) White (Non-Hisp.)	(7) Black (Non-Hisp.	(8) Asian	(9) Amer.	(10) Native-
J										
H										
A										
TRN										
TOT										

What are the recruitment sources for your projected hires (i.e., unions, government employment office, job tap center, community outreach)?

_____

_____

Trade: _____

Union Affiliation, If Applicable: _____

		MALES					FEMALES				
		(1) White (Non-Hisp.)	(2) Black (Non-Hisp.)	(3) Hisp.	(4) Asian	(5) Native-Amer.	(6) White (Non-Hisp.)	(7) Black (Non-Hisp.)	(8) Hisp.	(9) Asian	(10) Native-Amer.
Total (Col. # 1-10): _____	J										
	H										
Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10): _____	A										
	TRN										
Total Female (Col #6-10): _____	TOT										

Trade: _____

Union Affiliation, If Applicable: _____

		MALES					FEMALES				
		(1) White (Non-Hisp.)	(2) Black (Non-Hisp.)	(3) Hisp.	(4) Asian	(5) Native-Amer.	(6) White (Non-Hisp.)	(7) Black (Non-Hisp.)	(8) Hisp.	(9) Asian	(10) Native-Amer.
Total (Col. # 1-10): _____	J										
	H										
Total Minority, Male & Female (Col. #2,3,4,5,7,8,9, & 10): _____	A										
	TRN										
Total Female (Col #6-10): _____	TOT										

NOTE: Make as many copies of this form as you require for each trade category

DEPARTMENT OF BUSINESS SERVICES
DIVISION OF LABOR SERVICES
LESS THAN $750,000 SUBCONTRACTOR CERTIFICATE

SUBCONTRACTOR _____

ADDRESS _____

_____

TELEPHONE NUMBER _____ FAX NUMBER _____

CONTRACTING AGENCY _____

CONTRACT AMOUNT _____

PROJECT NUMBER _____

DESCRIPTION AND ADDRESS OF PROPOSED CONTRACT

_____

_____

I, (fill in name of person signing) _____ hereby affirm that I am authorized by the above-named subcontractor to certify that said subcontractor's proposed contract with the above named owner or City agency is less than $750,000.

_____ DATE

_____ SIGNATURE

WILLFUL OR FRAUDULENT FALSIFICATION OF ANY DATA OR INFORMATION SUBMITTED HEREWITH MAY RESULT IN THE TERMINATION OF ANY CONTRACT BETWEEN THE CITY AND THE BIDDER OR CONTRACTOR AND BAR THE BIDDER OR CONTRACTOR FROM PARTICIPATION IN ANY CITY CONTRACT FOR A PERIOD OF UP TO THREE YEARS. FURTHER, SUCH FALSIFICATION MAY RESULT IN CRIMINAL PROSECUTION.

SIGNATURE PAGE

The information submitted herewith is true and complete to the best of my knowledge and belief and submitted with the understanding that compliance with New York City's equal employment requirements, as contained in Chapter 56 of the City Charter, Executive Order No. 50 (1980) and the implementing Rules is a requirement for the contractors and subcontractors working on this construction project.

For City funded prime contracts in excess of $1 million or subcontractors in excess of $750,000, and Federally assisted contracts with Community Development (CD) or Urban Development Action (UDAG) funds in excess of $10,000.

I agree, by signature, on behalf of the company to submit a certified copy of payroll records to the Division of Labor Services on a monthly basis.

_____
CONTRACTOR'S NAME

_____ _____
NAME OF PERSON WHO PREPARED THIS REPORT TITLE

_____ _____
NAME OF OFFICIAL AUTHORIZED TO SIGN ON BEHALF OF THE CONTRACTOR TITLE

_____
BUSINESS TELEPHONE NUMBER

BY:_____ _____
SIGNATURE OF AUTHORIZED OFFICIAL DATE

ONLY ORIGINAL SIGNATURES ARE ACCEPTABLE.

IF CONTRACTORS ARE FOUND TO BE UNDERUTILIZING MINORITIES AND FEMALES IN ANY GIVEN TRADE BASED ON CHAPTER 56 SECTION 3H, THE DIVISION OF LABOR SERVICES RESERVES THE RIGHT TO REQUEST THE CONTRACTORS' WORKFORCE DATA AND TO IMPLEMENT AN EMPLOYMENT PROGRAM.

CONTRACTORS WHO FAILS TO COMPLY WITH THE ABOVE-MENTIONED REQUIREMENTS OR ARE FOUND TO BE IN NONCOMPLIANCE MAY BE SUBJECT TO THE WITHHOLDING OF FINAL PAYMENT.

WILLFUL OR FRAUDULENT FALSIFICATIONS OF ANY DATA OR INFORMATION SUBMITT HEREWITH MAY RESULT IN THE TERMINATION OF THE CONTRACT BETWEEN THE CITY AN THE BIDDER OR CONTRACTOR AND IN DISAPPROVAL OF FUTURE CONTRACTS. FURTH SUCH FALSIFICATIONS MAY RESULT IN CIVIL AND/OR CRIMINAL PROSECUTION.

Sworn to before me on this _____ day of _____ 199__

_____ Notary Public

_____ Authorized Signature, Date

CONFIDENTIALITY POLICY: To the extent permitted by law and consistent with the proper discharge of DLS' responsibilities under Charter Chapter 56 of the City Charter and Executive Order No. 50 (1980), the implementing Rules, all information provided by a contractor to DLS shall be confidential.

FOR OFFICIAL USE ONLY

AGENCY _____ FILE NO. _____

REGISTER _____ CONTRACT NO. _____

FUNDING SOURCE _____ BID DATE _____

APPROVAL STATUS

☐ Approved ☐ Conditional ☐ Disapproval

C.R. _____ DATE _____

REV. 12/94

SPECIAL NOTICE

This contract shall neither be binding nor effective unless:

(a) Approved by the Mayor pursuant to the provisions of Executive Order No. 42, dated October 9, 1975, in the event the Executive Order requires such approval; and

(b) Certified by the Mayor (Mayor's Fiscal Committee created pursuant to Executive Order No. 43, dated October 14, 1975) that performance thereof will be in accordance with the City's financial plan.

The requirements of this section of the contract shall be in addition to, and not in lieu of, any approval or authorization otherwise required for this contract to be effective and for the expenditure of City funds.

* * * * *

The Contractor hereby assigns, sells and transfers to the City of New York all right, title and interest in and to any claims and causes of action arising under the antitrust laws of New York State or of the United States relating to the particular goods or services purchased or procurred by the City under this contract.

* * * * *

This written agreement contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this agreement shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

CONTRACTOR'S COMPLIANCE WITH THE AMERICANS WITH DISABILITIES ACT

This Agreement is subject to the provisions of Title II of the Americans with Disabilities Act of 1990, 42 U.S.C. 12132 ("ADA") and regulations promulgated pursuant thereto, see 28 CFR Part 35. A successful bidder shall not discriminate against an individual with a disability, as defined in the ADA, in providing services, programs or activities pursuant to this Agreement. To ensure compliance with the ADA during the term of this Agreement bidder shall prepare a plan ("Compliance Plan") which lists its program site(s) and describes in detail how it intends to make the services, programs or activities set forth in the scope of services herein readily accessible to and usable by individuals with disabilities, including but not limited to people with visual, audial, or mobility disabilities, at such site(s) listed. In the event the program site is not readily accessible to and usable by individuals with disabilities, bidders shall also include in the Compliance Plan a description of reasonable alternative means and methods that result in making the services, programs or activities set forth herein readily accessible to and usable by individuals with disabilities.

NOTICE TO PROPOSERS

1. A Notice of Award will be sent by registered letter, return receipt requested, to the successful Proposer. Within ten (10) days after receipt of such letter, as evidenced by the date on the return receipt, the said Proposer shall furnish all required bonds and insurances; execute the contract; and hand-deliver the said bonds, insurances and executed contract to the Office of the Contracts/Purchasing, New York City Department of Transportation, 40 Worth Street, New York, NY 10013.

Failure to comply with the above within the stated period will be deemed as abandonment of the contract and shall result in forfeiture of the bid deposit and bidder shall also be liable for and agrees to pay to the City, on demand, the difference between the price bid by him and the price which the contract shall subsequently be relet, including the cost of such reletting and less the amount of the said bid deposit.

2. The Proposer represents that his attention has been specifically drawn to Executive Order No. 50 on Equal Employment Opportunity, reference to which is made in the Construction Rider attached hereto, and warrants that he will comply with its provisions.

3. Prior to contract award, the successful Proposer shall submit, to the Engineer, the names and telephone numbers of responsible persons who can be reached at any time to authorize the dispatch of the equipment, materials and labor required to correct emergency or hazardous conditions which may occur at work sites during work- or non-work-periods. Such persons may be a superintendent, an individual owner, a partner or authorized corporate officers. Upon receipt of a telephone call, said person(s) shall assemble and dispatch a work crew, with instructions that the emergency or hazardous condition be immediately corrected.

In the event that a work crew cannot be assemble and/or dispatched, or that a work crew fails to be assembled and/or dispatched, within a reasonable time period, corrective action shall be undertaken by the Division of Bridges' own personnel and the costs incurred by the Bureau will be deducted from any monies due and payable under the contract.

4. In accordance with Article 200 of the Penal Law:

A person who gives or offers a bribe to any employee of the City of New York, or an employee who takes or solicits a bribe, is guilty of a felony punishable by imprisonment for a term of seven years and by a fine.

SECTION 1.02

PRICE PROPOSAL FOR FURNISHING ALL NECESSARY SERVICES

Note: The Company's Price Proposal shall be deemed to have taken into consideration all requirements/provisions/specifications/statements/correpondence/technical information, etc. included in the RFP and in both Book 1 and Book 2 (Volumes 1 and 2), as well as in all Addenda issued for this procurement.

Book 1
Section 1.02

TABLE OF CONTENTS

Section 1.02 **PRICE PROPOSAL FOR FURNISHING ALL NECESSARY SERVICES**

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1.02.3 Contingent Work.....**64**
1.02.4 Proposer's Signature and Affidavit **65**

1.02.1. Proposer

Name of Proposer _____

Proposer is: Individual ( ) Partnership ( ) Corporation ( )
(Check one, as the case may be.)

Residence of Proposer (If Individual)_____

Place of Business of Proposer _____

Date of Proposal_____

(If proposer is partnership, fill in the following blanks:)

Names of Partners	Residence of Partners
_____	_____
_____	_____
_____	_____

(If proposer is a corporation, fill in the following blanks:)

Organized under the laws of the State of _____

Name and Home Address of President _____
_____

Name and Home Address of Secretary _____
_____

Name and Home Address of Treasurer _____
_____

1.02.2 Proposer's Affirmation and Declaration.

The above-named proposer affirms, declares, and certifies:

1. That said proposer is of lawful age and the only one interested in this proposal; and that no person, firm or corporation other than herein above named has any interest in this proposal or in the contract proposed to be taken.

2. By submission of this proposal, each proposer and each person signing on behalf of any proposer certifies, and in the case of a joint proposal each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

   (a) The prices in this proposal have been arrived at independently without collusion, consultation, communication, or agreement, for the purpose of restricting competition, as to any matter relating to such prices with any other proposer or with any competitor;
   (b) Unless otherwise required by law, the prices which have been quoted in this proposal have not been knowingly disclosed by the proposer and will not knowingly be disclosed by the proposer prior to opening, directly or indirectly, to any other proposer or to any competitor; and
   (c) No attempt has been made or will be made by the proposer to induce any other person, partnership or corporation to submit or not to submit a proposal for the purpose of restricting competition.

3. That no Councilmember or other officer or employee or person whose salary is payable in whole or in part from the City treasury is directly or indirectly interested in this proposal, or in the supplies, materials, equipment, work or labor to which it relates, or in any of the profits thereof.

4. That said proposer is not in arrears to the City of New York upon debt, contract or taxes, and is not a defaulter, as surety or otherwise, upon any obligation to the City of New York, and has not been declared not responsible, or disqualified, by any agency of the City of New York or State of New York, nor is there any proceeding pending relating to the responsibility or qualification of the proposer to receive public contracts except _____ (If none, proposer shall insert 'none').

5. The proposer, as an individual, or as a member, partner, director or officer of the proposer, if the same be a firm, partnership or corporation, executes this document expressly warranting and representing that should this proposal be accepted by the City and the contract awarded to him, he and his subcontractors engaged in the performance of the contract: (a) will comply with the provisions of Section 343-9.0 of the Administrative Code of the City of New York in relation to minimum wages; and (b) post a notice, to be furnished by the City, setting forth the requirements of this law, 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 notice posted until the supplies, materials or equipment, or work, labor or services required to be furnished or rendered by the contract have been finally accepted by the City.

   In the event of breach or violation of any of the foregoing, the proposer may be subject to damages, liquidated or otherwise, cancellation of the contract and suspension as a proposer/bidder for a period of three (3) years. The words "the proposer," "he," "his," "him," "it," and "its" where used herein shall mean the individual proposer, firm, partnership or corporation executing this proposal form.

6. The proposer, as an individual, or as a member, partner, director or officer of the proposer, if the same be a firm, partnership or corporation, executes this document expressly warranting and representing that should this proposal be accepted by the City and the contract awarded him, he and his subcontractors engaged in the performance: (a) will comply with the provisions of Section 343.8.0 of the Administrative Code of the City of New York and the non-discrimination provisions of Section 220-e of the New York State Labor Law as set forth more expressly and in detail in the contract form; (b) have complied with the provisions of the aforesaid laws since their respective effective dates; and (c) will post notices, to be furnished by the City, setting forth the requirements of the aforesaid law 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 Contractor have been finally accepted by the City. The words "the proposer," "it," "its," "he," "his," and "him" where used herein shall mean the individual proposer, firm, partnership or corporation executing this proposal form.

PRICE PROPOSAL SHEET

Item No.	Item	Construction	CSS	Design	Dollars in Figures
1	Mobilization Cost (NTE 4%)				
2	Permits, Bonds, Insurances, and Upfront Coordination (NTE 6%)				
3	Engineer's Office / PC / Supplies				
4	Community Outreach				
5	Traffic Study (Richmond Terrace)				
6	Bridge / Site Inspections				
7	Bridge / Site Surveys				
	BIN 2270180 (Ramp A)				
8	Maintenance & Protection of Traffic				
9	Demolition / Temporary Shielding				
10	Substructure Rehabilitation				
11	Superstructure Replacement (Including Beams, Deck & Barrier)				
12	Roadway Approach / Plaza Restoration Work				
	BIN 2269770 (Ramp B)				
13	Maintenance & Protection of Traffic				
14	Demolition / Temporary Shielding				
15	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
16	Deck Reconstruction (Including Sidewalk, Barrier, Parapet, Shear Studs, Exp. Joints & Fencing)				
17	Cleaning Existing Steel (Lead Abatement Required)				
18	Painting Existing Steel				
19	Structural Steel Repair & Bearing Replacement				
20	Bridge Drainage Work				
21	Bridge (On & Under)Lighting Work				
22	Pigeon Deterrent System				
23	Roadway/Approach Work				
	BIN 2269780 (Ramp C)				
24	Maintenance & Protection of Traffic				
25	Demolition / Temporary Shielding				
26	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
27	Deck Reconstruction (Including Sidewalk, Barrier, Parapet, Exp. Joints & Fencing)				
28	Cleaning Existing Steel (Lead Abatement Required)				
29	Painting Existing Steel				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
30	Structural Steel Repair & Bearing Replacement				
31	Bridge Drainage Work				
32	Bridge (On & Under) Lighting Work				
33	Roadway/Approach Work				
	BIN 2269730 (Ramp D)				
34	Maintenance & Protection of Traffic				
35	Demolition / Temporary Shielding				
36	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
37	Deck Reconstruction (Including Sidewalk, Exp. Joints & Fencing)				
38	Cleaning Existing Steel (Lead Abatement Required)				
39	Painting Existing Steel				
40	Structural Steel Repair & Bearing Replacement				
41	Bridge Drainage Work				
42	Bridge (On & Under) Lighting Work				
43	Pigeon Deterrent System				
44	Roadway/Approach Work				
	BIN 2269740 (Bus Station North)				
45	Maintenance & Protection of Traffic				
46	Demolition / Temporary Shielding				
47	Encasement Repair (Columns and Underside of Terminal Ped. Ramps)				
48	Deck Repair (Over Terminal) Including Waterproofing Membrane				
49	Deck Reconstruction (Including Lt Wt Overlay, Bus Platform Sidewalk, Traffic Dividers, Barrier, Expansion Joints & Fencing)				
50	Cleaning Existing Steel (Lead Abatement Required)				
51	Painting Existing Steel				
52	Structural Steel Repair				
53	Bridge Drainage Work				
54	Bridge (On & Under) Lighting Work				
55	Pigeon Deterrent System				
	BIN 2269750 (Bus Station South)				
56	Maintenance & Protection of Traffic				
57	Demolition / Temporary Shielding				
58	Deck Reconstruction (Including Bus Platform Sidewalks, Barrier, Exp. Joints & Fencing)				
59	Bus Canopy Brick Wall Reconstruction w/Steel Grating Infill				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
60	Cleaning Existing Structural & Bus Canopy Steel (Lead Abatement Required)				
61	Painting Existing Structural & Bus Canopy Steel				
62	Structural Steel Repair				
63	Bridge Drainage Work				
64	Bridge (On & Under) Lighting Work				
65	Pigeon Deterrent System				
	BIN 2269790 (Old Viaduct)				
66	Maintenance & Protection of Traffic				
67	Encasement Removal & Temporary Shielding / Assessment & Recommendations for Steel Repairs				
68	Demolition / Temporary Shielding (for Deck Reconstruction)				
69	Concrete Substructure Rehabilitation (Including Pedestal Reconstruction)				
70	Deck Reconstruction (Including Parapet, Sidewalk, N. Fascia Railing & Fencing)				
71	Cleaning Existing Steel (Lead Abatement Required – Select Areas)				
72	Painting Existing Steel				
73	Bearing Replacement				
74	Bridge Drainage Work				
75	Bridge (On & Under)Lighting Work				
76	Pigeon Deterrent System				
77	Roadway/Approach Work				
	BIN 2270170 (Pedestrian Breezeway)				
78	Demolition / Temporary Shielding Including Removal of Roof (Asbestos Abatement Required) and Stairs to Ramp B				
79	Concrete Column Base Repair				
80	Deck Reconstruction Including Expansion Joints				
81	Cleaning Existing Steel (Lead Abatement Required)				
82	Painting Existing Steel				
83	Structural Steel Repair / Mod. to S. Fascia Girder (Due to Stair Removal)				
84	Metal Roof Construction				
85	Bridge (On & Under) Lighting Work				
86	Pigeon Deterrent System				
	BIN 2269760 (North Ramp)				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
87	Maintenance & Protection of Traffic				
88	Reconstruction of SIRTOA Stadium Station Stairs				
89	Clearing Site/Foundation Excavation (Assume excess excavation material is Contaminated, Non-Hazardous, Non-Petroleum Industrial Waste for Hauling and Disposal purposes)				
90	Hauling and Disposal of Contaminated Excess Excavation Material Classified as Non-Hazardous, Petroleum Contaminated Waste **(Proposer to Provide Unit Price based on assumed proposal quantity of 100 Tons)**				
91	Hauling and Disposal of Contaminated Excess Excavation / Material Classified as Hazardous Waste **(Proposers to provide Unit Price based on assumed proposal quantity of 25 Tons)**				
92	Bridge Foundation (Including possible dewatering operations)				
93	Bridge Substructure Incl. Richmond Terrace Abutment Modification				
94	Bridge Superstructure / Deck				
95	Ramp Foundation (Including possible dewatering operations)				
96	Ramp Retaining Walls, Sidewalk, Parapet and Barrier				
97	Ramp Fill and Paving				
98	Bridge / Ramp Drainage				
99	Bridge / Ramp Lighting				
100	Pigeon Deterrent System				
101	Approach Tie-In Work				
102	Restoration of EDC Parking Lot				
103	Demolition of Existing North Ramp (Including Asbestos & Lead Paint Abatement)				
	North Municipal Parking Field				
104	Temporary Relocation of Taxi Stand				
105	Clearing Site				
106	Paving and Striping Site				
107	Site Fencing, Drainage and Lighting				
	Bus Canopy Package				

Item No.	Item	Construction	CSS	Design	Dollars in Figures
108	Bus Canopy (Architectural Work excluding Brick Wall and Cleaning & Painting Bus Canopy Steel)				
109	Bus Canopy (Electrical Work incl. Holding Lights & PA System Upgrade)				
110	Vestibule Work				
	Site Drainage				
111	Clearing Site / Excavation				
112	Replacement / Modifications to Underground Site Drainage Systems				
113	Backfill and Restoration of Site				
114	Public Utilities[1] (exclusive of site drainage work)				
115	Demobilization (Including Site Restoration)				
	Subtotal				
116	Allowance for Architectural Enhancements (Bus Canopies and Pedestrian Bridge)				$1,000,000.00
117	Allowance for Flag Repairs				$1,000,000.00
118	Incidental Repairs				$9,000,000.00
119	Incentive (NYC-1943)				$3,200,000.00
120	Allowance for NYCT Disruptions[2]				$500,000.00
121	Allowance for Anti-icing System[3]				$5,000,000.00
	Allowance Subtotal[4]				**$19,700,000.000**
	Total				

Note:

1. In the event there is a need for any Private Utility work beyond the limits of the Terminal (i.e. where such utilities are no longer under the ownership of New York City), there must be a separate contract between the Company and the Utility Company as per Section U.
2. This item is to reimburse the Company for demonstrated losses incurred as a direct result of NYC Transit ordered disruptions to the Company's otherwise scheduled and approved work operations. This will apply to any entity of NYC Transit including but not limited to SIRTOA and Bus Operations.
3. This item is included as a budgetary allowance for future anticipated work related to designing, furnishing and installing an anti-icing system at the St. George Ferry Terminal. The scope of this work will be finalized prior to Notice to Proceed.
4. The Allowance value shall not be considered in the total for computing DBE subcontracting percentages.

The total of the foregoing price proposal based on the Company's Estimate of Items of Work is (in words):

1.02.3 Contingent Work

Contingent work shall be taken and understood to mean all labor, materials and equipment necessary for the completion of the contract. Such work shall be performed only when ordered in writing by the Engineer.

1.02.4 Proposer's Signature and Affidavit

Proposer_____

By_____
(Signature of partner or corporate officer)

Attest:
(Corporate)
(Seal)

_____
Secretary of corporate proposer

* * * * * * * * * * * * *

Affidavit Where Proposer is an Individual

STATE OF NEW YORK, COUNTY OF_____ss.:

_____being duly sworn, says: I am the person described in and who executed the foregoing price proposal and the several matters therein stated are in all respects true.

_____
(Signature of the person who signed the price proposal)

Subscribed and sworn to before me this

_____day of _____, 20____

_____
Notary Public

Affidavit Where Proposer is a Corporation

STATE OF NEW YORK, COUNTY OF_____ss.:

_____being duly sworn, says: I am the _____of the above named corporation whose name is subscribed to and which executed the foregoing price proposal. I reside at _____. I have knowledge of the several matters therein stated, and they are in all respects true.

_____
(Signature of the person who signed the price proposal

Subscribed and sworn to before me this

_____day of_____, 20

_____
Notary Public

* * * * * * * * * * * * * *

Affidavit Where Proposer is a Partnership

STATE OF NEW YORK, COUNTY OF_____ss.:

_____being duly sworn, says: I am a member of_____the firm described in and which executed the foregoing price proposal. I subscribed the name of the firm thereto on behalf of the firm, and the several matters therein stated are in all respects true.

_____
(Signature of the person who signed the price proposal)

Subscribed and sworn to before me this

_____day of_____, 20

_____
Notary Public

SECTION 1.03

DESIGN BUILD CONTRACT AGREEMENT SECTION

Book 1
Section 1.03

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Attention to Changes

Attention is drawn to changes introduced as of April, 2006 to the contract language. These changes are as follows:

ARTICLE 5: COMPLIANCE WITH LAWS

Article 5.3 Noise Control Code Provisions was replaced in its entirety to reflect the changes brought about by the new Construction Noise Mitigation Rule promulgated by the New York City Department of Environmental Protection. This Rule will become effective on July 1, 2007. This rule was promulgated pursuant to the authority of Local Law 113 of 2005, codified in the Administrative Code as Title 24 chapter 2 which also goes into effect on the same date.

The Construction Noise Mitigation Rule requires a Construction Noise Mitigation Plan at each work site, in which the Contractor shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the New York City Department of Environmental Protection. No Contract work may take place at a worksite unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Rule requires that the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties.

Added Article 5.6 regarding the application of pesticides to any property owned or leased by the City.

ARTICLE 7: PROTECTION OF WORK AND OF PERSONS AND PROPERTY; NOTICES AND INDEMNIFICATION

Changes were made to Article 7 regarding the Company's obligation to file reports with the City and insurance carriers in the event of any loss, damage or injury to Work, persons or property, or any accidents arising out of the operations of the Company and/or its Subcontractors under the contract. In addition, changes were made to the indemnification provisions of the contract.

ARTICLE 23. SUBCONTRACTS

In accordance with the Mayor's Executive Order 73, a requirement was added in Article 23.1 that all subcontracts must be in writing and a provision was added to Article 23.9.2. that written subcontracts must include a requirement to pay prevailing wages in accordance with the State Labor Law. In addition, pursuant to Administrative Code Section 6-123, subcontracts in excess of $50,000 must contain a provision that the subcontractor will not engage in unlawful discriminatory practices as defined in Title VIII of the Administrative Code.

The written subcontracts were not added to the list of materials in Article 23.3 that must be provided to the Agency prior to the Agency granting approval of a subcontractor.

ARTICLE 27. RETAINED PERCENTAGE

The amounts set forth in Article 27 regarding retainage for those contracts where 100% performance and payment security is not required were raised from $250,000 to $500,000 to reflect the decision by the Mayor's Office of Contract Services to raise the amount at which payment and performance bonds need not be required from $250,000 to $500,000.

ARTICLE 28. INSURANCE

The insurance provisions of Article 28 have been significantly revised and a new schedule A has been attached for use in conjunction with the Standard Construction Contract. In addition to other changes in the insurance requirements, please not that in Article 28.1.1(b) there are new requirements for specific endorsements for contracts that exceed ten million dollars. Attached to this memo is a short statement providing guidance on how to use the new Schedule A.

A central feature of Schedule A is that Contractors are now required to submit, in addition to the Certificates of Insurance currently required, either a certification from their insurance broker that the Certificate of Insurance is accurate in all material aspects and that the described insurance is effective as of the date of the certification, or complete copies of all the insurance policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable. The purpose of requiring either the broker's certification or copies of the insurance policies is to confirm that the insurance in fact does exist. The agency need not engage in an extensive review of the policies themselves but still may rely on a review of the Certificate of Insurance.

For general information regarding insurance and the types of insurance listed in Article 28 and Schedule A, please consult "Insurance Requirements for Contractors," issued by the Central Insurance Program within the Office of Operations.

ARTICLE 29. MONEY RETAINED AGAINST CLAIMS

Minor changes were made to clarify the Article.

ARTICLE 31. CHANGES

Minor changes were made to clarify the Article, including changing reference from Mayor's Office of Construction to the Mayor's Office of Contract Services. In addition, a provision requiring CCPO approval of changes to the Contract that exceed 10% of the Contract price or $100,000 was deleted as more properly addressed in the PPB Rules than in the Contract. Please note that the requirement continues to exit in PPB Rule 4-02(b)(1)(ii).

ARTICLE 32. METHODS OF PAYMENT FOR OVERRUNS AND EXTRA WORK

Elements of Joint Directive #1 issued by the then Mayor's Office of Construction and the Chief Engineer of the Comptroller's Office were incorporated into the Contract regarding reimbursement of costs for contractor-owned equipment.

Costs related to Extra Work for worker's compensation insurance and performance and payment bonds were moved out of overhead and made a reimbursable direct cost.

Minor changes were made throughout to clarify the Article.

ARTICLE 33. RESOLUTION OF DISPUTES

Changes were made to reflect changes to PPB Rule 4-09 regarding who may make determinations that are subject to the dispute resolution procedures.

ARTICLE 42. NO DISCRIMINATION

A new provision 42.5 was added to incorporate the requirements of Section 6-123 of the Administrative Code regarding the Contractor's agreement not to engage in unlawful discriminatory practices in violation of Title VIII of the Administrative Code.

ARTICLE 43. LABOR LAW REQUIREMENTS

In accordance with the Mayor's Executive Order 73, provisions were added to Articles 43.1, 43.4, 43.6.2, 43.6.6. and 43.6.7 related to ensuring proper compliance with State Labor Law requirements, including a requirement that not only Contractors but also Subcontractors maintain daily site sign-in sheets, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began work and the time the employee left work.

In addition, Article 43.8 was deleted as it was an outdated reference to a now repealed Administrative Code Provision.

ARTICLE 73. M/WBE PROGRAM

This replaces the article for Locally Based Enterprise Programs.

ARTICLE 76. HEALTH INSURANCE COVERAGE

In accordance with the Mayor's Executive Order 72, a new Article 76 is added, replacing the prior provisions on Burma which previously had been deleted. **Article 76 now requires contractors, after registration of a contract, to inform the City whether it provides health benefits to its employees. If yes, the Contractor must either provide information as to whether it also provides such benefits equally to domestic partners of its employees to indicate that it refuses to answer the question. A form is attached of the Standard Construction Contract to be used in conjunction with this Article.**

WITNESSETH:

THIS AGREEMENT, made and entered into this _____day of _____20___, by and between the City of New York (the "City") acting by and through the Commissioner of the Department of Transportation of the City of New York (the "Commissioner") and _____ (the "Company"), located at_____

WITNESSETH:

WHEREAS, the City desires to have design, construction, and construction support services performed in an expeditious manner with respect to the rehabilitation and reconstruction of eight vehicular bridges and one pedestrian bridge at the St. George, Staten Island Ferry Terminal as further described in the contract (the "Project"); and

WHEREAS, the Company has been selected based upon and in consideration of its representation that it can perform the required services and complete the project in the time set forth herein.

NOW, THEREFORE, the parties in consideration of the mutual agreements contained herein, agree as follows:

CHAPTER I
THE CONTRACT AND DEFINITIONS

ARTICLE 1. THE CONTRACT

1.1 Except for titles, subtitles, headings, running headlines, tables of content and indices (all of which are printed herein merely for convenience), the following, except for such portions thereof as may be specifically excluded, shall be deemed to be part of this Contract:

1.1.1 All provisions required by law to be inserted in this Contract, whether actually inserted or not;

1.1.2 The Contract Drawings and Specifications;

1.1.3 The General Conditions and Special Conditions, if any;

1.1.4 The Contract;

1.1.5 The Information for Bidders; Request for Proposals; Notice of Solicitation and Proposal for Bids; Bid or Proposal, and, if used, the Bid Booklet;

1.1.6 The Budget Director's Certificate; all Addenda issued prior to the receipt of the bids; the Notice of Award; Performance and Payment Bonds, if required; and the Notice to Proceed with the Work.

1.2 Should any conflict occur in or between the Drawings and Specifications, the Company shall be deemed to have estimated the most expensive way of doing the Work, unless the Contractor shall have asked for and obtained a decision in writing from the Commissioner, of the Agency that is entering into this Contract, before the submission of its bid as to what shall govern.

ARTICLE 2. DEFINITIONS

2.1 The following words and expressions, or pronouns used in their stead, shall, wherever they appear in this Contract, be construed as follows, unless a different meaning is clear from the context:

2.1.1 **"Addendum"** or **"Addenda"** shall mean the additional Contract provisions issued in writing by the Commissioner prior to the receipt of bids.

2.1.2 **"Agency"** shall mean a city, county, borough or other office, position, department, division, bureau, board or commission, or a corporation, institution or agency of government, the expenses of which are paid in whole or in part from the City treasury.

2.1.3 **"Agency Chief Contracting Officer"** (ACCO) shall mean a person delegated authority by the Commissioner to organize and supervise the procurement activity of subordinate Agency staff in conjunction with the CCPO.

2.1.4 **"Allowance"** shall mean those contract funds allocated for the payment of specific costs and expenses.

2.1.5 **"Bridge Replacement"** or **"Bridge Reconstruction"** shall mean the removal of the existing bridge in its entirety, including footings, as necessary, and build up a new structure that will be compliant with all applicable codes and the terms of this Contract.

2.1.6 **"Business Day"** shall mean a day other than a Saturday, Sunday or a day on which the executive offices of the Department are not officially open for business.

2.1.7 **"City"** shall mean the City of New York.

2.1.8 **"City Chief Procurement Officer"** (CCPO) shall mean a person delegated authority by the Mayor to coordinate and oversee the procurement activity of Mayoral agency staff, including the ACCO and any offices which have oversight responsibility for the procurement of construction.

2.1.9 **"Commissioner"** shall mean the head of the Agency that has entered into this Contract, or his/her duly authorized representative.

2.1.10 **"Commissioner's Representative"** shall mean the Project Manager assigned by the Commissioner or any successor or alternate representative selected by the Commissioner.

2.1.11 **"Company"** shall mean the party of the second part hereto, whether a design or construction corporation, firm, individual, or any combination thereof, and its, their, his or her successors, personal representatives, executors, administrators and assigns, and any person, firm or corporation who or which shall at any time be substituted in the place of the party of the second part under this contract.

2.1.12 **"Comptroller"** shall mean the Comptroller of the City of New York.

2.1.13 **"Consultant" or "Consultant(s)"** shall mean any person or firm, partnership or corporation engaged in furnishing engineering, design, or other consulting services with respect to the work. All consultants must receive the prior written approval of the Commissioner.

2.1.14 **"Contract"** or **"Contract Documents"** shall mean each of the various parts of the contract referred to in Article 1 hereof, both as a whole and severally.

2.1.15 **"Construction Documents"** shall mean the final plans, drawings and specifications and all modifications thereto prepared by the Company pursuant to this Agreement and approved in writing by the Commissioner.

2.1.16 **"Construction Contractor"** shall mean the corporation, firm, or individual(s) engaged in construction work.

2.1.17 **"Contract Drawings"** shall mean only those drawings specifically entitled as such and listed in the Specifications or in any Addendum, or any drawings furnished by the Commissioner, pertaining or supplemental thereto.

2.1.18 **"Contract Duration"** shall mean consecutive calendar days from the date of the Notice to Proceed to the date of project substantial completion.

2.1.19 **"Contract Work"** shall mean everything required to be furnished and done by the Contractor by any one or more of the parts of the Contract referred to in Article 1, except Extra Work as hereinafter defined.

2.1.20 **"Contractor"** shall mean the entity which executed this Contract, whether a corporation, firm, partnership, joint venture, individual, or any combination thereof, and it(s), their, his/ her successors, personal representatives, executors, administrators and assigns, and any person, firm, partnership, joint venture, individual, or corporation which shall at any time be substituted in the place of the Contractor under this Contract.

2.1.21 **"Days"** shall mean calendar days, except where otherwise specified.

2.1.22 **"Department"** or **"DOT"** shall mean the Department of Transportation of the City of New York acting by and through the Commissioner thereof, or his/her duly authorized representative.

2.1.23 **"Engineer"** or **"Architect"** shall mean the consulting entity of the Company.

2.1.24 **"Engineering Audit Officer" (EAO)** shall mean the person so designated by the Commissioner to perform responsible auditing functions hereunder.

2.1.25 **"Extra Work"** shall mean Work other than that required by the Contract at the time of award which is authorized by the Commissioner pursuant to Chapter VI of this Contract.

2.1.26 **"Federal-Aid Contract"** shall mean a contract in which the United States (federal) Government provides financial funding as so designated in the Information for Bidders.

2.1.27 **"Final Acceptance"** shall mean final written acceptance of all the Work by the Commissioner, a copy of which shall be sent to the Contractor.

2.1.28 **"Final Approved Punch List"** shall mean a list, approved in writing by the Project Manager, specifying those items of Work to be completed by the Contractor after Substantial Completion and dates for the completion of each item of Work.

2.1.29 **"Government Entity"** shall mean the United States, the State and City of New York, and any and every agency, department, court, commission, or other instrumentality or political subdivision of government of any kind whatsoever, now existing or hereafter created.

2.1.30 **"Law"** or **"Laws"** shall mean the Constitution of the State of New York, the New York City Charter, the New York City Administrative Code, a Statute of the United States or of the State of New York, a local law of the City of New York, any ordinance, rule or regulation having the force of law, or common law.

2.1.31 **"Lien"** shall mean any and every lien, lease, security interest, or encumbrance of any kind whatsoever including, but not limited to, a Mechanic's Lien.

2.1.32 **"Materialman"** shall mean any corporation, firm, partnership, joint venture, or individual, other than employees of the Contractor, who or which contracts with the Contractor or any Subcontractor, to fabricate or deliver, or who actually fabricates or delivers, plant, materials or equipment to be incorporated in the Work.

2.1.33 **"Mayor"** shall mean the Mayor of the City of New York, his successors or duly authorized representatives.

2.1.34 **"Means and Methods of Construction"** shall mean the labor, materials, temporary structures, tools, plant, and construction equipment, and the manner and time of their use, necessary to accomplish the result intended by this Contract.

2.1.35 **"Other Contractor(s)"** shall mean any Contractor (other than the entity which executed this Contract or its Subcontractors) who has a contract with the City for work on or adjacent to the building or site of the Work.

2.1.36 **"Payroll Taxes"** shall mean State Unemployment Insurance ("SUI"), Federal Unemployment Insurance ("FUI") and payments pursuant to the Federal Insurance Contributions Act ("FICA").

2.1.37 **"Project"** shall mean the public improvement to which this Contract relates.

2.1.38 **"Procurement Policy Board" (PPB)** shall mean the Agency of the City of New York whose function is to establish comprehensive and consistent procurement policies and rules which shall have broad application throughout the City.

2.1.39 The **"Project Manager"** shall mean the person(s) as selected by the Deputy Chief Engineer as the sole party in charge of overseeing the project on behalf of the Department.

2.1.40 **"Railroad Force Account Agreements"** or **"Force Account"** refers to agreements with railroads for use of railroad personnel as flagmen, inspectors, signal protection, etc.

2.1.41 **"Required Quantity"** in a unit price Contract shall mean the actual quantity of any item of Work or materials which is required to be performed or furnished in order to comply with the Contract.

2.1.42 **"Resident Engineer"** (RE) shall mean the representative of the Commissioner duly designated by the Commissioner to be his/her representative at the site of the Work.

2.1.43 **"Safety Standards"** shall mean all laws, union rules and trade or industry custom or codes of any kind whatsoever, in effect from the date hereof through Final Acceptance, pertaining to worker safety and accident prevention applicable to the Project and/or the Work (including, but not limited to, rules, regulations and standards adopted pursuant to the Occupational Safety and Health Act of 1970, as amended from time to time).

2.1.44 **"Samples"** shall mean physical examples or specimens, intended to demonstrate workmanship or the characteristics of materials and equipment and/or to establish standards by which the work will be judged. "Samples" includes (but is not limited to) raw materials, assemblies, completed items, working components or parts thereof, required under this Agreement or by the City to ascertain whether the kind, quality, assembly, construction, workmanship, finish, color, texture, grade or other characteristics of Work submitted by the Company conforms to the requirements of the Agreement.

2.1.45 **"Shop Drawings"** shall mean any and all drawings, diagrams, layouts, explanations, illustrations, manufacturer's drawings or other written or graphic materials which illustrate any portion of the Work.

2.1.46 **"Site"** shall mean the area upon or in which the Contractor's operations are carried on, and such other areas adjacent thereto as may be designated as such by the Project Manager.

2.1.47 **"Specifications"** shall mean all of the directions, requirements and standards of performance applying to the Work as hereinafter detailed and designated under the Specifications.

2.1.48 **"Subcontractor"** shall mean any person, firm or corporation, other than employees of the Contractor, who or which contracts with the Contractor/Company or with its Subcontractors to furnish, or actually furnishes labor, or labor and materials, or labor and equipment, at the site. Wherever the word Subcontractor appears, it shall also mean Sub-Subcontractor.

2.1.49 **"Substantial Completion"** shall mean the written determination by the Commissioner that the Work required under this Contract is substantially, but not entirely, complete.

2.1.50 **"Term of Completion"** shall mean the Contract Duration, i.e. the Consecutive Calendar Days from Notice to Proceed to Substantial Completion.

2.1.51 **"Treasurer"** shall mean the Commissioner of the Department of Finance of the City of New York.

2.1.52 **"Utilities"** shall mean any and all utility services and installations whatsoever including, but not limited to, gas, water, electricity, telephone, other telecommunications, steam, sewer and storm sewer, and all piping, wiring, conduit and/or other fixtures of every kind whatsoever related thereto or used in connection therewith.

2.1.53 **"Work"** shall mean all services required to complete the Project in accordance with the Contract Documents, including without limitation, labor, material, superintendence, management, administration, equipment, and incidentals, and shall include both Contract Work and Extra Work.

CHAPTER II

THE WORK AND ITS PERFORMANCE

ARTICLE 3. CHARACTER OF THE WORK

3.1 Unless otherwise expressly provided in the **Contract Drawings**, **Specifications** and **Addenda**, the **Work** shall be performed in accordance with the best modern practice, utilizing, unless otherwise specified in writing, new and unused materials of standard first grade quality and workmanship and design of the highest quality, to the satisfaction of the **Commissioner**.

ARTICLE 4. MEANS AND METHODS OF CONSTRUCTION

4.1 Unless otherwise expressly provided in the **Contract Drawings**, **Specifications** and **Addenda**, the **Means and Methods of Construction** shall be such as the **Contractor** may choose; subject, however, to the **Commissioner's** right to reject the **Means and Methods of Construction** proposed by the **Contractor** which in the opinion of the **Commissioner**:

4.1.1 Will constitute or create a hazard to the **Work**, or to persons or property; or

4.1.2 Will not produce finished Work in accordance with the terms of the Contract; or

4.1.3 Will be detrimental to the overall progress of the Project.

4.2 The **Commissioner's** approval of the **Contractor's/Company's Means and Methods of Construction**, or its failure to exercise his/her right to reject such means or methods, shall not relieve the **Contractor** of its obligation to complete the **Work** as provided in this **Contract**; nor shall the exercise of such right to reject create a cause of action for damages.

ARTICLE 5. COMPLIANCE WITH LAWS

5.1 The **Company** shall comply with all **Laws** applicable to this **Contract** and to the **Work** to be done hereunder.

5.2 Procurement Policy Board Rules: This Contract is subject to the Rules of the PPB ("PPB Rules") in effect at the time of the bid opening for this Contract. In the event of a conflict between the PPB Rules and a provision of this Contract, the PPB Rules shall take precedence.

5.3 Noise control code provisions:

5.3.1 In accordance with the provisions of Section 24-216(b) of the Administrative Code of the **City** ("Administrative Code"), Noise Abatement Contract Compliance, devices and activities which will be operated, conducted, constructed or manufactured pursuant to this **Contract** and which are subject to the provisions of the **City** Noise Control Code shall be operated, conducted, constructed, or manufactured without causing a violation of the Administrative Code. Such devices and activities shall incorporate advances in the art of noise control development for the kind and level of noise emitted or produced by such devices and activities, in accordance with regulations issued by the **Commissioner** of the Department of Environmental Protection.

5.3.2 The Contractor agrees to comply with Section 24-219 of the Administrative Code of the City ("Administrative Code") and implementing rules codified at 15 Rules of the City of New York ("RCNY") Section 28-100 et. seq. In accordance with such provisions, the Contractor, if the Contractor is the responsible party under such regulations, shall prepare and post a Construction Noise Mitigation Plan at each work site, in which the Contractor

shall certify that all construction tools and equipment have been maintained so that they operate at normal manufacturers operating specifications. If the Contractor cannot make this certification, it must have in place an Alternative Noise Mitigation Plan approved by the New York City Department of Environmental Protection. In addition, the Contractor's certified Construction Noise Mitigation Plan is subject inspection by the Department of Environmental Protection in accordance with 15 RCNY §28-101. No Contract work may take place at a worksite unless there is a Construction Noise Mitigation Plan or approved Alternative Noise Mitigation Plan in place. In addition, the Contractor shall create and implement a noise mitigation training program. Failure to comply with these requirements may result in fines and other penalties pursuant to the applicable provisions of the Administrative Code and RCNY.

5.4 Ultra Low Sulfur Diesel Fuel: In accordance with the provisions of Section 24-163.3 of the Administrative Code, the Company specifically agrees as follows:

5.4.1 Definitions. For purposes of this Article 5.4, the following definitions apply:

5.4.1(a) "Company" means any person or entity that enters into a Public Works Contract with a City agency, or any person or entity that enters into an agreement with such person or entity, to perform work or provide labor or services related to such Public Works Contract

5.4.1(b) "Motor Vehicle" means any self-propelled vehicle designed for transporting persons or property on a street or highway.

5.4.1(c) "Nonroad Engine" means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

5.4.1(d) "Nonroad Vehicle" means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this term shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

5.4.1(e) "Public Works Contract" means a contract with a City agency for a construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; a contract with a City agency for the preparation for any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge; or a contract with a City agency for any final work involved in the completion of any construction program or project involving the construction, demolition, restoration, rehabilitation, repair, renovation, or abatement of any building, structure, tunnel, excavation, roadway, park or bridge.

5.4.1(f) "Ultra Low Sulfur Diesel Fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

5.4.2 Ultra Low Sulfur Diesel Fuel

5.4.2(a) All Contractors shall use Ultra Low Sulfur Diesel Fuel in diesel-powered Nonroad Vehicles in the performance of this **Contract**.

5.4.2(b) Notwithstanding the requirements of Article 5.4.2(a), Contractors may use diesel fuel that has a sulfur content of no more than thirty parts per million to fulfill the requirements of this Article 5.4.2, where the Commissioner of the New York City Department of Environmental Protection ("DEP Commissioner") has issued a determination that a sufficient quantity of Ultra Low Sulfur Diesel Fuel is not available to meet the needs of City agencies and Contractors. Any such determination shall expire after six months unless renewed.

5.4.2(c) Contractors shall not be required to comply with this Article 5.4.2 where the agency letting this contract makes a written finding, which is approved, in writing, by the DEP Commissioner, that a sufficient quantity of Ultra Low Sulfur Diesel Fuel, or diesel fuel that has a sulfur content of no more than thirty parts per million is not available to meet the requirements of Section 24-163.3 of the Administrative Code, provided that such Company in its fulfillment of the requirements of this Contract, to the extent practicable, shall use whatever quantity of Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million is available. Any finding made pursuant to this subdivision shall expire after sixty days, at which time the requirements of this Article 5.4.2 shall be in full force and effect unless the Agency renews the finding in writing and such renewal is approved by the DEP Commissioner.

5.4.2(d) Contractors may check on determinations and approvals issued by the DEP Commissioner pursuant to Section 24-163.3 of the Administrative Code, if any, at www.dep.nyc.gov or by contacting the Agency issuing this solicitation.

5.4.2(e) The requirements of this Article 5.4.2 do not apply where they are precluded by federal or State funding requirements or where the **Contract** is an emergency procurement.

5.4.3 Best Available Technology

5.4.3(a) All Contractors shall utilize the best available technology for reducing the emission of pollutants for diesel-powered Nonroad Vehicles in the performance of this **Contract**. For determinations of best available technology for each type of diesel-powered Nonroad Vehicle, Contractors shall comply with the regulations of the City Department of Environmental Protection, as and when adopted, Chapter 14 of Title 15 of the Rules of the City of New York (RCNY). The Company shall fully document all steps in the best available technology selection process and shall furnish such documentation to the Agency or the DEP Commissioner upon request. The Company shall retain all documentation generated in the best available technology selection process for as long as the selected best available technology is in use.

5.4.3(b) No Company shall be required to replace best available technology for reducing the emission of pollutants or other authorized technology utilized for a diesel-powered Nonroad Vehicle in accordance with the provisions of this Article 5.4.3 within three years of having first utilized such technology for such vehicle.

5.4.3(c) This Article 5.4.3 shall not apply to any vehicle used to satisfy the requirements of a specific Public Works Contract for fewer than twenty calendar days.

5.4.3(d) The Company shall not be required to comply with this Article 5.4.3 with respect to a diesel-powered Nonroad Vehicle under the following circumstances:

5.4.3(d)(1) Where the agency makes a written finding, which is approved, in writing, by the DEP Commissioner, that the best available technology for reducing the emission of pollutants as required by those paragraphs is unavailable for such vehicle, Company

shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle.

5.4.3(d)(2) Where the DEP Commissioner has issued a written waiver based upon the Company having demonstrated to the DEP Commissioner that the use of the best available technology for reducing the emission of pollutants might endanger the operator of such vehicle or those working near such vehicle, due to engine malfunction, Company shall use whatever technology for reducing the emission of pollutants, if any, is available and appropriate for such vehicle, which would not endanger the operator of such vehicle or those working near such vehicle.

5.4.3(d)(3) In determining which technology to use for the purposes of Articles 5.4.3(d)(1) and 5.4.3(d)(2) above, Company shall primarily consider the reduction in emissions of particulate matter and secondarily consider the reduction in emissions of nitrogen oxides associated with the use of such technology, which shall in no event result in an increase in the emissions of either such pollutant.

5.4.3(d)(4) Contractors shall submit requests for a finding or a waiver pursuant to this Article 5.4.3(d) in writing to the DEP Commissioner, with a copy to the ACCO of the Agency issuing the solicitation. Any finding or waiver made or issued pursuant to Articles 5.4.3(d)(1) and 5.4.3(d)(2) above shall expire after one hundred eighty days, at which time the requirements of Article 5.4.3(a) shall be in full force and effect unless the Agency renews the finding, in writing, and the DEP Commissioner approves such finding, in writing, or the DEP Commissioner renews the waiver, in writing.

5.4.3(e) The requirements of this Article 5.4.3 do not apply where they are precluded by federal or State funding requirements or where the contract is an emergency procurement.

5.4.4 Section 24-163 of the Administrative Code. Contractors shall comply with Section 24-163 of the Administrative Code related to the idling of the engines of motor vehicles while parking.

5.4.5 Compliance

5.4.5(a) Company's compliance with Article 5.4 may be independently monitored. If it is determined that the Company has failed to comply with any provision of Article 5.4, any costs associated with any independent monitoring incurred by the City shall be reimbursed by the Company.

5.4.5(b) Any Company who violates any provision of Article 5.4, except as provided in Article 5.4.5(c) below, shall be liable for a civil penalty between the amounts of one thousand and ten thousand dollars, in addition to twice the amount of money saved by such Company for failure to comply with Article 5.4.

5.4.5(c) No Company shall make a false claim with respect to the provisions of Article 5.4 to a City agency. Where a Company has been found to have done so, such Company shall be liable for a civil penalty of twenty thousand dollars, in addition to twice the amount of money saved by such Company in association with having made such false claim.

5.4.6 Reporting

5.4.6(a) For all Public Works Contracts covered by this Article 5.4, the Company shall report to the Department the following information:

5.4.6(a)(1) The total number of diesel-powered Nonroad Vehicles used to fulfill the requirements of this Public Works Contract;

5.4.6(a)(2) The number of such Nonroad Vehicles that were powered by Ultra Low Sulfur Diesel Fuel;

5.4.6(a)(3) The number of such Nonroad Vehicles that utilized the best available technology for reducing the emission of pollutants, including a breakdown by vehicle model and the type of technology;

5.4.6(a)(4) The number of such Nonroad Vehicles that utilized such other authorized technology in accordance with Article 5.4.3, including a breakdown by vehicle model and the type of technology used for each such vehicle;

5.4.6(a)(5) The locations where such Nonroad Vehicles were used; and

5.4.6(a)(6) Where a determination is in effect pursuant to Article 5.4.2(b) or 5.4.2(c), detailed information concerning the Company's efforts to obtain Ultra Low Sulfur Diesel Fuel or diesel fuel that has a sulfur content of no more than thirty parts per million.

5.4.6(b) The Company shall submit the information required by Article 5.4.6(a) at the completion of work under the Public Works Contract and on a yearly basis no later than August 1 throughout the term of the Public Works Contract. The yearly report shall cover work performed the preceding fiscal year (July 1 - June 30).

5.5 Ultra Low Sulfur Diesel Fuel. In accordance with the Coordinated Construction Act for Lower Manhattan, as amended:

5.5.1 Definitions. For purposes of this Article 5.5, the following definitions apply:

5.5.1(a) "Lower Manhattan" means the area to the south of and within the following lines: a line beginning at a point where the United States pierhead line in the Hudson river as it exists now or may be extended would intersect with the southerly line of West Houston street in the borough of Manhattan extended, thence easterly along the southerly side of West Houston street to the southerly side of Houston street, thence easterly along the southerly side of Houston street to the southerly side of East Houston street, thence northeasterly along the southerly side of East Houston street to the point where it would intersect with the United States pierhead line in the East river as it exists now or may be extended, including tax lots within or immediately adjacent thereto.

5.5.1(b) "Lower Manhattan Redevelopment Project" means any project in Lower Manhattan that is funded in whole or in part with federal or State funding, or any project intended to improve transportation between Lower Manhattan and the two air terminals in the City of New York known as LaGuardia Airport and John F. Kennedy International Airport, or between Lower Manhattan and the air terminal in Newark known as Newark Liberty International Airport, and that is funded in whole or in part with federal funding.

5.5.1(c) "Nonroad Engine" means an internal combustion engine (including the fuel system) that is not used in a Motor Vehicle or a vehicle used solely for competition, or that is not subject to standards promulgated under section 7411 or section 7521 of title 42 of the United States Code, except that this term shall apply to internal combustion engines used to power generators, compressors or similar equipment used in any construction program or project.

5.5.1(d) "Nonroad Vehicle" means a vehicle that is powered by a Nonroad Engine, fifty horsepower and greater, and that is not a Motor Vehicle or a vehicle used solely for competition, which shall include, but not be limited to, excavators, backhoes, cranes, compressors, generators, bulldozers and similar equipment, except that this terms shall not apply to horticultural maintenance vehicles used for landscaping purposes that are powered

by a Nonroad Engine of sixty-five horsepower or less and that are not used in any construction program or project.

5.5.1(e) "Ultra Low Sulfur Diesel Fuel" means diesel fuel that has a sulfur content of no more than fifteen parts per million.

5.5.2 Requirements. **Contractors** and **Subcontractors** are required to use only Ultra Low Sulfur Diesel Fuel to power the diesel-powered Nonroad Vehicles with engine horsepower (HP) rating of 50 HP and above used on a Lower Manhattan Redevelopment Project and, where practicable, to reduce the emission of pollutants by retrofitting such Nonroad Vehicles with oxidation catalysts, particulate filters, or technology that achieves lowest particulate matter emissions.

5.6 Pesticides. In accordance with Section 17-1209 of the Administrative Code, to the extent that the **Company** or any **Subcontractor** applies pesticides to any property owned or leased by the **City**, the **Company** and any **Subcontractor** shall comply with chapter 12 of the Administrative Code.

ARTICLE 6. INSPECTION

6.1 During the progress of the **Work** and up to the date of **Final Acceptance**, the **Company** shall at all times afford the representatives of the **City** every reasonable, safe and proper facility for inspecting all **Work** done or being done at the **Site** and also for inspecting the manufacture or preparation of materials and equipment at the place of such manufacture or preparation.

6.2 The **Company's** obligation hereunder shall include the uncovering or taking down of finished **Work** and its restoration thereafter; provided, however, that the order to uncover, take down and restore shall be in writing, and further provided that if **Work** thus exposed proves satisfactory, and if the **Company** has complied with Article 6.1, such uncovering or taking down and restoration shall be considered an item of **Extra Work** to be paid for in accordance with the provisions of Article 32. If the **Work** thus exposed proves unsatisfactory, the **City** has no obligation to compensate the **Company** for the uncovering, taking down or restoration.

6.3 Inspection and approval by the **Commissioner**, of finished **Work** or of **Work** being performed, or of materials and equipment at the place of manufacture or preparation, shall not relieve the **Company** of its obligation to perform the **Work** in strict accordance with the **Contract**. Finished or unfinished **Work** not found to be in strict accordance with the **Contract** shall be replaced as directed by the **Commissioner**, even though such **Work** may have been previously approved and paid for. Such corrective work is **Contract Work** and shall not be deemed **Extra Work**.

6.4 Rejected **Work** and materials shall be promptly taken down and removed from the **Site**, which must at all times be kept in a reasonably clean and neat condition.

ARTICLE 7. PROTECTION OF WORK AND OF PERSONS AND PROPERTY; NOTICES AND INDEMNIFICATION

7.1 During the performance of the **Work** and up to the date of **Final Acceptance**, the **Company** shall be under an absolute obligation to protect the finished and unfinished **Work** against any damage, loss, injury, theft and/or vandalism and in the event of such damage, loss, injury, theft and/or vandalism, it shall promptly replace and/or repair such **Work** at the **Company's** sole cost and expense, as directed by the **Resident Engineer**. The obligation to deliver finished **Work** in strict accordance with the **Contract** prior to **Final Acceptance** shall be absolute and shall not be affected

by the **Resident Engineer's** approval of, or failure to prohibit, the **Means and Methods of Construction** used by the **Company**.

7.2 During the performance of the **Work** and up to the date of **Final Acceptance**, the **Company** shall take all reasonable precautions to protect the persons and property of the **City** and of others from damage, loss or injury resulting from the **Company's**, and/or its **Subcontractors'** operations under this **Contract.** The **Company's** obligation to protect shall include the duty to provide, place or replace and adequately maintain at or about the **Site** suitable and sufficient protection such as lights, barricades, and enclosures.

7.3 The **Company** shall comply with the notification requirements set forth below in the event of any loss, damage or injury to **Work**, persons or property, or any accidents arising out of the operations of the **Company** and/or its **Subcontractors** under this **Contract**.

7.3.1 The **Company** shall make a full and complete report in writing to the **Resident Engineer** within three (3) **Days** after the occurrence.

7.3.2 The **Company** shall notify in writing the commercial general liability insurance carrier, and, where applicable, the worker's compensation and/or other insurance carrier, of any such loss, damage, injury, or accident, and any claim or suit arising therefrom, immediately, but not later than 20 days after such event. The **Company's** notice to the commercial general liability insurance carrier must expressly specify that "this notice is being given on behalf of the City of New York as Additional Insured as well as [the Company] as Named Insured." The Company's notice to the insurance carrier shall contain the following information: the name of the **Company**, the number of the **Contract**, the date of the occurrence, the location (street address and borough) of the occurrence, and the identity of the persons or things injured, damaged or lost.

7.3.2(a) At the time notice is provided to the insurance carrier(s), the **Company** shall provide copies of such notice to the **Comptroller** and the **Commissioner**. Notice to the **Comptroller** shall be sent to the Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, New York, 10007. Notice to the **Commissioner** shall be sent to the address set forth in Schedule A of the General Conditions.

7.3.2(b) If the **Company** fails to provide any of the foregoing notices to any appropriate insurance carrier(s) in a timely and complete manner, the **Company** shall indemnify the City for all losses, judgments, settlements and expenses, including reasonable attorneys' fees, arising from an insurer's disclaimer of coverage citing late notice by or on behalf of the City.

7.4 To the fullest extent permitted by law, the **Company** shall indemnify, defend and hold the **City**, its employees and agents (the "Indemnitees") harmless against any and all claims (including but not limited to claims asserted by any employee of the **Company** and/or its **Subcontractors)** and costs and expenses of whatever kind (including but not limited to payment or reimbursement of attorneys' fees and disbursements) allegedly arising out of or in any way related to the operations of the **Company** and/or its **Subcontractors** in the performance of this **Contract** or from the **Company's** and/or its **Subcontractors'** failure to comply with any of the provisions of this **Contract** or of the **Law**. Such costs and expenses shall include all those incurred in defending the underlying claim and those incurred in connection with the enforcement of this Article 7.4 by way of cross-claim, third-party claim, declaratory action or otherwise. The parties expressly agree that the indemnification obligation hereunder contemplates (1) full indemnity in the event of liability imposed against the Indemnitees without negligence and solely by reason of statute, operation of law or otherwise; and (2) partial indemnity in the event of any actual negligence on the part of the Indemnitees either causing or contributing to the underlying claim (in which case, indemnification

will be limited to any liability imposed over and above that percentage attributable to actual fault whether by statute, by operation of law, or otherwise). Where partial indemnity is provided hereunder, all costs and expenses shall be indemnified on a pro rata basis.

7.4.1 Indemnification under Article 7.4 or any other provision of the **Contract** shall operate whether or not **Company** or its **Subcontractors** have placed and maintained the insurance specified under Article 22.

7.5 The **Company** waives all rights against the **City** for any damages or losses for which either is covered under any insurance required under Article 22 (whether or not such insurance is actually procured) or any other insurance applicable to the operations of the **Company** and/or its **Subcontractors** in the performance of this **Contract**.

7.6 The provisions of this Article shall not be deemed to create any new right of action in favor of third parties against the **Company** or the **City**.

ARTICLE 8. AGREEMENT TO SERVE

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ARTICLE 9. OVERVIEW OF COMPANY'S SERVICES

9.1 The services of the **Company** shall be performed under the general direction of the **Commissioner** and shall consist of all aspects of the planning, design, construction, management and coordination of the **Project**, as described in Exhibit E, Scope of Work, in order to effectuate timely completion of the **Work**. The **Company** shall provide or cause to be provided design, construction, and construction support services, including, but not limited to, labor, material, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and all other facilities and services necessary for the proper execution and completion of the work, whether temporary or permanent, and whether or not incorporated or to be incorporated into the **Work**. In the event the company does not comply with the Scope of Work as described in Exhibit E, it will be deemed as reduced Scope of Work and it will entitle the **City** to an appropriate credit.

9.2 The **Company** shall provide such services as are required to complete the **Project** as intended in order to make it fully code compliant and functional, whether expressly required or fairly implied by this Agreement.

9.3 The **Company's Consultant** will be responsible to the **Company** for the preparation and acceptance of all design submissions.

9.4 The **Company** shall use a single prime consultant with overall responsibility to provide Design and CSS unless otherwise approved in writing by the Director of the Emergency/Design Build Contracts of the Division of Bridges.

9.5 It shall be the responsibility of the **Consultant** to directly notify the **City** in writing, of any concern that may present a structural problem, a safety risk, a maintenance problem or a concern that the completed work will not meet the requirements of this contract. It shall be the responsibility of the **Consultant** to directly notify the **City** in writing of any change in the design plans, shop drawings or methods of performance of the work at least seven business days prior to the implementation of such changes in the field.

9.6 The **Company** shall participate in bi-weekly meetings with NYCDOT from the Notice to Proceed date to the date of Substantial Completion. The following shall always be present at all bi-weekly meetings: the **Company**'s Manager of the Design Build project, the construction project manager, the design project manager, and the construction support services project manager. In addition, the **Company's** engineer that is responsible for all technical design issues shall be present at all bi-weekly meetings from Notice to Proceed to the day of all design completion.

9.7 The **Company** shall provide personnel dedicated to the project. Specifically, the following individuals will dedicate 100% of their time to this project throughout the duration of their services to the project: the construction project manager, the office engineer(s), the engineer responsible for all technical design issues. In addition, the following individuals will dedicate at least 50% of their time to this project throughout the duration of their services to the project: the Design and CSS project manager(s).

9.8 The Construction Contracting entity of the **Company**, shall furnish evidence before Contract Execution, that it has entered into a proper agreement with the Engineering Entity of the **Company**. This evidence may be a copy of the signed contract between the two entities or a notarized affidavit signed by both entities indicating that such an agreement exists and has been executed.

ARTICLE 10. DESIGN SERVICES

10.1 Design Services

10.1.1 The **Company** or its designee shall provide all services, whether managerial, administrative, supervisory, professional or technical necessary to complete all design services for the **Project** in compliance with all requirements of this Contract and all Exhibits hereto. Such design services shall be in accordance with the Criteria for Technical Services.

10.1.2 Professional design services specified here shall be provided by persons or firms licensed by the State of New York. All consultants performing such services are subject to the prior written approval of the **Commissioner**. If an approved consultant elects to subcontract any portion of its subcontract, the proposed subconsultant is subject to the prior written approval of the **Commissioner**. No consultant or subconsultant shall be permitted to perform services hereunder until such written approval herein has been obtained. The **Commissioner**'s approval of a consultant or subconsultant shall not relieve the **Company** of any of its responsibilities, duties and liabilities hereunder.

10.1.3 The **Company** or its designee shall provide the personnel listed in Form 1, Appendix B of the Request for Proposal for the specified titles set forth therein. It is the intent of this Agreement to secure the personal services of those personnel identified in Form 1 for the tasks described therein. Accordingly, such personnel shall not be transferred and replacement personnel assigned without prior written approval of the **Commissioner**, which shall not be unreasonably withheld. Replacement personnel must possess qualifications similar to those of the transferred personnel. In addition, at the **Commissioner**'s request, the **Company** shall remove any personnel and substitute another employee to the satisfaction of the **Commissioner**. The **Commissioner** may request such substitution for any reason whatsoever.

10.1.4 The **Company** shall be solely responsible to the **City** for damages arising out of the acts, defaults, errors or omissions of its consultants and of such consultants' officers, agents

and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the **Company** to the extent of its subcontract.

10.1.5 The **Company** shall make a thorough examination of the designated site noting all conditions and implications of the same pertaining to the completion of construction of the **Project**. The **Company** shall promptly bring to the attention of the **Commissioner** any inadequacy or uncertainty of facilities or utilities, or other impediments reasonably discoverable by the **Company** which would prevent orderly and expeditious accommodation of the **Project**.

10.1.6 The **Company** shall design and plan the work with reference to, and in conformity with, such information relating to existing lines, grades, levels, sewers, subsurface structures, conditions and facilities as may be furnished by the **Commissioner**, supplemented by an inspection of the site by the **Company**, as well as by the examination of all relevant information and public records.

10.1.7 The Company shall be responsible for verifying all measurements and details of existing construction. All drawings, specifications and data regarding the existing structure furnished by the Commissioner must be verified in the field by visual examination and physical measurements by the Company, as well as through all sources of records.

10.1.8 All required design services and deliverables shall be in accordance with the Contract as specified in Article 10.1 and 10.2.

10.1.9 The **Company**'s design shall include provisions for all necessary demolition and connection to existing structures as required for this **Project**, as well as site clearing and development surveys, and geotechnical investigation.

10.1.10 The **Company**'s design shall include provisions for all necessary removal and/or abatement of hazardous materials as required for this **Project**, including, but not limited to lead, asbestos and contaminated soils and groundwater.

10.1.11 The **Company** shall attend meetings as required with the **Department** and any other regulatory agencies whose approval is required. This shall include, but not limited to meetings and dialogue with local community boards, merchants and residents as required.

10.1.12 The **Company** shall secure the approval of all regulatory agencies and Community Boards whose approval of the design is required, including but not limited to, the Division of Bridges (NYCDOT), Passenger Transport Division - SI Ferries (NYCDOT), the Bureau of Water Permits (NYSDEC), the Bureau of Water Supply (NYCDEP), Sewer Division (NYCDEP), Street Lighting Division (NYCDOT), Signals Division (NYCDOT), Office of Construction Mitigation and Coordination (NYCDOT), Highway Design and Construction(NYCDOT), Bureau of Parking (NYCDOT), Staten Island Rapid Transit Operating Agency (NYCT), Outside Projects (NYCT), Surface Operations (NYCT) and the Economic Development Corporation of NYC.

10.1.13 In the event regulatory agencies other than the Department whose approval of the design is required, fail to take action within a reasonable period of time following final submission by the **Company** of all required documents, and the **Commissioner** determines that the **Company** is not responsible for the delay, the **Company** shall be entitled to an extension of time for such delays; provided, however, that no such

extension of time shall be granted if the **Company** has not given The Department prompt written notice of any such delay.

10.1.14 All Construction Documents, including final design drawings, shop drawings and specifications, are subject to final written approval by the **Commissioner**.

10.1.15 Construction work may commence with segmental approval of the design of individual components, i.e., foundations, piers, etc. No construction work is to commence prior to the Department's written approval of the relevant design submission.

10.1.16 Final design documents are subject to approval by all regulatory agencies whose approval of the design is required.

10.1.17 All drawings shall bear all required stamps of approval, including the seal and authorized facsimile of the signature of the **Consultant**, and be accompanied by all necessary applications, certificates, or permits of all **City**, State or Federal agencies having jurisdiction over the **Work**.

10.2 Design Deliverables

10.2.1 The **Company** shall submit the Design Deliverables as set forth, in accordance with the delivery schedule specified in Exhibit D of Book 2: Volume 2 of this Contract.

10.2.2 The provisions set below apply to the submission, review, and resubmission of Inspection Reports, Design Plans and As-Built Documents. The number of copies required of design documents is outlined under each task, and submissions of documents are as follows:

a) Within fourteen (14) consecutive business days of submission or re-submission of design documents, the **Commissioner** shall (i) approve the same in writing, or (ii) approve the same as noted and indicate whether re-submission is required, or (iii) disapprove the same and transmit changes or comments to the **Company**.

b) In the event design documents are not approved, the **Company** shall, within seven (7) consecutive business days of receipt of the **Commissioner**'s changes or comments, revise such documents and re-submit the same to the **Commissioner** for his written approval.

c) The day on which design documents are actually received by the respective party shall be considered the first consecutive business day for the purpose of calculating the submission, re-submission and review times set forth in paragraphs (a) and (b) above; provided, however, any documents received after 1:00 p.m. shall be deemed received the next consecutive business day.

d) Upon re-submission of design documents, the Company shall not make any changes from the original submission, unless such changes are in response to comments by the Commissioner or are specifically noted in a written cover letter.

10.3 Inspection Report

10.3.1 Prior to the commencement of Design, the **Company** shall prepare and submit a Condition Survey report which shall incorporate the following:

a) An investigation and analysis of the existing condition of each bridge, including superstructure and substructure.

b) A review of the **Company**'s Scope of Work, including the program set forth and either confirm the feasibility of the Scope of Work or recommend changes to the same.

The **Company** shall submit three (3) copies of the report to the **Commissioner** for review. After review, the **Company** shall address all comments and submit final "Condition Survey Report". A "Condition Survey Report" may not be needed if the structure under consideration is replaced entirely or newly built. This determination is to be made solely by the **Commissioner**.

10.3.2 The **Company** must comply with all applicable requirements stipulated in Exhibit G – Railroad Requirements in Book 2 Engineering Requirements of this proposal document and the Force Account Agreement between NYC Transit and NYCDOT before access to SIRTOA's ROW will be permitted for the purposes of inspection. This will include but is not limited to NYC Transit safety training for all field personnel, inspection and certification of all rail mounted inspection vehicles by SIRTOA's MOW division and proof of acceptable insurance.

10.4 <u>Design Plans</u>

10.4.1 Upon approval of the Condition Survey Report, the Engineer shall prepare Design Plans, based on the approved Technical Proposal Submission including changes made as per the Condition Survey Report. The Plans shall show sufficient details to ensure constructability of the proposed scheme, including all existing and proposed utilities, acquaint affected parties with the project and project components and obtain all affected parties' approval. Large scale partial cross sections showing dimensions between utilities and structural members shall be provided for both the existing and proposed conditions. In addition, the Engineer shall provide detailed construction staging and Maintenance and Protection of Traffic (MPT) drawings.

10.4.2 The **Company** shall submit to the **Department** interim design submissions as indicated in the schedule the **Company** submitted with its Technical Proposal and as the parties may later agree upon to support the overall project schedule. On or about the time of the scheduled submissions, the **Company** and the **Department** shall meet and confer about the submissions, with the **Company** identifying, among other things, the evolution of the design and any significant changes or deviations that have taken place from previous design submissions. Minutes of the meeting will be maintained by the **Company** and provided to all attendees for review. Following the design review meeting, the **Department** shall review and provide its response to the interim submissions in a time that is consistent with the turnaround times set forth in the Agreement. It is the **Company**'s obligation to submit interim design submissions at such a time that will allow a reasonable review time by all entities/agencies having jurisdiction. No construction activity is to commence prior to the **Department's** written approval of the relevant interim design submission.

The Design Plans shall include the following requirements:

a) The **Company** shall submit eight (8) sets of 11" x 17" Plans to the **Department** for review. The set shall include applicable special specifications, if any.

b) The elimination or improvement, of all substandard features, except as noted in the **Company**'s Proposal.

c) The bridge project(s) shall coordinate with the planning of any adjacent public/private agency projects currently anticipated regardless of the scheduled construction fiscal years, as concurred by the **Department**.

d) The incorporation of all work proposed by private parties and public agencies (utilities, railroads, etc.) and as concurred by the **Department**.

e) All deficient conditions noted, and any commented on by the **Department** shall be addressed in the Design to the satisfaction of the **Department** and in compliance with standard design requirements.

f) The **Company** shall submit sets of the Plans to all other affected agencies as determined by the **Commissioner**, for their review. An All-Agency conference and a separate Office of Construction Mitigation and Coordination (OCMC) meeting will be held if deemed necessary to receive their comments, at which the Engineer shall attend. All comments as approved by the **Commissioner** shall be incorporated into the Plans.

g) For the project bridge(s) the **Company** shall prepare the Plan submission (including plans, calculations and specification book(s)) incorporating all comments made on the plans by the **Department** and all other affected parties.

h) The **Engineer** shall work closely with the Construction **Company** and shall incorporate his input in the Plans prior to the Plan submission to the Department.

10.4.3 All rehabilitated and new bridge components are to be designed as further outlined in the Design Specifications of the relevant Exhibit of the Engineering Requirements of this Contract.

10.4.4 Load ratings of the reconstructed structure(s) shall be calculated for an HS25 vehicle type and a summary table shall be provided on the plans. The load rating of all members of the structure shall be in accordance with current NYSDOT requirements for Level One load ratings. Each member shall be rated for both inventory and operating conditions using the HS-25 vehicle loading.

10.4.5 All members of the reconstructed superstructure must be designed to meet the minimum inventory load requirements for an HS25 vehicle type.

10.4.6 Load ratings of the rehabilitated structure(s) shall be calculated in the event the proposed dead load exceeds the existing dead load. The ratings shall be calculated for an HS20 vehicle type and a summary table shall be provided on the plans. The load rating of all members of the structure shall be in accordance with current NYSDOT requirements for Level One load ratings. Each member shall be rated for both inventory and operating conditions using the HS-20 vehicle loading.

10.4.7 All members of the rehabilitated structures must be designed to meet the minimum inventory load requirements for an HS20 vehicle type.

10.4.8 Seismic criteria – See Exhibit B in Book 2: Volume 2 – Technical Specifications.

10.4.9 Maintenance and Protection of Traffic details shall be included in the plans. All plans must obtain the approval of the Office of Construction Mitigation and Coordination (OCMC) and **the Department**. Once the Maintenance and Protection of Traffic scheme has been agreed upon by the Department (both the Director of the Design Build Section and OCMC), the Engineer shall evaluate whether or not the project warrants additional efforts to mitigate the impact of the construction on the public. Such efforts would include construction provisions to: ensure a project's timely completion; to shorten the total duration; to minimize traffic delays.

The **Engineer** shall consider and address in his evaluation, the project's significance with respect to: vehicular and railroad traffic (SIRTOA services); public safety; the community (quality of life, business, pedestrians, etc.); program needs (scheduling of other impacted projects, etc.); the project's complexity; coordination with others (railroads, utilities, etc.).

10.4.10 The **Company** shall be responsible to comply with all time related contract provisions such as interim milestone dates or contract completion dates with liquidated damage provisions.

10.4.11 Prior to the start of Design, the **Engineer** shall submit to the **Commissioner** its proposed design criteria for review and approval by the **Commissioner**; wherein such criteria shall include, but not be limited to, the following: a listing of applicable design specifications, loading conditions and material design parameters for structural steel, concrete, reinforcement steel, etc. and foundation criteria.

10.5 <u>As-Built Documents</u>

10.5.1 Upon completion of construction the Engineer shall prepare and hand deliver to the **Commissioner** the As-built Documents (100% completion of As-built drawings), which shall be labeled, bound, and indexed in an orderly fashion.

10.5.2 The Engineer shall prepare and submit the following:

a) A complete set of the plotted Survey and the As-built Plans on reproducible drafting film. In addition, two (2) CD-ROMS with one (1) copy of all the drawing files on each CD, should be submitted to the Department. The drawing files shall be prepared in accordance with the latest NYCDOT CAD standards.

b) Ten (10) sets of prints of the plotted the approved Plans with all modifications made to them up to the time of construction completion.

c) Original design calculations and Bridge Load Ratings. The Submission of computerized calculations must include, but is not limited to, diskettes and written details of all programming information and results. Design calculations shall be sealed by a Professional Engineer licensed in the State of New York.

d) Originals or copies of all correspondence and data pertinent to the project. All correspondence shall be numbered, bound, and submitted with a typed index.

e) Videotapes of all inspections. Refer to Book 2 Engineering Requirements, Exhibit H Article 4 – Progress Video Movie.

f) The Engineer's certification that all applicable Departmental Standards, Directions, Rules, Regulations, and Guidelines have been conformed to.

g) All materials shall be packaged and delivered to the **Commissioner** in temporary file-type cartons, together with an index.

h) Microfilm and index all project files.

i) The submission shall be subject to Department review and approval.

10.6 Uniform Land Use Review Procedure (ULURP)

10.6.1 If it is determined that a ULURP is required for any purpose other than legal grade changes, the Engineer shall immediately initiate the required ULURP. It shall be the responsibility of the **Company** to advise the Design Build Selection Committee (DBSC) during the Technical proposal submission of any indication of ULURP requirements.

10.6.2 Preliminary Mapping: In conjunction with any required ULURP, the Engineer shall perform the following:

a) The Engineer shall prepare preliminary ULURP application drawings (Area Map, Preliminary Alteration Map, and Acquisition Map) suitable for submission to the Department of City Planning for Pre-application review. The drawings will be prepared in accordance with the instructions of the Office of NYCDOT's Land Use Coordination, the office of the Borough President, and the Department of City Planning Technical Review Unit.

b) The Engineer shall modify the ULURP drawings as required until approval is obtained from the Department of City Planning Technical Review Unit.

c) Upon receipt of said approval the Engineer will provide NYCDOT's Office of Land Use Coordination with 55 sets of prints of the ULURP Drawings and all applicable drawings selected from the contract plans.

10.6.3 Engineering Assistance: The Engineer shall assist the **City** with their engineering expertise during the mapping procedure. This shall include, but not be limited to the following:

a) Participate in all conferences, meetings, and Public Hearings on the mapping, upon the request of the Division of Bridges or the Office of Land Use Coordination, to present the engineering background necessary.

b) Prepare reports, documentation, drawings or backup material necessary to advance the proceedings.

10.6.4 Final Map Preparation: The Engineer may be required to modify the Preliminary Alteration Map in accordance with the instructions of the Office of the Borough President, so that it is acceptable for approval by the Borough President as the Final Alteration Map.

10.6.5 Surveys: In preparation of the Maps for the ULURP Application, the Engineer shall

utilize all information as contained in the plotted Topographic and Utility Surveys. The Engineer shall supplement this information with field trips, additional surveys and searches for information as may be required.

10.6.6 Final Documents: Upon completion of ULURP [Adoption of Map(s)], the Engineer shall hand-deliver to the **Commissioner** the following:

a) One complete set of all Map(s), in ink, on reproducible drafting film (or other reproducible material as specified by the Office of Borough President).

b) All notes, studies, designs, analysis, drawings, calculations, data, etc. used in the preparation of Map(s).

c) Copies of all correspondence to and from all agencies (City, State, and Federal), Utilities, Community Planning Boards, and all other having jurisdiction or interest in project or area.

d) Original survey notes and plotted survey tracings. All original Topographic Survey information shall be dated, signed and certified by a licensed surveyor. The License Seal of the Surveyor and/or Registered Professional Engineer shall be shown on all plans, tracings and tabulations sheets.

10.7 Specification Requirements

10.7.1 The Engineer shall use State Standard and Special Specification items. If State Specifications are not applicable, the Engineer may use existing NYC approved specification items. It shall be the Engineer's responsibility to convert State Special and NYC approved specification items from SI (metric) units to English units.

10.7.2 The Engineer shall prepare Special Specifications other than those outlined in the Request for Proposal package and submit them as early as possible for approval by the Department. Special Specifications shall be required if the latest issue of the **Department** and NYSDOT Standard Specifications with current additions and modifications, including any Engineering Instruction (E.I.) and State Special Specifications (as per the current NYSDOT Control Report), does not cover particular items included in the scope(s) of work of the subject bridge(s).

10.7.3 The procedure for preparing and obtaining new special **City** specifications approval shall include the following:

a) After determining that there is no current applicable State or **City** specifications, the Engineer shall prepare any special specifications required and shall submit them for approval to the **Department**, and all affected parties.

b) After approval by the **Department**, the item numbers will be assigned. The Engineer shall then incorporate the special specifications into the Specification Book portion of the contract documents.

10.7.4 The Engineer shall prepare and assemble the Specification Book, in accordance with the **Department's** standard format and specific requirements. This shall not include Bid

prices or Bid Agreement. This task shall include writing all technical items and assembling the Specification Book for use during construction.

10.8 Subcontract Requirements

10.8.1 The **Company** will employ a single consultant to provide all design work. The only design work that may be subcontracted to a different entity is work associated with survey, geotechnical engineering, landscape architecture, arborist's work, architectural work, electrical engineering and lighting design, utility design, pigeon deterrent system work, community outreach work, testing laboratory's work, and environmental engineering work.

10.8.2 Any subcontract between the **Company** or its subcontractor and a subconsultant for design services hereunder shall be in accordance with the provisions set forth below, unless otherwise authorized in a written directive from the **Commissioner**:

a) Such subcontract shall require that all design services comply with all criteria and requirements set forth in this Contract.

b) Such subcontract shall contain provisions approved in advance by the **Commissioner** regarding the time frames for submission of all required design deliverables.

c) Such subcontract shall require that the consultant agree not to make any claims against the **City**, its officers, agents or employees, by reason of such subcontract or any acts or omissions of the Company.

10.9 Ownership of Documents

10.9.1 All design and construction documents, including drawings, tracings, specifications and other such materials prepared and furnished under and for this contract by the **Company**, Consultants, Subcontractors and/or Subconsultants shall become the property of the **City** upon their acceptance by the **Commissioner** or upon termination of services of the **Company**. Such documents shall be promptly delivered to the **Commissioner** upon demand and thereafter may be used by the **City** in whole or in part or in modified form, for those purposes the **City** may deem advisable without further employment of or payment of additional compensation to the **Company**.

10.9.2 Any other records prepared by or for the **Company** pursuant to this Agreement, (including, but not limited to, office diaries, engineers' and inspectors' diaries, daily records of labor, materials and equipment used, notes, designs, reports including laboratory and plant inspection reports, drawings, tracings, estimates and specifications) shall be prepared and furnished by the **Company** and shall become the property of the **City** upon their approval and acceptance in writing by the **Commissioner**. The **Company** shall deliver to the **Commissioner** all said diaries, daily records, kept notes, designs, reports, drawings, tracings, estimates and specifications, which there-after the **City** may utilize in whole or in part or in modified form and in such manner or for such purposes or as many times as it may deem advisable, without employment of or additional compensation to the **Company**.

ARTICLE 11. CONSTRUCTION SUPPORT SERVICES

11.1 The **Company** or its designee shall provide all services, whether managerial, administrative, supervisory, professional or technical necessary to complete all construction support services for the **Project** in compliance with all requirements of this Agreement and all Exhibits hereto. Such services shall be in accordance with the Criteria for Technical Services specified in the relevant Exhibit of the Engineering Requirements of this Contract.

11.2 Professional services specified here shall be provided by persons or firms licensed by the State of New York. The **Company** shall employ a single Consultant to perform all construction support services work. The only portion of the work that the **Company** or its consultant may subcontract is geotechnical engineering work, survey work, landscape architectural work, arborist's work architectural work, electrical engineering and lighting design, utility design, pigeon deterrent system work, community outreach work, testing laboratory's work, and environmental engineering work. All proposed subconsultants are subject to the prior written approval of the **Commissioner**. No consultant or subconsultant shall be permitted to perform services hereunder until such written approval herein has been obtained. The **Commissioner**'s approval of a consultant or subconsultant shall not relieve the **Company** of any of its responsibilities, duties and liabilities hereunder.

11.3 The **Company** or its designee shall provide the personnel listed in Form 1 of Appendix B of the Request for Proposal for the specified titles set forth therein. It is the intent of this Agreement to secure the personal services of those personnel identified in Form 1 for the tasks described therein. Accordingly, such personnel shall not be transferred and replacement personnel assigned without prior written approval of the **Commissioner**, which shall not be unreasonably withheld. Replacement personnel must possess qualifications similar to those of the transferred personnel. In addition, at the **Commissioner**'s request, the **Company** shall remove any personnel and substitute another employee to the satisfaction of the **Commissioner**. The **Commissioner** may request such substitution for any reason whatsoever.

11.4 The **Company** shall be solely responsible to the **City** for damages arising out of the acts, defaults, errors or omissions of its consultants and of such consultants' officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the **Company** to the extent of its subcontract.

11.5 The **Company** agrees to provide, to the satisfaction of the **Commissioner**, Shop Drawing Review Services and Erection Drawing Review Services as required by the **Commissioner**, such that Shop Drawings and Erection Drawings conform to the Plans, Specifications, and requirements of the Contract and to Good Construction Practice. The **Company** also agrees to provide to the satisfaction of the **Commissioner**, all necessary Specialized Engineering and Inspection and Testing Services. The **Company** shall employ a staff commensurate with the level of construction activity until completion and final acceptance of the contract work.

11.6 The **Company** shall be responsible for the review and approval of all Shop Drawings as required by the Contract Documents. Shop Drawings shall be reviewed for their conformance with the Contract Documents and any changes to the details or specification as approved by the **Department**.

11.7 The **Company** shall appropriately stamp all reviewed shop drawings with a stamp indicating "designations of acceptance" which conform to the requirements of the contract. Processing of Shop Drawings shall comply with direction given by the **Commissioner**. The **Company** may also be required to coordinate Shop Drawing review with other agencies as required by the contract documents or agencies as designated by the **Commissioner**. All drawings prepared by the **Company** to facilitate construction as required by the Contract Documents through its

Company, Sub-Contractors, Fabricators, Manufacturers, Erectors, etc. shall be termed Shop Drawings.

Such Shop Drawings shall include, as applicable, but not be limited to the following:

1. Structural Steel Drawings
2. Prestressed/Precast Concrete Drawings
3. Repair Procedures and Drawings
4. Heat Curving/Cambering Drawings
5. Erection and Transportation Drawings
6. Expansion Joint System Drawings
7. Steel Reinforcement Drawings
8. Bridge Railing Drawings
9. Bridge Bearing Drawings
10. Containment System Plan/Drawings
11. Temporary Shielding
12. Temporary Jacking and/or Shoring Drawings
13. Temporary Sheeting Drawings
14. Demolition/Removal Drawings
15. Bridge Fencing / Catalog Cuts
16. Electrical Drawings/Catalog Cut
17. Bridge Drainage Catalog Cuts
18. Pigeon Deterrent System Drawings

As part of Shop Drawings Review Services the **Company** also agrees to review and provide comments on any calculations required by the contract documents or by the **Commissioner** to be submitted by the **Company**, through its Contractor.

The **Company** shall review the Removal Plan to ascertain if they adequately identify and address safety conditions and that the demolition operation does not subject the structure to any stress in excess of the structure ability to support.

The **Company** representative shall attend liaison, progress, coordination and other such meetings when required by the Department. When required by the Department, the **Company** shall analyze, review and provide recommendations on all changes in materials, design or proposed work.

The **Company** specifically agrees that: (a) its Subcontractors, agents or employees shall possess the experience, knowledge, and character necessary to qualify them individually for the particular duties they perform; (b) it will comply with the provisions of the Labor Law and all State Laws and Federal and local statutes, ordinances and regulations that are applicable to the performance of the Agreement; and (c) it will secure all licenses and permits, if any, that are necessary for the performance of his duties under this contract. In fulfillment of provision (a) above, the **Company** shall submit a resume for each employee prior to assignment to the contract, for review and approval by the Director of Emergency/Design Build Contracts of the Division of Bridges as outlined in Form 1, Key Personnel – Design, CSS & Construction, in Appendix B of the RFP. Employees shall be Professional Engineer licensed in the State of New York if their ASCE/NICET grade requires that they be Professional Engineers. No substitutions for approved employees shall be permitted until the resume of the replacement employee is approved.

The **Commissioner** shall have the right at all times to inspect the work of the **Company**.

11.8 Prior to commencement of work under Shop Drawing Review and/or Erection Drawing Review Services, the **Company** shall submit to the **Commissioner** for review and approval, the names, grades and experience of the personnel who it is anticipated will be utilized on these services. In no event shall the **Company** perform Shop Drawing Review Services without prior written authorization by the **Commissioner**.

11.9 It shall be the responsibility of the **Company** to directly notify the **City** in writing of any change in the design plans, shop drawings or methods of performance of work at least seven business days prior to implementation of such changes in the field.

11.10 No construction work is to commence prior to the **City**'s written approval of all design plans and shop drawings referring to such work and approval of all design changes of such work.

ARTICLE 12. COMMUNITY LIAISON/PUBLIC OUTREACH

12.1 Public Outreach Liaison

NYCDOT reserves the right to delete the Community Outreach Liaison services from this design-build contract and procure them as a separate contract. In such an event the Design-Build Company will be notified prior to contract registration.

12.1.1 Absolutely no subconsultant work shall begin without the specific written consent of the Director of Emergency/Design Build Contracts of the Division of Bridges.

Under the direction of the Project Manager, the **Company** shall provide a dedicated Community Relations Subconsultant to support the project with the distribution of timely, accurate, and constructive information. The **Company**'s Subconsultant will serve as adjunct to NYCDOT; attend community meetings and advice and update the community as to the project's plans, schedule and progress.

The Subconsultant will also be responsible for responding to and coordinating the following: answering questions from the public, maintaining mailing lists, issuing newsletters, press releases, and brochures, as well as other associated tasks. The **Company**'s public outreach subconsultant will require extensive community and public relations experience, a superior command of the English language, and excellent communication skills in order to carry out the aforementioned responsibilities which may include, but not limited to:

a) Plan and implement a public outreach program. This plan will detail the outreach procedures that will be utilized throughout the entire project such as: press releases, public advisories, dedicated hotlines and web sites. This plan will also include intense start-up information distribution such as press fact sheets, travel advisories and if directed, require attendance at public and local meetings to establish the subconsultant office contact.

b.) Identify key community leaders and establish points of contact with elected officials, community boards, civic/merchant groups, etc. for ongoing dialogue and liaison.

c) Create mailings lists of elected officials, CB's, community groups, etc. for effective information distribution.

d) Foster ongoing communication and coordination through regular updates, telephone contacts, field visits with community and other affected entities such as NYCDOT OCMC, NYCT, SIRTOA, NYCDOT Passenger Transport Ferries, EDC, etc.

e) Maintain telephone and visitor logs.

f) The primary goal of the Subconsultant will be the identification of potential problems/issues concerning the project. Thereafter, the public outreach liaison will be responsible for notification of project concerns to the community. Also, the subconsultant will provide the **Department** with possible solutions to these concerns.

12.1.2 Prepare and Upon Approval Issue Newsletter

A monthly newsletter will be produced by the public outreach liaison. It will contain current information about the project: including work completed, work to be performed in the near future, schedule information, and what the public can do to help. NO newsletters are to be distributed without the express prior approval of the NYCDOT Community Affairs Director and the NYCDOT Office of Public Information.

12.1.3 Prepare and Upon Approval Issue Brochures

Project brochures will be printed and distributed prior to roadway or lane closures to inform bridge users of the anticipated closures and offer alternatives. The brochures will be included in the press releases for each roadway closure. Brochures related to major MPT changes must be distributed on a regular basis a month prior to the implementation of such changes. The NYCDOT Director of Design Build Contracts in consultation with the NYCDOT Community Affairs Director will determine the frequency of such distributions and the manner in which such brochures may be distributed.

12.1.4 Prepare and Upon Approval Issue Direct Mailings

There will be several direct mailings targeted at bridge / terminal area users and nearby employers which will include the current brochure and newsletter. Other information related to public transportation or alternate routes may also be included. NO direct mailings are to be distributed without the express prior approval of the NYCDOT Community Affairs Director and the NYCDOT Office of Public Information.

12.1.5 Prepare Press Releases for Issue by NYCDOT

Whenever a major stage of the construction is scheduled to begin a press release will be made available to the media. This will document information similar to the newsletters for the upcoming project, including roadway and transit closures. All press releases require direct, express prior approval from the Community Affairs Director and the NYCDOT Office of Public Information.

ARTICLE 13. CONSTRUCTION SERVICES

13.1 Construction Contractors Personnel

13.1.1 The Company shall provide all services, whether administrative, managerial or technical, necessary to supervise and coordinate all work necessary to complete the **Project**, including, but not limited to, the specific responsibilities set forth below. It is the intent of the **City** to secure the personal services of those key design and construction management personnel identified in Form 1, Key Personnel – Design, CSS & Construction (Appendix B of the Request for Proposal) for the titles set forth therein. Accordingly, the Company agrees to assign such key personnel for the duration of the project. Failure by the Company to provide such Key Personnel will be considered a material breach of the contract and grounds for termination for cause. Replacement of

such key personnel will only be permitted in the following circumstances: (i) if the designated individual is no longer in the employ of the Company, or (ii) if the **City** fails to direct the Company to commence work on the **Project** within six (6) months of the date the Company submits its technical proposal. Replacement personnel must possess qualifications substantially similar to those of the personnel being replaced and are subject to the prior written approval of the **Commissioner**. In addition, at the **Commissioner**'s request at any time, the Company shall remove any personnel and substitute another employee of the Company reasonably satisfactory to the **Commissioner**. The **Commissioner** may request such substitution at any time, in his/her sole discretion.

13.2 Specific Responsibilities:

The Company's construction management responsibilities include without limitation the tasks set forth below:

13.2.1 Obtain or cause to be obtained all necessary permits, certificates, licenses or approvals, and assure that no work proceeds in the absence of necessary permits, certificates, licenses or approvals.

13.2.2 Ensure that all Work performed on the railroad's Right of Way, either directly by the Company or his Subcontractors, is done so in strict conformance with their technical requirements.

13.2.3 Provide technical inspection, supervision and coordination of the **Work** on the **Project** until final completion and acceptance of the **Work** by the **City**, verifying that the materials furnished and work performed are in accordance with the plans, drawings, specifications and construction documents, and that **Work** on the project is progressing on schedule.

13.2.4 Take appropriate action to prevent installation of **Work**, or furnishing of materials or equipment which has not been properly approved or otherwise fails to conform to the plans, drawings, specifications, and Construction Documents, and inform **Commissioner** promptly of such action and the reasons for and outcome of such action.

13.2.5 Assure that all inspections, quality control tests, or any other tests required by law, rule or regulation or by the Construction Documents are performed in a satisfactory and timely fashion, including without limitation, semi-controlled or off-site inspections and controlled inspections and testing of soils, welding, cement, concrete, masonry, structural or reinforcing steel or any other material or equipment. The Company shall provide laboratory services for any other material or equipment. The Company shall provide laboratory services for any required testing, as directed by the **Commissioner**.

13.2.6 Conduct job meetings with subcontractors, consultants and representatives of the **Commissioner** to discuss such matters as procedures, performance, progress, problems and scheduling.

13.2.7 Cooperate in all respects with representatives of the **Commissioner** concerning all aspects of the **Project**.

13.2.8 Provide monthly progress reports to the **Commissioner**, unless otherwise directed.

13.2.9 Provide reports regarding the **Work** as may be directed by the **Commissioner**, incorporating such information, interpretation, detail or back-up material as may be required by the **Commissioner**.

13.2.10 Make recommendations to the **Commissioner** for such changes in the **Work** as the Company may consider necessary or desirable.

13.2.11 Prepare cost estimates and negotiate amounts for **Work** to be performed on a Change Order Basis if required and submit the same to the **Commissioner** for his approval.

13.2.12 Maintain accurate, orderly and detailed files and written records and documents regarding the **Project** during all stages of planning, design and construction, including project correspondence, minutes of job conferences, progress reports, shop drawings and other submissions, subcontract documents, including all addenda, change orders, supplemental drawings and all other project-related document. The Company shall provide any records, documents or information concerning the **Project** to the **Commissioner** as directed.

13.2.13 Maintain a daily job diary or log book describing all activities which occurred on the job for each day, including without limitation, the number of workers identified by trade employed at the site by each subcontractor, the number of hours worked, material shortages, labor difficulties, weather conditions, visits by officials, decisions reached, and any other general or specifics observations pertinent to the **Work**. The daily job log shall be available to the **Commissioner** at all times upon request, and the **Commissioner** shall have the right to remove the log and make copies thereof.

13.2.14 Maintain accurate, orderly and detailed cost accounting and computation records with respect to all **Work** to be performed on a time and materials, unit price, or similar basis.

13.2.15 Provide progress photographs on a regular basis as directed by the **Commissioner**.

13.2.16 Provide or cause to be provided all temporary facilities and utilities as necessary for the performance of the **Work**.

13.2.17 Review and revise and adjust as necessary the safety program developed by each subcontractor, coordinate all safety programs for the **Project** and take appropriate action to enforce the adherence of each subcontractor to such program. The Company shall immediately notify the **Commissioner** of the failure of any subcontractor to adhere to such program. The Company shall take or cause to be taken precautions to minimize the risk of injury to persons and damage to property resulting from or arising out of the **Work**. In the event of an emergency, the Company shall provide such labor, materials, equipment and supervision necessary to cure **s**uch emergency condition. The Company shall immediately notify the **Commissioner** of any such emergency condition.

13.2.18 Take appropriate action to minimize delays to the **Project** caused by labor disputes during construction.

13.2.19 Prior to the end of the guarantee period provided in this Contract, inspect and furnish a detailed report to the **Commissioner** of discrepancies and deficiencies applicable to such guarantee.

13.2.20 In the event any claim is made or any action brought in any way relating to the design or construction of the project, the Company shall diligently render to the **City** all assistance which the **City** may require. In the event such assistance is required, the Company shall be reimbursed for the reasonable costs and expenses of those personnel assigned to the project, or comparable personnel if those who were assigned to the project are no longer employed by the Company. Notwithstanding the foregoing, in the event any claim is made or any action brought which relates to the services to be provided hereunder by the Company or delays by the Company, then Company shall diligently render to the **City** without additional compensation any and all assistance which the **City** may require in responding to such claim or defending such action.

13.2.21 Perform such other project related services as may from time to time be directed by the **Commissioner**.

13.2.22 The **Company** may not close any bridge without prior written approval of the Director of Emergency/Design Build Contracts.

CHAPTER III
TIME PROVISIONS

ARTICLE 14. COMMENCEMENT AND PROSECUTION OF THE WORK

14.1 The **Company** shall commence **Work** on the date specified in a written notice signed by the **Commissioner**. The time for performance of the **Work** under the **Contract** shall be computed from the date specified in such written notice. **TIME BEING OF THE ESSENCE** to the **City**, the **Company** shall thereafter prosecute the **Work** diligently, using such **Means and Methods of Construction** as are in accord with Article 4 herein and as will assure its completion not later than the date specified herein, or on the date to which the time for completion may be extended.

ARTICLE 15. PROGRESS SCHEDULES

15.1 To enable the **Work** to be performed in an orderly and expeditious manner, the **Company**, within fifteen (15) **Days** after the Notice to Proceed with this **Contract**, unless otherwise directed by the **Commissioner**, shall submit to the **Commissioner** a proposed progress schedule in the form of a bar graph or in such other form as specified by the **Commissioner**, and monthly cash flow requirements, showing:

15.1.1 The anticipated time of commencement and completion of each of the various design and construction operations to be performed under this **Contract**; and

15.1.2 The sequence and interrelation of each of these operations with the others and with those of other related **Contracts**; and

15.1.3 The estimated time required for fabrication or delivery, or both, of all materials and equipment required for the **Work**; and

15.1.4 The estimated amount in dollars the **Company** will claim on a monthly basis.

15.2 The proposed schedule shall be revised as directed by the **Commissioner**, until finally approved by the Commissioner, and after such approval, subject to the provisions of **Article 17**, shall be strictly adhered to by the **Company**.

15.3 If the **Company** shall fail to adhere to the approved progress schedule, or to the schedule as revised pursuant to Article 17, it shall promptly adopt such other or additional **Means and Methods of Construction** as will make up for the time lost and will assure completion in accordance with the approved progress schedule. The approval by the City of a progress schedule which is shorter than the time allotted under the **Contract** shall not create any liability for the **City** if the approved progress schedule is not met.

15.4 The **Company** will not receive any payments until the proposed progress schedule is submitted.

ARTICLE 16. REQUESTS FOR INFORMATION OR APPROVAL

16.1 From time to time as the **Work** progresses and in the sequence indicated by the approved progress schedule, the **Company** shall submit to the **Commissioner** a specific request in writing for each item of information or approval required by the **Company**. These requests shall state the latest date upon which the information or approval is actually required by the **Company**, and shall be submitted in a reasonable time in advance thereof to enable the **Commissioner** a sufficient time to act upon such submissions, or any necessary re-submissions thereof.

16.2 The **Company** shall not have any right to an extension of time on account of delays due to the **Company's** failure to submit requests for the required information or the required approval in accordance with the above requirements.

ARTICLE 17. NOTICE OF CONDITIONS CAUSING DELAY AND DOCUMENTATION OF DAMAGES CAUSED BY DELAY

17.1 After the commencement of any condition which is causing or may cause a delay in completion of the **Work**, including conditions for which the **Company** may be entitled to an extension of time, the following notifications and submittals are required:

17.1.1 Within seven (7) **Days** after the commencement of such condition, the **Company** must notify the **Commissioner** in writing of the existence, nature and effect of such condition upon the approved progress schedule and the **Work**, and must state why and in what respects, if any, the condition is causing or may cause a delay.

17.1.2 If the **Company** shall claim to be sustaining damages for delay, by reason of any act or omission of the **City** or its agents, it shall submit to the **Commissioner** within forty-five (45) **Days** from the time such damages are first incurred, and every thirty (30) **Days** thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The **Company** may submit any of the above statements within such additional time as may be granted by the **Commissioner** in writing upon written request therefor. Failure of the **Commissioner** to respond in writing to a written request for additional time within thirty (30) **Days** shall be deemed a denial of the request. On failure of the **Company** to fully comply with the foregoing provisions, such claims shall be deemed waived and no right to recover on such claims shall exist. Damages that the **Company** may claim in any action arising under or by reason of this **Contract** shall not be different from or in excess of the statements made and documentation provided pursuant to this article.

17.2 Failure of the **Company** to strictly comply with the requirements of Article 17.1.1 may, in the discretion of the **Commissioner**, be deemed sufficient cause to deny any extension of time on account of delay arising out of such condition. Failure of the **Company** to strictly comply with the requirements of Articles 17.1.1 and 17.1.2 shall be deemed a conclusive waiver by the

Company of any and all claims for damages for delay arising from such condition and no right to recover on such claims shall exist.

17.3 When appropriate and directed by the **Commissioner**, the progress schedule shall be revised by the **Company** until finally approved by the **Commissioner**. The revised progress schedule must be strictly adhered to by the **Company**.

ARTICLE 18. COORDINATION WITH OTHER CONTRACTORS

18.1 During the progress of the **Work**, **Other Contractors** may be engaged in performing other work or may be awarded other contracts for additional work on this **Project**. In that event, the **Company** shall coordinate the **Work** to be done hereunder with the work of such **Other Contractors** and the **Company** shall fully cooperate with such **Other Contractors** and carefully fit its own **Work** to that provided under other contracts as may be directed by the **Commissioner**. The **Company** shall not commit or permit any act which will interfere with the performance of work by any **Other Contractors**.

18.2 If the **Commissioner** shall determine that the **Company** is failing to coordinate its **Work** with the work of **Other Contractors** as the **Resident Engineer** has directed, then the **Commissioner** shall have the right to withhold any payments otherwise due hereunder until the **Company** completely complies with the **Resident Engineer's** directions.

18.3 The **Company** shall notify the **Commissioner** in writing if any **Other Company** on this **Project** is failing to coordinate its work with the **Work** of this **Contract**. If the **Commissioner** finds such charges to be true, the **Commissioner** shall promptly issue such directions to the **Other Company** with respect thereto as the situation may require. The **City** shall not, however, be liable for any damages suffered by any **Other Company's** failure to coordinate its work with the **Work** of this **Contract** or by reason of the **Other Company's** failure to promptly comply with the directions so issued by the **Commissioner**, or by reason of any **Other Company's** default in performance, it being understood that the **City** does not guarantee the responsibility or continued efficiency of any Company. The **Company** agrees to make no claim against the **City** for any damages relating to or arising out of any directions issued by the **Commissioner** pursuant to this article (including but not limited to the failure of any **Other Company** to comply or promptly comply with such directions), or the failure of the **Commissioner** to issue any directions, or the failure of any **Other Company** to coordinate its work, or the default in performance of any **Other Company**.

18.4 The **Company** shall indemnify and hold the **City** harmless from any and all claims or judgments for damages and from costs and expenses to which the **City** may be subjected or which it may suffer or incur by reason of the **Company's** failure to comply with the **Commissioner's** directions promptly; and the **Comptroller** shall have the right to exercise the powers reserved in Article 29 with respect to any claims which may be made for damages due to this **Company's** failure to comply with the **Commissioner's** direction promptly. Insofar as the facts and **Law** relating to any claim would preclude the **City** from being completely indemnified by the **Company**, the **City** shall be partially indemnified by the **Company** to the fullest extent provided by **Law**.

18.5 Should the **Company** sustain any damage through any act or omission of any **Other Company** having a contract with the **City** for the performance of work upon the **Site** or of work which may be necessary to be performed for the proper prosecution of the **Work** to be performed hereunder, or through any act or omission of a **Subcontractor, Consultant and/or Subconsultant** of such **Company**, the **Company** shall have no claim against the **City** for such damage, but shall have a

right to recover such damage from the **Other Company** under the provision similar to the following provisions which apply to this **Contract** and have been or will be inserted in the contracts with such **Other Contractors**:

18.5.1 Should any **Other Company** having or who shall hereafter have a contract with the **City** for the performance of work upon the **Site** sustain any damage through any act or omission of the **Company** hereunder or through any act or omission of any **Subcontractor, Consultant and/or Subconsultant** of the **Company**, the **Company** agrees to reimburse such **Other Company** for all such damages and to defend at its own expense any suit based upon such claim and if any judgment or claims (even if the allegations of the suit are without merit) against the **City** shall be allowed the **Company** shall pay or satisfy such judgment or claim and pay all costs and expenses in connection therewith and agrees to indemnify and hold the **City** harmless from all such claims. Insofar as the facts and **Law** relating to any claim would preclude the **City** from being completely indemnified by the **Company**, the **City** shall be partially indemnified by the **Company** to the fullest extent provided by **Law**.

18.6 The **City's** right to indemnification hereunder shall in no way be diminished, waived or discharged, by its recourse to assessment of liquidated damages as provided in Article 21, or by the exercise of any other remedy provided for by **Contract** or by **Law**.

ARTICLE 19. EXTENSION OF TIME FOR PERFORMANCE

19.1 If performance by the **Company** is delayed for a reason set forth in Article 19.3, the **Company** may be allowed a reasonable extension of time in conformance with this article and the **PPB** Rules.

19.2 Any extension of time may be granted only by the **Commissioner** or by the Board for the Extension of Time (hereafter "Board") (as set forth below) upon written application by the **Company**.

19.3 Grounds for Extension: If such application is made, the **Company** shall be entitled to an extension of time for delay in completion of the **Work** caused solely:

19.3.1 By the acts or omissions of the **City**, its officers, agents or employees; or

19.3.2 By the act or omissions of **Other Contractors** on this **Project**; or

19.3.3 By supervening conditions entirely beyond the control of either party hereto (such as, but not limited to, acts of God or the public enemy, excessive inclement weather, war or other national emergency making performance temporarily impossible or illegal, or strikes or labor disputes not brought about by any act or omission of the **Company**).

19.3.4 The **Company** shall, however, be entitled to an extension of time for such causes only for the number of **Days** of delay which the **Commissioner** or the Board may determine to be due solely to such causes, and then only if the **Company** shall have strictly complied with all of the requirements of **Articles 15 and 16**.

19.4 The **Company** shall not be entitled to receive a separate extension of time for each of several causes of delay operating concurrently, but, if at all, only for the actual period of delay in completion of the **Work** as determined by the **Commissioner** or the Board, irrespective of the number of causes contributing to produce such delay. If one of several causes of delay operating

concurrently results from any act, fault or omission of the **Company** or of its **Subcontractors, Consultants or Subconsultants** or **Materialmen**, 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.

19.5 The determination made by the **Commissioner** or the Board on an application for an extension of time shall be binding and conclusive on the **Company**.

19.6 The granting of an application for an extension of time for causes of delay other than those herein referred to shall be entirely within the discretion of the **Commissioner** or the Board.

19.7 Permitting the **Company** to continue with the **Work** after the time fixed for its completion has expired, or after the time to which such completion may have been extended has expired, or the making of any payment to the **Company** after such time, shall in no way operate as a waiver on the part of the **City** of any of its rights under this **Contract**.

19.8 Application for Extension of Time:

19.8.1 Before the **Company's** time extension request will be considered, the **Company** shall notify the **Commissioner** of the condition which allegedly has caused or is causing the delay, and shall submit a written application to the **Commissioner** identifying:

a) The **Company**; the registration number; and **Project** description;

b) Liquidated damage assessment rate, as specified in the **Contract**;

c) Original Contract amount;

d) The original Contract start date and completion date;

e) Any previous time extensions granted (number and duration); and

f) The extension of time requested.

19.8.2 In addition, the application for extension of time shall set forth in detail:

a) The nature of each alleged cause of delay in completing the Work;

b) The date upon which each such cause of delay began and ended and the number of **Days** attributable to each such cause;

c) A statement that the **Company** waives all claims except for those delineated in the application, and the particulars of any claims which the **Company** does not agree to waive. For time extensions for **Substantial Completion** and final completion payments, the application shall include a detailed statement of the dollar amounts of each element of claim item reserved; and

d) A statement indicating the **Company's** understanding that the time extension is granted only for purposes of permitting continuation of **Contract** performance and payment for **Work** performed and that the **City** retains its right to conduct an investigation and assess liquidated damages as appropriate in the future.

19.9 Analysis and Approval of Time Extensions:

19.9.1 For time extensions for partial payments, a written determination shall be made by the **Commissioner** who may, for good and sufficient cause , extend the time for the performance of the **Contract** as follows:

19.9.1(a) If the **Work** is to be completed within six (6) months, the time for performance may be extended for sixty (60) **Days**;

19.9.1(b) If the **Work** is to be completed within less than one (1) year but more than six (6) months, an extension of ninety (90) **Days** may be granted;

19.9.1(c) If the **Contract** period exceeds one (1) year, besides the extension granted in Article 19.9.1(b), an additional thirty (30) **Days** may be granted for each multiple of six (6) months involved beyond the one (1) year period; or

19.9.1(d) If exceptional circumstances exist, the **Commissioner** may extend the time for performance beyond the extensions in Articles 19.9.1(a), 19.9.1(b), and 19.9.1(c). In that event, the **Commissioner** shall file with the Mayor's Office of Construction a written explanation of the exceptional circumstances.

19.9.2 For extensions of time for **Substantial Completion** and final completion payments, the **Commissioner**, shall prepare a written analysis of the delay (including a preliminary determination of the causes of delay, the beginning and end dates for each such cause of delay, and whether the delays are excusable under the terms of this **Contract**). The report shall be subject to review by and approval of the Board, which shall have authority to question its analysis and determinations and request additional facts or documentation. The report as reviewed and made final by the Board shall be made a part of the **Agency Contract** file. Neither the report itself nor anything contained therein shall operate as a waiver or release of any claim the **City** may have against the **Company** for either actual or liquidated damages.

19.9.3 Approval Mechanism for Time Extensions for **Substantial Completion** or Final Completion Payments: An extension shall be granted only with the approval of the Board which is comprised of the **Commissioner**, the Corporation Counsel and the **Comptroller**, or their authorized representatives.

19.9.4 Neither the granting of any application for an extension of time to the **Company** or any other **Company** on this **Project** nor the papers, records or reports related to any application for or grant of an extension of time or determination related thereto shall be referred to or offered in evidence by the **Company** or its attorneys in any action or proceeding.

19.10 No Damage for Delay: The **Company** agrees to make no claim for damages for delay in the performance of this **Contract** occasioned by any act or omission to act of the **City** or any of its representatives, and agrees that all it may be entitled to on account of any such delay is an extension of time to complete performance of the **Work** as provided herein.

ARTICLE 20. COMPLETION AND FINAL ACCEPTANCE OF THE WORK

20.1 Date for **Substantial Completion**: The **Company** shall substantially complete the **Work** within the time fixed in Schedule A of the General Conditions, or within the time to which such **Substantial Completion** may be extended.

20.2 Determining the Date of **Substantial Completion**: The **Work** will be deemed to be substantially complete when the two conditions set forth in Articles 20.2.1 and 20.2.2 have been met. The **Commissioner** will then issue a Certificate of **Substantial Completion**.

20.2.1 Inspection: The **Commissioner** has inspected the **Work** and has made a written determination that it is substantially complete.

20.2.2 Approval of Final Punch List and Date for **Final Acceptance**: Following inspection of the **Work**, the **Resident Engineer** shall furnish the **Company** a final punch list, which has been approved by the Commissioner, specifying all items of **Work** to be completed. The **Company** shall then submit to the **Resident Engineer** dates for the completion of each specified item of **Work**. Such dates must then be approved by the Commissioner. Within a reasonable time after receipt, the **Commissioner**, in a written notification to the **Company**, shall approve the **Company's** completion dates or, if they are unable to agree, shall establish dates for the completion of each item of **Work**. The latest completion date specified shall be the date for **Final Acceptance** of the **Work**.

20.3 Determining the Date of **Final Acceptance**: The **Work** will be accepted as final and complete as of the date of the **Commissioner's** inspection if, upon such inspection, the **Commissioner** finds that all items on the **Final Approved Punch List** are complete and no further **Work** remains to be done. The **Commissioner** will then issue a written determination of **Final Acceptance**.

20.4 Request for Inspection: Inspection of the **Work** by the **Commissioner** for the purpose of **Substantial Completion** or **Final Acceptance** shall be made within ten (10) **Days** after receipt of the **Company's** written request therefor.

20.5 Request for Re-inspection: If upon inspection for the purpose of **Substantial Completion** or **Final Acceptance**, the **Commissioner** determines that there are items of **Work** still to be performed, the **Company** shall promptly perform them and then request a re-inspection. If upon re-inspection, the **Commissioner** determines that the **Work** is substantially complete or finally accepted, the date of such re-inspection shall be the date of **Substantial Completion** or **Final Acceptance**. Re-inspection by the **Commissioner** shall be made within ten (10) **Days** after receipt of the **Company's** written request therefor.

20.6 Initiation of Inspection by the **Commissioner**: If the **Company** does not request inspection or re-inspection of the **Work** for the purpose of **Substantial Completion** or **Final Acceptance**, the **Commissioner** may initiate such inspection or re-inspection.

ARTICLE 21. LIQUIDATED DAMAGES

21.1 In the event the **Company** fails to complete the **Work** within the time fixed for such completion in Schedule A of the General Conditions, plus authorized time extensions, or if the **Company**, in the sole determination of the **Commissioner**, has abandoned the **Work**, the **Company** shall pay to the **City** the sum fixed in **Schedule A** of the General Conditions, for each and every **Day** that the time consumed in completing the **Work** exceeds the time allowed therefor; which said sum, in view of the difficulty of accurately ascertaining the loss which the **City** will suffer by reason of delay in the completion of the **Work** hereunder, is hereby fixed and agreed as the liquidated

damages that the **City** will suffer by reason of such delay, and not as a penalty. This article shall apply to the **Company** if it is defaulted pursuant to Chapter X of this **Contract**. Neither the failure to assess liquidated damages nor the granting of any time extension shall operate as a waiver or release of any claim the **City** may have against the **Company** for either actual or liquidated damages.

21.2 Liquidated damages received hereunder are not intended to be nor shall they be treated as either a partial or full waiver or discharge of the **City's** right to indemnification, or the **Company's** obligation to indemnify the **City**, or to any other remedy provided for in this **Contract** or by **Law**.

21.3 The **Commissioner** may deduct and retain out of the monies which may become due hereunder, the amount of any such liquidated damages; and in case the amount which may become due hereunder shall be less than the amount of liquidated damages suffered by the **City**, the **Company** shall be liable to pay the difference.

ARTICLE 22. OCCUPANCY OR USE PRIOR TO COMPLETION

22.1 Unless otherwise provided for in the specifications, the **Commissioner** may take over, use, occupy or operate any part of the **Work** at any time prior to **Final Acceptance**, upon written notification to the **Company**. The **Commissioner** shall inspect the part of the **Work** to be taken over, used, occupied, or operated, and will furnish the **Company** with a written statement of the **Work**, if any, which remains to be performed on such part. The **Company** shall not object to, nor interfere with, the **Commissioner's** decision to exercise the rights granted by this article. In the event the **Commissioner** takes over, uses, occupies, or operates any part of the **Work**:

22.1.1 the **Commissioner** shall issue a written determination of **Substantial Completion** with respect to such part of the **Work**;

22.1.2 the **Company** shall be relieved of its absolute obligation to protect such part of the unfinished **Work** in accordance with Article 7;

22.1.3 the **Company's** guarantee on such part of the **Work** shall begin on the date of such use by the **City**; and;

22.1.4 the **Company** shall be entitled to a return of so much of the amount retained in accordance with Article 27 as it relates to such part of the **Work**, except so much thereof as may be retained under Articles 30 and 50.

CHAPTER IV
SUBCONTRACTS AND ASSIGNMENTS

ARTICLE 23. SUBCONTRACTS

23.1 The **Company** shall not make subcontracts totaling an amount more than the percentage of the total **Contract** price fixed in Schedule A of the General Conditions, without prior written permission from the **Commissioner**. All subcontracts made by the **Company** shall be in writing. No work may be performed by a **Subcontractor** prior to the **Company** entering into a written subcontract with the **Subcontractor** and complying with the provisions of this Article 23.

23.2 Before making any subcontracts, the **Company** shall submit a written statement to the **Commissioner** giving the name and address of the proposed **Subcontractor**, the portion of the

Work and materials which it is to perform and furnish, the cost of the subcontract, the VENDEX questionnaire if required, and any other information tending to prove that the proposed **Subcontractor** has the necessary facilities, skill, integrity, past experience and financial resources to perform the **Work** in accordance with the terms and conditions of this **Contract**.

23.3 If an approved **Subcontractor** elects to subcontract any portion of its subcontract, the proposed sub-subcontract shall be submitted in the same manner as directed above.

23.4 The **Commissioner** will notify the **Company** in writing whether the proposed **Subcontractor** is qualified or not qualified. If the proposed **Subcontractor** is not qualified, the **Company** may submit another proposed **Subcontractor** unless the **Company** decides to do the **Work**. No **Subcontractor** shall be permitted on the **Site** unless approved.

23.5 Before entering into any subcontract hereunder, the **Company** shall inform the **Subcontractor** fully and completely of all provisions and requirements of this **Contract** relating either directly or indirectly to the **Work** to be performed and the materials to be furnished under such subcontract, and every such **Subcontractor** shall expressly stipulate that all labor performed and materials furnished by the **Subcontractor** shall strictly comply with the requirements of this **Contract**.

23.6 Documents given to a **Subcontractor** for the purpose of soliciting the **Subcontractor's** bid shall include either a copy of the bid cover or a separate information sheet setting forth the **Project** name, the **Contract** number (if available), the **Agency** (as noted in Article 2.1.6), and the **Project's** location.

23.7 The **Commissioner's** approval of a **Subcontractor** shall not relieve the **Company** of any of its responsibilities, duties and liabilities hereunder. The **Company** shall be solely responsible to the **City** for the acts or defaults of its **Subcontractor** and of such **Subcontractor's** officers, agents and employees, each of whom shall, for this purpose, be deemed to be the agent or employee of the **Company** to the extent of its subcontract.

23.8 The **Company** shall be responsible for ensuring that all **Subcontractors** performing **Work** at the **Site** have either their own insurance coverage or are covered by the **Company's** insurance as required by Article 22.

23.9 The **Company** shall promptly, upon request, file with the **Engineer** a conformed copy of the subcontract and its cost. The subcontract shall provide the following:

23.9.1 Payment to **Subcontractors**: The agreement between the **Company** and its **Subcontractors** shall contain the same terms and conditions as to method of payment for **Work**, labor and materials, and as to retained percentages, as are contained in this **Contract**.

23.9.2 Prevailing Rate of Wages: The agreement between the **Company** and its **Subcontractors** shall include the prevailing wage rates and supplemental benefits to be paid in accordance with Labor Law Section 220.

23.9.3 Section 6-123 of the Administrative Code: Pursuant to the requirements of Section 6-123 of the Administrative Code, every agreement between the **Company** and its **Subcontractors** in excess of $50,000 shall include a provision that the **Subcontractor** shall not engage in any unlawful discriminatory practice as defined in Title VIII of the Administrative Code (Section 8-101 et. seq.).

23.10 The **Commissioner** may deduct from the amounts certified under this **Contract** to be due to the **Company**, the sum or sums due and owing from the **Company** to the **Subcontractors** according to the terms of the said subcontracts, and in case of dispute between the **Company** and its

Subcontractor, or **Subcontractors**, as to the amount due and owing, the **Commissioner** may deduct and withhold from the amounts certified under this **Contract** to be due to the **Company** such sum or sums as may be claimed by such **Subcontractor**, or **Subcontractors,** in a sworn affidavit, to be due and owing until such time as such claim or claims shall have been finally adjusted.

23.11 On **Contracts** where 100% performance bonds and payment bonds are executed, the **Company** shall include on each requisition for payment the following data: **Subcontractor's** name, value of the subcontract, total amount previously paid to **Subcontractor** for **Work** previously requisitioned, and the amount, including retainage, to be paid to the **Subcontractor** for **Work** included in the requisition.

23.12 On **Contracts** where performance bonds and payment bonds are not executed, the **Company** shall include with each requisition for payment submitted hereunder, a signed statement from each and every **Subcontractor** and/or **Materialman** for whom payment is requested in such requisition. Such signed statement shall be on the letterhead of the **Subcontractor** and/or **Materialman** for whom payment is requested and shall (i) verify that such **Subcontractor** and/or **Materialman** has been paid in full for all work performed and/or material supplied to date, exclusive of any amount retained and any amount included on the current requisition, and (ii) state the total amount of retainage to date, exclusive of any amount retained on the current requisition.

ARTICLE 24. ASSIGNMENTS

24.1 The **Company** shall not assign, transfer, convey or otherwise dispose of this **Contract**, or the right to execute it, or the right, title or interest in or to it or any part thereof, or assign, by power of attorney or otherwise any of the monies due or to become due under this **Contract**, unless the previous written consent of the **Commissioner** shall first be obtained thereto, and the giving of any such consent to a particular assignment shall not dispense with the necessity of such consent to any further or other assignments.

24.2 Such assignment, transfer, or conveyance shall not be valid until filed in the office of the **Commissioner** and the **Treasurer**, with the written consent of the **Commissioner** endorsed thereon or attached thereto.

24.3 Failure to obtain the previous written consent of the **Commissioner** to such an assignment, transfer or conveyance, may result in the revocation and annulment of this **Contract**. The **City** shall thereupon be relieved and discharged from any further liability to the **Company**, its assignees, transferees or sublessees, who shall forfeit and lose all monies therefor earned under the **Contract**, except so much as may be required to pay the **Company's** employees.

24.4 The provisions of this clause shall not hinder, prevent, or affect an assignment by the **Company** for the benefit of its creditors made pursuant to the **Laws** of the State of New York.

24.5 This **Contract** may be assigned by the **City** to any corporation, agency or instrumentality having authority to accept such assignment.

CHAPTER V
COMPANY'S SECURITY AND GUARANTEE

ARTICLE 25. SECURITY DEPOSIT

25.1 The bid deposit, if required, shall be retained by the **Comptroller** as security for the **Company's** faithful performance of the **Contract** and will be returned to the **Company** only after the sum retained under Article 27 equals the amount of the bid deposit, subject to the other provisions of this Contract. If performance and payment bonds are required, any bid security posted shall be returned within a reasonable time after posting of such bonds and execution of this Contract by the City. When no partial payments are provided, the bid deposit will be released when final payment is certified to the Comptroller for payment.

25.2 If the Company is declared in default under Article 54 prior to the return of the deposit, or if any claim is made such as referred to in Article 29, the amount of such deposit, or so much thereof as the **Comptroller** may deem necessary, may be retained and then applied by the **Comptroller**:

25.2.1 To compensate the **City** for any expense, loss or damage suffered or incurred by reason of or resulting from such default, including the cost of re-letting and liquidated damages; **or**

25.2.2 To indemnify the **City** against any and all claims.

ARTICLE 26. PAYMENT GUARANTEE

26.1 On **Contracts** where 100% performance bonds and payment bonds are executed, this article does not apply.

26.2 In the event the terms of this **Contract** do not require the **Company** to provide a payment bond, the **City** shall, in accordance with the terms of this article, guarantee payment of all lawful demands for:

26.2.1 Wages and compensation for labor performed and/or services rendered; and

26.2.2 Materials, equipment, and supplies provided, whether incorporated into the **Work** or not, when demands have been filed with the **City** as provided hereinafter by any person, firm, or corporation which furnished labor, material, equipment, supplies, or any combination thereof, in connection with the **Work** performed hereunder (hereinafter referred to as the "beneficiary") at the direction of the **City** or the **Company**.

26.3 The provisions of Article 26.2 are subject to the following limitations and conditions:

26.3.1 The guarantee is made for the benefit of all beneficiaries as defined in Article 26.2 provided that those beneficiaries strictly adhere to the terms and conditions of this Article 26.3.

26.3.2 Nothing in this article shall prevent a beneficiary providing labor, services or material for the **Work** from suing the **Company** for any amounts due and owing the beneficiary by the **Company**.

26.3.3 All demands made against the **City** pursuant to this article shall be made within four (4) months from the date payment is due on the invoice or invoices submitted by the beneficiary to the **Company** for labor or **Work** done or for materials or supplies delivered, or, if the demand is for wages, four (4) months from the date the wages were due to be paid to the beneficiary.

26.3.4 All demands made against the **City** by such beneficiary shall be presented to the **Commissioner** along with all written documentation concerning the demand which the **Commissioner** deems appropriate or necessary, which may include, but shall not be

limited to: the subcontract; any invoices presented to the **Company** for payment; the notarized statement of the beneficiary that the demand is due and payable, that a request for payment has been made of the **Company** and that the demand has not been paid by the **Company** within the time allowed for such payment by the subcontract; and copies of any correspondence between the beneficiary and the **Company** concerning such demand. The **City** shall notify the **Company** that a demand has been made. The **Company** shall inform the **City** of any defenses to the demand, and shall forward to the **City** any documents the **City** requests concerning the demand.

26.3.5 The **City** shall make payment only if, after considering all defenses presented by the **Company**, it determines that the payment is due and owing to the beneficiary making the demand.

26.3.6 The **City** will not initiate the payment process of this article or make payment on a demand where the beneficiary making the demand has filed a lien against the **Work** or otherwise sues the **City** prior to receiving a written notice from the **City** that it will not pay the demand.

26.3.7 No beneficiary shall be entitled to interest from the **City**, or to any other costs, including, but not limited to, attorney's fees.

26.4 Upon the receipt by the **City** of a demand pursuant to this article, the **City** may withhold from any payment otherwise due and owing to the **Company** under this **Contract** an amount sufficient to satisfy the demand.

26.4.1 In the event the **City** determines that the demand is valid, the **City** shall notify the **Company** of such determination and the amount thereof, and direct the **Company** to immediately pay such amount to the beneficiary. In the event the **Company**, within seven (7) days of receipt of such notification from the **City**, fails to pay the beneficiary, such failure shall constitute an automatic and irrevocable assignment of payment by the **Company** to the beneficiary for the amount of the demand determined by the **City** to be valid. The **Company**, without further notification or other process, hereby gives its unconditional consent to such assignment of payment to the beneficiary and authorizes the **City**, on its behalf, to take all necessary actions to implement such assignment of payment, including without limitation the execution of any instrument or documentation necessary to effectuate such assignment.

In the event that the amount otherwise due and owing to the **Company** by the **City** is insufficient to satisfy such demand, the **City** may, at its option, require payment from the **Company** of an amount sufficient to cover such demand and exercise any other right to require or recover payment which the **City** may have under **Law** or **Contract**.

26.4.2 In the event the **City** determines that the demand is invalid, any amount withheld pending the City's review of such demand shall be paid to the **Company**; provided, however, no lien has been filed. In the event a lien has been filed, the terms and conditions set forth in Article 29 shall apply.

26.5 The provisions of this article shall not prevent the **City** and the **Company** from resolving disputes in accordance with the **PPB** Rules, where applicable.

26.6 In the event the **City** determines that the beneficiary is entitled to payment pursuant to this article, such determination and any defenses and counterclaims raised by the **Company** shall be taken into account in evaluating the **Company's** performance.

26.7 Nothing in this article shall relieve the **Company** of the obligation to pay the claims of all persons with valid and lawful claims against the **Company** relating to the **Work**.

26.8 The **Company** shall not require any performance, payment or other bonds of any **Subcontractor** if this **Contract** does not require such bonds of the **Company**.

26.9 The payment guarantee made pursuant to this article shall be construed in a manner consistent with Section 137 of the State Finance Law and shall afford to persons furnishing labor or materials to the **Company** or his **Subcontractors** in the prosecution of the **Work** under this **Contract** all of the rights and remedies afforded to such persons by such section, including but not limited to, the right to commence an action against the **City** on the payment guarantee provided by this article within the one year limitations period set forth in Section 137(4)(b) of the State Finance Law.

ARTICLE 27. RETAINED PERCENTAGE

27.1 If this **Contract** requires 100% performance and payment security, then as further security for the faithful performance of this **Contract**, the **Commissioner** shall deduct, and retain until the substantial completion of the **Work**, five (5%) percent of the value of **Work** certified for payment in each partial payment voucher.

27.2 If this **Contract** does not require 100% performance and payment security and if the price for which this **Contract** was awarded does not exceed $500,000, then as further security for the faithful performance of this **Contract**, the **Commissioner** shall deduct, and retain until the substantial completion of the **Work**, ten (10%) percent of the value of **Work** certified for payment in each partial payment voucher.

27.3 If this **Contract** does not require 100% performance and payment security and if the price for which this **Contract** was awarded exceeds $500,000, then as further security for the faithful performance of this **Contract,** the **Commissioner** shall deduct, and retain until the substantial completion of the **Work,** up to ten (10%) percent of the value of **Work** certified for payment in each partial payment voucher. The percentage to be retained is set forth in Schedule A of the General Conditions.

ARTICLE 28. INSURANCE

28.1 Types of Insurance: From the date the **Company** is required to provide Proof of Insurance pursuant to Article 28.3.1 through the date of completion of all required **Work** (including punch list work as certified in writing by the **Resident Engineer)**, the **Company** shall effect and maintain the following types of insurance if and as indicated in Schedule A of the General Conditions (with the minimum limits and special conditions specified in Schedule A). Such insurance shall be issued by companies that meet the standards of Article 28.2.1 and shall be primary (and non-contributing) to any insurance or self-insurance maintained by the **City.**

28.1.1 Commercial General Liability Insurance: The **Company** shall provide a Commercial General Liability Insurance policy covering the **Company** as Named Insured and the **City** as an Additional Insured. This policy shall protect the **City** and the **Company** from claims for property damage and/or bodily injury, including death, which may arise from any of the

operations under this **Contract**. Coverage under this policy shall be at least as broad as that provided by ISO Form CG 0001 (10/01 ed.), must be "occurrence" based rather than "claims-made", and shall include, without limitation, the following types of coverage: Premises Operations, Products and Completed Operations, Contractual Liability (including the tort liability of another assumed in a contract), Broad Form Property Damage, Medical Payments, Independent Contractors, Personal Injury (Contractual Exclusion deleted), Explosion, Collapse and Underground Property, and Incidental Malpractice. If such insurance contains an aggregate limit, it shall apply separately to this **Project**.

28.1.1(a) Such Commercial General Liability Insurance shall name the City, together with its officials and employees, as an Additional Insured under this policy. Coverage for the City as Additional Insured shall specifically include the City's officials and employees, and shall be at least as broad as either Insurance Services Office ("ISO") Form CG 20 10 (07/04 ed.) or Form CG 20 33 (07/04 ed.) and shall provide completed operations coverage at least as broad as CG 20 37 (07/04 ed.).

28.1.1(b) If this **Contract** is equal to or greater than Ten Million Dollars ($10,000,000.00), each Commercial General Liability Insurance policy provided shall contain each of the following endorsements:

28.1.1(b)(i) The Duties in the Event of Occurrence, Claim or Suit condition of the policy is amended per the following: If and insofar as knowledge of an "occurrence", "claim", or "suit" is relevant to the City of New York as Additional Insured under this policy, such knowledge by an agent, servant, official, or employee of the City of New York will not be considered knowledge on the part of the City of New York of the "occurrence", "claim", or "suit" unless the following position shall have received notice thereof from such agent, servant, official, or employee: Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department; and

28.1.1(b)(ii) Any notice, demand or other writing by or on behalf of the Named Insured to the Insurance Company shall also be deemed to be a notice, demand, or other writing on behalf of the City as Additional Insured. Any response by the Insurance Company to such notice, demand or other writing shall be addressed to Named Insured and to the City at the following addresses: Insurance Unit, NYC Comptroller's Office, 1 Centre Street – Room 1222, New York, N.Y. 10007; and Insurance Claims Specialist, Affirmative Litigation Division, New York City Law Department, 100 Church Street, New York, NY 10007.

28.1.2 Workers' Compensation Insurance and Disability Benefits Insurance: The **Company** shall provide, and ensure that each **Subcontractor** provides, Workers Compensation Insurance and Disability Benefits Insurance in accordance with the **Laws** of the State of New York on behalf of all employees providing services under this **Contract** (except for those qualifying for insurance pursuant to Article 28.1.4).

28.1.3 Employers' Liability Insurance: The **Company** shall provide, and ensure that each **Subcontractor** provides, Employers Liability Insurance affording compensation due to bodily injury by accident or disease sustained by any employee arising out of and in the course of its employment under this Contract (except for those qualifying for insurance pursuant to Article 28.1.4).

28.1.4 United States Longshoremen's and Harbor Workers Act and/or Jones Act Insurance: The **Company** shall provide, and ensure that each **Subcontractor** provides, insurance in accordance with the United States Longshoremen's and Harbor Workers Act and/or the Jones Act, on behalf of all qualifying employees providing services under this **Contract**.

28.1.5 Builders' Risk Insurance: The **Company** shall provide a Builders' Risk Insurance policy covering all risks in completed value form. Such policy shall cover the total value of the **Work** performed in accordance with Schedule A, as well as the value of any equipment, supplies and/or material for the **Project** that may be in storage (on or off the **Site**) or in transit. The policy shall cover the cost of removing debris, including demolition as may be legally necessary by the operation of any law, ordinance or regulation, and for loss or damage to any owned, borrowed, leased or rented capital equipment, tools, including tools of their agents and employees, staging towers and forms, and property of the **City** held in their care, custody and/or control. Such policy shall name as insured the **City**, the **Company,** and its **Subcontractors**. The Builders' Risk policy shall contain the following endorsements:

28.1.5(a) The **City** and the **Company** shall be named as loss payee for the **Work** in order of precedence, as their interest may appear; and

28.1.5(b) In the event the loss occurs at an occupied facility, the policy shall permit occupancy without the consent of the Insurance Company; and

28.1.5(c) In the event that the insurance policy has been issued by a mutual insurance company, the following language shall be included: "The City of New York is not liable for any premium or assessment under this policy of insurance. The First Named Insured is solely liable therefore."

28.1.6 Comprehensive Business Automobile Liability Insurance: The **Company** shall provide a Comprehensive Business Automobile Liability policy for liability arising out of any owned, non-owned, leased and hired vehicles to be used in connection with this **Contract**. Coverage should be at least as broad as ISO Form CA0001, ed. 10/01.

28.1.6(a) If autos are used for transporting hazardous materials, the Automobile Liability Insurance shall be endorsed to provide pollution liability broadened coverage for covered vehicles (endorsement CA 99 48) as well as proof of MCS 90.

28.1.7 Pollution/Environmental Liability Insurance: The **Company** shall provide Pollution/Environmental Liability Insurance covering bodily injury and property damage, including loss of use of damaged property or of property that has not been physically injured. Such insurance shall provide coverage for actual, alleged or threatened emission, discharge, dispersal, seepage, release or escape of pollutants (including asbestos), including any loss, cost or expense incurred as a result of any cleanup of pollutants (including asbestos) or in the investigation, settlement or defense of any claim, suit, or proceedings against the **City** arising from the operations under this **Contract**. Such insurance shall be in the **Company's** name and list the **City** as an Additional Insured. Coverage for the **City** as Additional Insured shall specifically include the **City's** officials and employees, and shall be at least as broad as provided to the **Company** for this **Project**.

28.1.7(a) If such coverage is written on a claims-made policy, such policy shall have a retroactive date on or before the effective date of this **Contract,** and continuous coverage shall be maintained, or an extended discovery period exercised, for a period of not less than three years from the time the **Work** under this **Contract** is completed.

28.1.8 Marine Insurance:

28.1.8(a) Marine Protection and Indemnity Insurance: The **Company** shall provide a Marine Protection and Indemnity policy with coverage at least as broad as policy form SP-23. The policy shall provide coverage for the **Company** and for the **City** (together with its officials and employees) as Additional Insured for bodily injury and property damage

arising from marine operations under this **Contract** including injury or death of crew members (if not fully provided through other insurance), damage to piers, wharves and other fixed or movable structures and loss of or damage to any other vessel or craft, or to property on such other vessel or craft, not caused by collision.

28.1.8(b) Ship Repairers Legal Liability Insurance: The **Company** shall provide a Ship Repairers Legal Liability Insurance policy covering all repair operations under this **Contract** at or in the vicinity of a designated approved port or yard under this **Contract**. The policy shall provide coverage from the point of acceptance of care custody and control of any **City** vessel. The policy shall provide Bailee Coverage for any **City** vessel in the **Company's** care, custody and control and coverage for damage to property of others caused by any **City** vessel in the **Company's** care custody and control.

28.1.8(c) Collision Liability/Towers Liability Insurance: The **Company** shall provide a Collision Liability/Towers Liability Insurance policy with coverage for the **Company** and for the **City** (together with its officials and employees) as Additional Insured at least as broad as the American Institute Tug Form (08/01/76) for all tugs used under this **Contract** and Collision Liability per American Institute Hull Clauses (6/2/77).

28.1.8(d) Marine Pollution Liability Insurance: The **Company** shall provide a Marine Pollution Liability Insurance policy covering itself as Named Insured and the **City** (together with its officials and employees) as Additional Insured for liability arising from the discharge or substantial threat of a discharge of oil, or from the release or threatened release of a hazardous substance including injury to, or economic losses resulting from, the destruction of or damage to real property, personal property or natural resources. Coverage under this policy shall be at least as broad as that provided by Water Quality Insurance Syndicate Form (09/98 ed.).

28.1.9 The **Company** shall provide such other types of insurance, at such minimum limits, as are specified in Schedule A of the General Conditions.

28.2 General Requirements for Insurance Policies:

28.2.1 All required insurance policies shall be maintained with companies that may lawfully issue the required policy and have an A.M. Best rating of at least A- VII or a Standard and Poor's rating of at least AA, unless prior written approval is obtained from the Mayor's Office of Operations.

28.2.2 The **Company** shall be solely responsible for the payment of all premiums for all required policies and all deductibles and self-insured retentions to which such policies are subject, whether or not the **City** is an insured under the policy.

28.2.3 In its/her sole discretion, the **Commissioner** may, subject to the approval of the **Comptroller** and the Corporation Counsel, accept Letters of Credit and/or custodial accounts in lieu of required insurance.

28.2.4 The **City's** limits of coverage for all types of insurance required pursuant to Schedule A of the General Conditions shall be the greater of (i) the minimum limits set forth in Schedule A or (ii) the limits provided to the **Company** as Named Insured under all primary, excess and umbrella policies of that type of coverage.

28.2.5 All required insurance policies, except for insurance required pursuant to Sections 28.1.2, 28.1.3, and 28.1.4, shall contain the following endorsement: "This policy may not be cancelled, terminated, modified or changed unless thirty (30) days prior written notice is sent by the Insurance Company to the Named Insured (or First Named Insured, as appropriate), the **Commissioner**, and to the **Comptroller**, attn: Office of Contract Administration, Municipal Building, Room 1005, New York, New York 10007."

28.3 Proof of Insurance:

28.3.1 Within ten (10) **Days** of award, the **Company** shall, for each policy required under this **Contract,** except for Workers Compensation Insurance and Disability Benefits Insurance and builders' risk insurance, file a Certificate of Insurance with the **Commissioner** pursuant to Article 28.6. For Workers' Compensation Insurance and Disability Benefits Insurance, the **Company** shall file proof of insurance in a form acceptable to the **Commissioner** within ten (10) **Days** of award. Accord forms are not acceptable proof of workers' compensation coverage. The Company must submit one of the following forms to the Department, or another form acceptable to the Department: C-105.2 -- Certificate of Workers' Compensation Insurance, or U-26.3 -- State Insurance Fund Certificate of Workers' Compensation Insurance. For builders' risk insurance, the **Company** shall file a Certificate of Insurance with the **Commissioner** at the direction of the **Commissioner** but in any event no later than ten (10) **Days** prior to commencement of the **Work**.

28.3.1(a) All Certificates of Insurance shall be in a form acceptable to the **City** and shall certify the issuance and effectiveness of the types of insurance specified in Schedule A, each with the specified minimum limits and evidence of the compliance with the Additional Insured or Named Insured provisions of Articles 28.1.1(a), 28.1.5, 28.1.7, and 28.1.8, as applicable. All Certificate(s) of Insurance shall be accompanied by either a duly executed "Certification by Broker" in the form contained in Part II of Schedule A or completed copies of all policies referenced in the Certificate of Insurance. In the absence of completed policies, binders are acceptable.

28.3.2 Certificates of Insurance confirming renewals of insurance shall be submitted to the **Commissione**r prior to the expiration date of coverage of policies required under this **Contract**. Such Certificates of Insurance shall comply with the requirements of Article 28.3.1(a) and, if applicable, Article 28.3.1(b).

28.3.3 The **Company** shall be obligated to provide the **City** with a copy of any policy required by this Article 28 upon the demand for such policy by the **Commissioner** or the New York City Law Department.

28.4 Operations of the Company:

28.4.1 The **Company** shall not commence the **Work** unless and until all required certificates have been submitted to and accepted by the **Commissioner**. Acceptance by the **Commissioner** of a certificate hereunder does not excuse the **Company** from securing a policy consistent with all provisions of this Article or of any liability arising from its failure to do so.

28.4.2 The **Company** shall be responsible for providing continuous insurance coverage in the manner, form, and limits required by this **Contract** and shall be authorized to perform **Work** only during the effective period of all required coverage.

28.4.3 In the event that any of the required insurance policies lapse, are revoked, suspended or otherwise terminated, for whatever cause, the **Company** shall immediately stop all **Work**, and shall not recommence **Work** until authorized in writing to do so by the **Commissioner**. Upon quitting the **Site**, except as otherwise directed by the Commissioner, the **Company** shall leave all plant, materials, equipment, tools and supplies on the **Site**. **Contract** time shall continue to run during such periods and no extensions of time will be granted. The **Commissioner** may also declare the **Company** in default for failure to maintain required insurance.

28.5 The **City** as Additional Insured or Loss Payee under **Subcontractors'** Insurance. The Company shall ensure that each **Subcontractor** name the **City** as Additional Insured or loss payee, as appropriate, under all policies covering **Work** performed by such **Subcontractor** under this **Contract**. The **City**'s coverage as Additional Insured shall include the **City's** officials and employees and be at least as broad as that provided to the **Company**. The foregoing requirements shall not apply to insurance provided pursuant to Articles 28.1.2, 28.1.3, and 28.1.4.

28.6 Wherever reference is made in Article 7 or this Article 28 to documents to be sent to the **Commissioner** (e.g., notices, filings, or submissions), such documents shall be sent to the address set forth in Schedule A of the General Conditions. In the event no address is set forth in Schedule A, such documents are to be sent to the **Commissioner's** address as provided elsewhere in this **Contract**.

28.7 If the **Contract** involves disposal of hazardous materials, the **Company** shall dispose such materials only at sites where the disposal site operator maintains Pollution Legal Liability Insurance in the amount of at least $2,000,000 for losses arising from such disposal site.

28.8 Materiality/Non-Waiver: The **Company's** failure to secure policy(ies) in complete conformity with this Article, or to give the Insurance Company timely notice of any sort required in this **Contract** on behalf of the **City**, or to do anything else required by this Article shall constitute a material breach of this **Contract**. Such breach shall not be waived or otherwise excused by any action or inaction by the **City** at any time.

28.9 Other Remedies: Insurance coverage in the minimum amounts provided for herein shall not relieve the **Company** or **Subcontractors** of any liability under this **Contract**, nor shall it preclude the **City** from exercising any rights or taking such other actions as are available to it under any other provisions of this **Contract** or **Law**.

ARTICLE 29. MONEY RETAINED AGAINST CLAIMS

29.1 If any claim shall be made by any person or entity (including **Other Contractors** with the **City** on this **Project**) against the **City** or against the **Company** and the **City** for any of the following:

(a) An alleged loss, damage, injury, theft or vandalism of any of the kinds referred to in Articles 7 and 17, plus the reasonable costs of defending the City, which in the opinion of the **Comptroller** may not be paid by an insurance company (for any reason whatsoever); or

(b) An infringement of copyrights, patents or use of patented articles, tools, etc., as referred to in Article 63; or

(c) Damage claimed to have been caused directly or indirectly by the failure of the **Company** to perform the **Work** in strict accordance with this **Contract,**

the amount of such claim, or so much thereof as the **Comptroller** may deem necessary, may be withheld by the **Comptroller**, as security against such claim, from any money due hereunder. The **Comptroller**, in its/her discretion, may permit the **Company** to substitute other satisfactory security in lieu of the monies so withheld.

29.2 If an action on such claim is timely commenced and the liability of the **City**, or the **Company**, or both, shall have been established therein by a final judgment of a Court of competent jurisdiction, or if such claim shall have been admitted by the **Company** to be valid, the **Comptroller** shall pay

such judgment or admitted claim out of the monies retained by the **Comptroller** under the provisions of this article, and return the balance, if any, without interest, to the **Company**.

29.3 Liens: If at any time before or within thirty (30) **Days** after the **Work** is completed and accepted by the **City**, any persons claiming to have performed any labor or furnished any material toward the performance or completion of this **Contract**, shall file with the **Agency** and with the **Treasurer** any notice as is described in the New York State Lien **Law**, or any act of the Legislature of the State of New York, the **City** shall retain, from the monies due or to become due under this **Contract**, so much of such monies as shall be sufficient to pay the amount claimed in said notice, together with the reasonable costs of any action or actions brought or that may be brought to enforce such lien. The monies so retained shall be held by the **City** until the lien thereon created by the said act and the filing of the said notice shall be discharged pursuant to **Law**.

ARTICLE 30. MAINTENANCE AND GUARANTEE

30.1 The **Company** shall promptly repair, replace, restore or rebuild, as the **Commissioner** may determine, any finished **Work** in which defects of materials or workmanship may appear or to which damage may occur because of such defects, during the one (1) year period subsequent to the date of **Substantial Completion** (or use and occupancy in accordance with Article 22), except where other periods of maintenance and guarantee are provided for.

30.2 As security for the faithful performance of its obligations hereunder, the **Company**, upon filing its requisition for payment on **Substantial Completion**, shall deposit with the **Commissioner** a sum equal to one (1%) percent of the price (or the amount fixed in Schedule A of the General Conditions) in cash or certified check upon a state or national bank and trust company or a check of such bank and trust company signed by a duly authorized officer thereof and drawn to the order of the **Comptroller**, or obligations of the **City**, which the **Comptroller** may approve as of equal value with the sum so required.

30.3 In lieu of the above, the **Company** may make such security payment to the **City** by authorizing the **Commissioner** in writing to deduct the amount from the **Substantial Completion** payment which shall be deemed the deposit required above.

30.4 If the **Company** has faithfully performed all of its obligations hereunder the **Commissioner** shall so certify to the **Comptroller** within five (5) **Days** after the expiration of one (1) year from the date of **Substantial Completion** and acceptance of the **Work** or within thirty (30) **Days** after the expiration of the guarantee period fixed in the **Specifications**. The security payment shall be repaid to the **Company** without interest within thirty (30) **Days** after certification by the **Commissioner** to the **Comptroller** that the **Company** has faithfully performed all of its obligations hereunder.

30.5 Notice by the **Commissioner** to the **Company** to repair, replace, rebuild or restore such defective or damaged **Work** shall be timely, pursuant to this article, if given not later than ten (10) **Days** subsequent to the expiration of the one (1) year period or other periods provided for herein.

30.6 If the **Company** shall fail to repair, replace, rebuild or restore such defective or damaged **Work** promptly after receiving such notice, the **Commissioner** shall have the right to have the **Work** done by others in the same manner as provided for in the completion of a defaulted **Contract**, under Article 57.

30.7 If the security payment so deposited is insufficient to cover the cost of such **Work**, the **Company** shall be liable to pay such deficiency on demand by the **Commissioner**.

30.8 The **Resident Engineer's** certificate as approved by the Commissioner, setting forth the fair and reasonable cost of repairing, replacing, rebuilding or restoring any damaged or defective **Work** when performed by one other than the **Company**, shall be binding and conclusive upon the **Company** as to the amount thereof.

30.9 The **Company** shall obtain all manufacturers' warranties and guaranties of all equipment and materials required by this **Contract** in the name of the **City** and shall deliver same to the **Commissioner**. All of the **City's** rights and title and interest in and to said manufacturers' warranties and guaranties may be assigned by the **City** to any subsequent purchasers or lessees of the premises.

CHAPTER VI
CHANGES, EXTRA WORK AND DOCUMENTATION OF CLAIM

ARTICLE 31. CHANGES

31.1 Changes may be made to this **Contract** only as duly authorized in writing by the **Commissioner** in accordance with the **Laws** and this **Contract**. All such changes, modifications and amendments will become a part of the **Contract**. **Work** so ordered shall be performed by the **Company**.

31.2 **Contract** changes will be made only for **Work** necessary to complete the **Work** included in the original scope of the **Contract** and/or for non-material changes to the scope of the **Contract**. Changes are not permitted for any material alteration in the scope of **Work** in the **Contract**.

31.3 The **Company** shall be entitled to a price adjustment for **Extra Work** performed pursuant to a written change order. Adjustments to price shall be computed in one or more of the following ways:

31.3.1 By applicable unit prices specified in the **Contract**; and/or

31.3.2 By agreement of a fixed price; and/or

31.3.3 By time and material records; and/or

31.3.4 In any other manner approved by the **CCPO**.

31.4 All payments for change orders are subject to pre-audit by the **Engineering Audit Officer** and may be post-audited by the **Comptroller** and/or the **Department**.

ARTICLE 32. METHODS OF PAYMENT FOR OVERRUNS AND EXTRA WORK

32.1 Overrun of Unit Price Item: An overrun is any quantity of a unit price item which the **Company** is directed to provide which is in excess of one hundred twenty-five (125%) percent of the estimated quantity for that item set forth in the bid schedule.

32.1.1 For any unit price item, the **Company** will be paid at the unit price bid for any quantity up to one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule. If during the progress of the **Work,** the actual quantity of any

unit price item required to complete the **Work** approaches the estimated quantity for that item, and for any reason it appears that the actual quantity of any unit price item necessary to complete the **Work** will exceed the estimated quantity for that item by twenty-five (25%) percent, the **Company** shall immediately notify the **Engineer** of such anticipated overrun. The **Company** shall not be compensated for any quantity of a unit price item provided which is in excess of one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule without written authorization from the Engineer.

32.1.2 If the actual quantity of any unit price item necessary to complete the Work will exceed one hundred twenty five (125%) percent of the estimated quantity for that item set forth in the bid schedule, the **City** reserves the right and the **Company** agrees to negotiate a new unit price for such item. In no event shall such negotiated new unit price exceed the unit bid price. If the **City** and **Company** cannot agree on a new unit price, then the **City** shall order the **Company** and the **Company** agrees to provide additional quantities of the item on a time and material basis for the actual and reasonable cost as determined under Article 32.2, but in no event at a unit price exceeding the unit price bid.

32.2 **Extra Work:** For **Extra Work** where payment is by agreement on a fixed price in accordance with Article 31.3.2, the price to be paid for such **Extra Work** shall be based on the fair and reasonable estimated cost of the items set forth below. For **Extra Work** where payment is on a time and material basis in accordance with Article 31.3.3, the price to be paid for such **Extra Work** shall be the actual and reasonable cost of the items set forth below.

32.2.1 Necessary materials (including transportation to the **Site**); plus

32.2.2 Necessary direct labor, including payroll taxes and supplemental benefits; plus

32.2.3 Sales and personal property taxes, if any, required to be paid on materials not incorporated into such **Extra Work**; plus

32.2.4 Reasonable rental value of **Company-**owned, necessary plant and equipment other than small tools, plus fuel/energy costs. Except for fuel costs for pick-up trucks which shall be reimbursed based on a consumption of five (5) gallons per shift, fuel costs shall be reimbursed based on actual costs or, in the absence of auditable documentation, the following fuel consumption formula per operating hour: (.035) x (HP rating) x (Fuel cost/gallon). Reasonable rental value is defined as the lower of either seventy-five percent of the monthly prorated rental rates established in "The AED Green Book, Rental Rates and Specifications for Construction Equipment" published by PRIMEDIA (the "Green Book"), or seventy-five percent of the monthly prorated rental rates established in the "Rental Rate Blue Book for Construction Equipment" published by PRIMEDIA (the "Blue Book"). The reasonable rental value is inclusive of all operating costs except for fuel/energy consumption and equipment operator's wages/costs. For multiple shift utilization, reimbursement shall be calculated as follows: first shift shall be seventy-five percent of such rental rates; second shift shall be sixty percent of the first shift rate; and third shift shall be forty percent of the first shift rate. Equipment on standby shall be reimbursed at one-third the prorated monthly rental rate. **Company-**owned equipment includes equipment from rental companies affiliated with or controlled by the **Company,** as determined by the **Commissioner**. In establishing cost reimbursement for non-operating Company-owned equipment (scaffolding, sheeting systems, road plates, etc.), the City may restrict reimbursement to a purchase-salvage/life cycle basis if less than the computed rental costs; plus

32.2.5 Necessary installation and dismantling of such plant and equipment, including transportation to and from the **Site**, if any, provided that, in the case of non-**Company**-owned equipment rented from a third party, the cost of installation and dismantling are not allowable if such costs are included in the rental rate; plus

32.2.6 Reasonable rental costs of non-**Company**-owned necessary plant and equipment other than small tools, plus fuel/energy costs. Except for fuel costs for pick-up trucks which shall be reimbursed based on a consumption of five (5) gallons per shift, fuel costs shall be reimbursed based on actual costs or, in the absence of auditable documentation, the following fuel consumption formula per hour of operation: (.035) x (HP rating) x (Fuel cost/gallon). In lieu of renting, the City reserves the right to direct the purchase of non-operating equipment (scaffolding, sheeting systems, road plates, etc.), with payment on a purchase-salvage/life cycle basis, if less than the projected rental costs; plus

32.2.7 Workers' compensation insurance, and any insurance coverage expressly required by the **City** for the performance of the **Extra Work** which is different than the types of insurance required by Article 28 and Schedule A of the General Conditions. The cost of workers' compensation insurance shall be based upon the Manual Rate for such insurance for the applicable work classifications/codes, in accordance with the most recent schedule promulgated by the New York Compensation Insurance Rating Board; plus

32.2.8 Additional costs incurred as a result of the **Extra Work** for performance and payment bonds; plus

32.2.9 Ten (10%) percent of the total of items in Articles 32.2.1 through 32.2.5 as compensation for overhead, except that no percentage for overhead will be allowed on **Payroll Taxes** or on the premium portion of overtime pay or on sales and personal property taxes. Overhead shall include without limitation, all costs and expenses in connection with administration, management superintendence, small tools, and insurance required by Schedule A of the General Conditions other than workers' compensation insurance; plus

32.2.10 Ten (10%) percent of the total of items in Articles 32.2.1 through 32.2.5, plus item 32.2.9, as compensation for profit, except that no percentage for profit will be allowed on **Payroll Taxes** or on the premium portion of overtime pay or on sales and personal property taxes; plus

32.2.11 Five (5%) percent of the total of items in Article 32.2.6, 32.2.7, and 32.2.8 as compensation for overhead and profit.

32.3 Where the **Extra Work** is performed in whole or in part by other than the **Company's** own forces pursuant to Article 32.2, the **Company** shall be paid, subject to pre-audit by the **Engineering Audit Officer**, the cost of such **Work** computed in accordance with Article 32.2 above, plus an additional allowance of five (5%) percent to cover the **Company's** overhead and profit.

32.4 Where a change is ordered, involving both **Extra Work** and omitted or reduced **Contract Work,** the **Contract** price shall be adjusted, subject to pre-audit by the **EAO**, in an amount based on the difference between the cost of such **Extra Work** and of the omitted or reduced **Work**. The cost of such **Extra Work** and of such omitted or reduced **Work** shall be computed based upon applicable **Contract** unit prices. Where there are no applicable **Contract** unit prices, the cost of such **Extra Work** and of such omitted or reduced **Contract Work** shall be computed in accordance with items 32.2.1 through 32.2.8. If the cost of such **Extra Work** exceeds the costs of

such omitted or reduced **Contract Work**, the **Contract** price shall be increased by the difference, plus percentages for overhead and profit as provided in Articles 32.2.9 through 32.2.11. If the cost of the omitted or reduced **Contract Work** exceeds the cost of the **Extra Work**, then the **Contract** price shall be reduced by the difference.

32.5 Where the **Company** and the **Commissioner** can agree upon a fixed price for **Extra Work** in accordance with Article 31.3.2 or another method of payment for **Extra Work** in accordance with Article 31.3.4, or for **Extra Work** ordered in connection with omitted work, such method, subject to pre-audit by the **EAO**, may, at the option of the **Commissioner**, be substituted for the cost plus a percentage method provided in Article 32.2; provided, however, that if the **Extra Work** is performed by a **Subcontractor**, the **Company** shall not be entitled to receive more than an additional allowance of five (5%) percent for overhead and profit over the cost of such **Subcontractor's Work** as computed in accordance with Article 32.2.

ARTICLE 33. RESOLUTION OF DISPUTES

33.1 All disputes between the **City** and the **Company** of the kind delineated in this article that arise under, or by virtue of, this **Contract** shall be finally resolved in accordance with the provisions of this article and the **PPB** Rules. This procedure for resolving all disputes of the kind delineated herein shall be the exclusive means of resolving any such disputes.

33.1.1 This article shall not apply to disputes concerning matters dealt with in other sections of the **PPB** Rules, or to disputes involving patents, copyrights, trademarks, or trade secrets (as interpreted by the courts of New York State) relating to proprietary rights in computer software.

33.1.2 This article shall apply only to disputes about the scope of work delineated by the **Contract**, the interpretation of **Contract** documents, the amount to be paid for **Extra Work** or disputed work performed in connection with the **Contract**, the conformity of the **Company's Work** to the **Contract**, and the acceptability and quality of the **Company's Work**; such disputes arise when the **Engineer**, **Resident Engineer**, **Engineering Audit Officer**, or other designee of the **Commissioner** makes a determination with which the **Company** disagrees.

33.2 All determinations required by this article shall be made in writing clearly stated, with a reasoned explanation for the determination based on the information and evidence presented to the party making the determination. Failure to make such determination within the time required by this article shall be deemed a non-determination without prejudice that will allow application to the next level.

33.3 During such time as any dispute is being presented, heard, and considered pursuant to this article, the **Contract** terms shall remain in force and the **Company** shall continue to perform **Work** as directed by the **ACCO** or the **Engineer**. Failure of the **Company** to continue **Work** as directed shall constitute a waiver by the **Company** of its claim.

33.4 Presentation of Disputes to **Commissioner**.
Notice of Dispute and Agency Response. The **Company** shall present its dispute in writing ("Notice of Dispute") to the **Commissioner** within thirty (30) Days of receiving written notice of the determination or action that is the subject of the dispute. This notice requirement shall not be read to replace any other notice requirements contained in the **Contract**. The Notice of Dispute shall include all the facts, evidence, documents, or other basis upon which the **Company** relies in support of its position, as well as a detailed computation demonstrating how any amount of

money claimed by the **Company** in the dispute was arrived at. Within thirty (30) Days after receipt of the detailed written submission comprising the complete Notice of Dispute, the **Engineer**, **Resident Engineer**, **Engineering Audit Officer**, or other designee of the **Commissioner** shall submit to the **Commissioner** all materials it or she deems pertinent to the dispute. Following initial submissions to the **Commissioner**, either party may demand of the other the production of any document or other material the demanding party believes may be relevant to the dispute. The requested party shall produce all relevant materials that are not otherwise protected by a legal privilege recognized by the courts of New York State. Any question of relevancy shall be determined by the **Commissioner** whose decision shall be final. Willful failure of the **Company** to produce any requested material whose relevancy the **Company** has not disputed, or whose relevancy has been affirmatively determined, shall constitute a waiver by the **Company** of its claim.

33.4.1 **Commissioner** Inquiry. The **Commissioner** shall examine the material and may, in its or her discretion, convene an informal conference with the **Company**, the **ACCO**, and the **Engineer**, **Resident Engineer**, **Engineering Audit Officer**, or other designee of the **Commissioner** to resolve the issue by mutual consent prior to reaching a determination. The **Commissioner** may seek such technical or other expertise as it or she shall deem appropriate, including the use of neutral mediators, and require any such additional material from either or both parties as it or she deems fit. The **Commissioner's** ability to render, and the effect of, a decision hereunder shall not be impaired by any negotiations in connection with the disputed presented, whether or not the **Commissioner** participated therein. The **Commissioner** may or, at the request of any party to the dispute, shall compel the participation of any other **Company** with a **Contract** related to the **Work** of this **Contract**, and that **Company** shall be bound by the decision of the **Commissioner**. Any **Company** thus brought into the dispute resolution proceeding shall have the same rights and obligations under this article as the **Company** initiating the dispute.

33.4.2 **Commissioner** Determination. Within thirty (30) days after the receipt of all materials and information, or such longer time as may be agreed to by the parties, the **Commissioner** shall make its or her determination and shall deliver or send a copy of such determination to the **Company**, the **ACCO,** and **Engineer**, **Resident Engineer**, **Engineering Audit Officer**, or other designee of the **Commissioner**, as applicable, together with a statement concerning how the decision may be appealed.

33.4.3 Finality of **Commissioner** Decision. The **Commissioner's** decision shall be final and binding on all parties, unless presented to the Contract Dispute Resolution Board pursuant to this article. The **City** may not take a petition to the Contract Dispute Resolution Board. However, should the **Company** take such a petition, the **City** may seek, and the Contract Dispute Resolution Board may render, a determination less favorable to the **Company** and more favorable to the **City** than the decision of the **Commissioner**.

33.5 Presentation of Dispute to the **Comptroller**. Before any dispute may be brought by the **Company** to the Contract Dispute Resolution Board, the **Company** must first present its claim to the **Comptroller** for its or her review, investigation, and possible adjustment.

33.5.1 Time, Form, and Content of Notice. Within thirty (30) days of its receipt of a decision by the **Commissioner,** the **Company** shall submit to the **Comptroller** and to the **Commissioner** a Notice of Claim regarding its dispute with the **Agency**. The Notice of Claim shall consist of (i) a brief Written statement of the substance of the dispute, the amount of money, if any, claimed and the reason(s) the **Company** contends the dispute was wrongly decided by the **Commissioner**; (ii) a copy of the written decision of the

Commissioner; and (iii) a copy of all materials submitted by the **Company** to the **Agency**, including the Notice of Dispute. The **Company** may not present to the **Comptroller** any material not presented to the **Commissioner**, except at the request of the **Comptroller**.

33.5.2 **Agency** Response. Within thirty (30) days of receipt of the Notice of Claim, the **Agency** shall make available to the **Comptroller** a copy of all material submitted by the **Agency** to the **Commissioner** in connection with the dispute. The **Agency** may not present to the **Comptroller** any material not presented to the **Commissioner** except at the request of the **Comptroller**.

33.5.3 **Comptroller** Investigation. The **Comptroller** may investigate the claim in dispute and, in the course of such investigation, may exercise all powers provided in section 7-201 and 7-203 of the New York City Administrative Code. In addition, the **Comptroller** may demand of either party, and such party shall provide, whatever additional material the **Comptroller** deems pertinent to the claim, including original business records of the **Company**. Willful failure of the **Company** to produce within fifteen (15) days any material requested by the **Comptroller** shall constitute a waiver by the **Company** of its claim. The **Comptroller** may also schedule an informal conference to be attended by the **Company**, **Agency** representatives, and any other personnel desired by the **Comptroller**.

33.5.4 Opportunity of **Comptroller** to Compromise or Adjust Claim. The **Comptroller** shall have forty-five (45) days from its or her receipt of all materials referred to in Article 33.5.3 to investigate the disputed claim. The period for investigation and compromise may be further extended by agreement between the **Company** and the **Comptroller**, to a maximum of ninety (90) days from the **Comptroller's** receipt of all materials. The **Company** may not present its petition to the Contract Dispute Resolution Board until the period for investigation and compromise delineated in Article 33.5.4 has expired. In compromising or adjusting any claim hereunder, the **Comptroller** may not revise or disregard the terms of the **Contract** between the parties.

33.6 Contract Dispute Resolution Board. There shall be a Contract Dispute Resolution Board composed of:

33.6.1 The chief administrative law judge of the Office of Administrative Trials and Hearings (OATH) or its/her designated OATH administrative law judge, who shall act as chairperson, and may adopt operational procedures and issue such orders consistent with this article as may be necessary in the execution of the Contract Dispute Resolution Board's functions, including, but not limited to, granting extensions of time to present or respond to submissions;

33.6.1.1 The **CCPO** or its/her designee; any designee shall have the requisite background to consider and resolve the merits of the dispute and shall not have participated personally and substantially in the particular matter that is the subject of the dispute or report to anyone who so participated; and

33.6.2 A person with appropriate expertise who is not an employee of the City. This person shall be selected by the presiding administrative law judge from a prequalified panel of individuals, established and administered by OATH with appropriate background to act as decision-makers in a dispute. Such individual may not have a contract or dispute with the City or be an officer or employee of any company or organization that does, or regularly represents persons, companies, or organizations having disputes with the City.

33.7 Petition to the Contract Dispute Resolution Board. In the event the claim has not been settled or adjusted by the **Comptroller** within the period provided in this article, the **Company**, within thirty (30) days thereafter, may petition the Contract Dispute Resolution Board to review the **Commissioner's** determination.

33.7.1 Form and Content of Petition by **Company**. The **Company** shall present its dispute to the Contract Dispute Resolution Board in the form of a petition, which shall include (i) a brief written statement of the substance of the dispute, the amount of money, if any, claimed, and the reason(s) the Company contends the dispute was wrongly decided by the **Commissioner**; (ii) a copy of the written Decision of the **Commissioner,** (iii) copies of all materials submitted by the **Company** to the Agency; (iv) a copy of the written decision of the **Comptroller**, if any, and (v) copies of all correspondence with, or written material submitted by the **Company**, to the **Comptroller**. The **Company** shall concurrently submit four (4) complete sets of the Petition: one set to the Corporation Counsel (Attn: Commercial and Real Estate Litigation Division) and three (3) sets to the Contract Dispute Resolution Board at OATH's offices with proof of service on the Corporation Counsel. In addition, the **Company** shall submit a copy of the written statement of the substance of the dispute, cited in (i) above, to both the **Commissioner** and the **Comptroller**.

33.7.2 **Agency** Response. Within thirty (30) Days of its receipt of the petition by the Corporation Counsel, the **Agency** shall respond to the brief written statement of the **Company** and make available to the Contract Dispute Resolution Board all material it submitted to the **Commissioner** and **Comptroller**. Three (3) complete copies of the **Agency** response shall be provided to the Contract Dispute Resolution Board and one to the **Company**. Extensions of time for submittal of the **Agency** response shall be given as necessary upon a showing of good cause or, upon consent of the parties, for an initial period of up to thirty (30) Days.

33.7.3 Further Proceedings. The Contract Dispute Resolution Board shall permit the **Company** to present its case by submission of memoranda, briefs, and oral argument. The Contract Dispute Resolution Board shall also permit the **Agency** to present its case in response to the **Company** by submission of memoranda, briefs, and oral argument. If requested by the Corporation Counsel, the **Comptroller** shall provide reasonable assistance in the preparation of the **Agency's** case. Neither the **Company** nor the **Agency** may support its case with any documentation or other material that was not considered by the **Comptroller**, unless requested by the Contract Dispute Resolution Board. The Contract Dispute Resolution Board, in its discretion, may seek such technical or other expert advice as it shall deem appropriate and may seek, on its own or upon application of a party, any such additional material from any party as it deems fit. The Contract Dispute Resolution Board, in its discretion, may combine more than one dispute between the parties for concurrent resolution.

33.7.4 Contract Dispute Resolution Board Determination. Within forty-five (45) Days of the conclusion of all written submissions and oral arguments, the Contract Dispute Resolution Board shall render a written decision resolving the dispute. In an unusually complex case, the Contract Dispute Resolution Board may render its decision in a longer period, not to exceed ninety (90) Days, and shall so advise the parties at the commencement of this period. The Contract Dispute Resolution Board's decision must be consistent with the terms of the **Contract**. Decisions of the Contract Dispute Resolution Board shall only resolve matters before the Contract Dispute Resolution Board and shall not have precedential effect with respect to matters not before the Contract Dispute Resolution Board.

33.7.5 Notification of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board shall send a copy of its decision to the **Company**, the **ACCO**, the Engineer, the **Comptroller**, the Corporation Counsel, the Director of the Office of Construction, and the **PPB**. A decision in favor of the **Company** shall be subject to the prompt payment provisions of the **PPB** Rules. The Required Payment Date shall be thirty (30) Days after the date the parties are formally notified of the Contract Dispute Resolution Board's decision.

33.7.6 Finality of Contract Dispute Resolution Board Decision. The Contract Dispute Resolution Board's decision shall be final and binding on all parties. Any party may seek review of the Contract Dispute Resolution Board's decision solely in the form of a challenge, filed within four (4) months of the date of the Contract Dispute Resolution Board's decision, in a court of competent jurisdiction of the State of New York, County of New York pursuant to Article 78 of the Civil Practice Laws and Rules. Such review by the court shall be limited to the question of whether or not the Contract Dispute Resolution Board's decision was made in violation of lawful procedure, was affected by an error of **Law**, or was arbitrary and capricious or an abuse of discretion. No evidence or information shall be introduced or relied upon in such proceeding that was not presented to the Contract Dispute Resolution Board in accordance with this article.

33.8 Any termination, cancellation, or alleged breach of the **Contract** prior to or during the pendency of any proceedings pursuant to this article shall not affect or impair the ability of the **Commissioner** or Contract Dispute Resolution Board to make a binding and final decision pursuant to this article.

ARTICLE 34. RECORD KEEPING FOR EXTRA OR DISPUTED WORK

34.1 While the **Company** or any of its **Subcontractors** is performing **Extra Work** on a Time and Material Basis ordered by the **Commissioner** under Article 31, or is performing disputed **Work**, or complying with a determination or order under protest in accordance with Articles 33 and 36, in each such case the **Company** shall furnish the **Resident Engineer** daily with three (3) copies of written statements signed by the **Company's** representative at the **Site** showing:

34.1.1 The name and number of each Worker employed on such **Work** or engaged in complying with such determination or order, the number of hours employed, and the character of the **Work** each is doing; and

34.1.2 The nature and quantity of any materials, plant and equipment furnished or used in connection with the performance of such Work or compliance with such determination or order, and from whom purchased or rented.

34.2 A copy of such statement will be countersigned by the **Resident Engineer**, noting thereon any items not agreed to or questioned, and will be returned to the **Company** within two (2) **Days** after submission.

34.3 The **Company** and its **Subcontractors, Consultants or Subconsultants** when required by the **Commissioner**, or the **Comptroller**, shall also produce for inspection, at the office of the **Company** or **Subcontractor**, any and all of its books, bid documents, financial statements, vouchers, records, daily job diaries and reports, and cancelled checks, and any other documents relating to showing the nature and quantity of the labor, materials, plant and equipment actually used in the performance of such **Work**, or in complying with such determination or order, and the amounts expended therefor, and shall permit the **Commissioner** and the **Comptroller** to make such extracts therefrom, or copies thereof, as they or either of them may desire.

34.4 In connection with the examination provided for herein, the **Commissioner**, upon demand therefor, will produce for inspection by the **Company** such records as the **Agency** may have with respect to such **Extra** or disputed **Work** performed under protest pursuant to order of the **Commissioner**, except those records and reports which may have been prepared for the purpose of determining the accuracy and validity of the **Company's** claim.

34.5 Failure to comply strictly with these requirements shall constitute a waiver of any claim for extra compensation or damages on account of the performance of such **Work** or compliance with such determination or order.

ARTICLE 35. OMITTED WORK

35.1 If any **Contract Work** in a lump sum **Contract**, or if any part of a lump sum item in a unit price, lump sum, or percentage-bid **Contract** is omitted by the **Commissioner** pursuant to Article 39, the **Contract** price, subject to audit by the EAO, shall be reduced by a pro rata portion of the lump sum bid amount based upon the percent of **Work** omitted subject to Article 35.4. For the purpose of determining the pro rata portion of the lump sum bid amount, the bid breakdown submitted in accordance with Article 47 shall be considered, but shall not be the determining factor.

35.2 If the whole of a lump sum item or units of any other item is so omitted by the **Commissioner** in a unit price, lump sum, or percentage-bid **Contract**, then no payment will be made therefor except as provided in Article 35.4.

35.3 For units that have been ordered but are only partially completed, the unit price shall be reduced by a pro rata portion of the unit price bid based upon the percentage of **Work** omitted subject to Article 35.4.

35.4 In the event the **Company**, with respect to any omitted **Work**, has purchased any non-cancelable material and/or equipment that is not capable of use except in the performance of this **Contract** and has been specifically fabricated for the sole purpose of this **Contract**, but not yet incorporated into the **Work**, the **Company** shall be paid for such material and/or equipment in accordance with Article 70.2.1(b); provided, however, such payment is contingent upon the **Company's** delivery of such material and/or equipment in acceptable condition to a location designated by the **City**.

35.5 The **Company** agrees to make no claim for damages or for loss of overhead and profit with regard to any omitted **Work**.

ARTICLE 36. NOTICE AND DOCUMENTATION OF COSTS AND DAMAGES; PRODUCTION OF FINANCIAL RECORDS

36.1 If the **Company** shall claim to be sustaining damages by reason of any act or omission of the **City** or its agents, it shall submit to the **Commissioner** within forty-five (45) **Days** from the time such damages are first incurred, and every thirty (30) **Days** thereafter for as long as such damages are incurred, verified statements of the details and the amounts of such damages, together with documentary evidence of such damages. The **Company** may submit any of the above statements within such additional time as may be granted by the **Commissioner** in writing upon written request therefor. Failure of the **Commissioner** to respond in writing to a written request for additional time within thirty (30) **Days** shall be deemed a denial of the request. On failure of the **Company** to fully comply with the foregoing provisions, such claims

shall be deemed waived and no right to recover on such claims shall exist. Damages that the **Company** may claim in any action or dispute resolution procedure arising under or by reason of this **Contract** shall not be different from or in excess of the statements and documentation made pursuant to this article.

36.2 In addition to the foregoing statements, the **Company** shall, upon notice from the **Commissioner**, produce for examination at the **Company's** office, by the **Project Manager**, all of its books of account, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this **Contract**, and submit itself and persons in its employment, for examination under oath by any person designated by the **Commissioner** or **Comptroller** to investigate claims made or disputes against the **City** under this **Contract**. At such examination, a duly authorized representative of the **Company** may be present.

36.3 In addition to the statements required under Article 34 and this article, the **Company** and/or its **Subcontractor, Consultant or Subconsultant** shall, within thirty (30) **Days** upon notice from the **Commissioner** or **Comptroller**, produce for examination at the **Company's** and/or **Subcontractor's** office, by a representative of either the **Commissioner** or **Comptroller**, all of its books of account, bid documents, financial statements, accountant workpapers, bills, invoices, payrolls, subcontracts, time books, daily reports, bank deposit books, bank statements, check books, cancelled checks, showing all of its acts and transactions in connection with or relating to or arising by reason of this **Contract**. Further, the **Company** and/or its **Subcontractor, Consultant or Subconsultant** shall submit any person in its employment, for examination under oath by any person designated by the **Commissioner** or **Comptroller** to investigate claims made or disputes against the **City** under this **Contract**. At such examination, a duly authorized representative of the **Company** may be present.

36.4 Unless the information and examination required under Article 36.3 is provided by the **Company** and/or its **Subcontractor, Consultant or Subconsultant** upon thirty (30) **Days** notice from the **Commissioner** or **Comptroller**, or upon the **Commissioner's** or **Comptroller's** written authorization to extend the time to comply, the **City** shall be released from all claims arising under, relating to or by reason of this **Contract**, except for sums certified by the **Commissioner** or **Comptroller** to be due under the provisions of this **Contract**. It is further stipulated and agreed that no person has the power to waive any of the foregoing provisions and that in any action or dispute resolution procedure against the **City** to recover any sum in excess of the sums certified by the **Commissioner** or **Comptroller** to be due under or by reason of this **Contract**, the **Company** must allege in its complaint and prove, at trial or during such dispute resolution procedure, compliance with the provisions of this article.

36.5 In addition, after the commencement of any action or dispute resolution procedure by the **Company** arising under or by reason of this **Contract**, the **City** shall have the right to require the **Company** to produce for examination under oath, up until the trial of the action or hearing before the Contract Dispute Resolution Board, the books and documents described in Article 36.3 and submit itself and all persons in its employ for examination under oath. If this article is not complied with as required, then the **Company** hereby consents to the dismissal of the action or dispute resolution procedure.

CHAPTER VII
POWERS OF THE RESIDENT ENGINEER, THE ENGINEER OR ARCHITECT AND THE COMMISSIONER

ARTICLE 37. THE RESIDENT ENGINEER

"INTENTIONALLY LEFT BLANK"

ARTICLE 38. THE ENGINEER OR ARCHITECT

"INTENTIONALLY LEFT BLANK"

ARTICLE 39. THE COMMISSIONER

39.1 The **Commissioner**, in addition to those matters elsewhere herein expressly made subject to his/her determination, direction or approval, shall have the power:

39.1.1 To review and make determinations on any and all questions in relation to this Contract and its performance; and

39.1.2 To modify or change this Contract so as to require the performance of Extra Work (subject, however, to the limitations specified in Article 31) or the omission of Contract Work; and

39.1.3 To suspend the whole or any part of the **Work** whenever in his/her judgment such suspension is required:

39.1.3(a) In the interest of the **City** generally; or

39.1.3(b) To coordinate the **Work** of the various **Contractors** engaged on the **Project** to the provisions of Article 18; or

39.1.3(c) To expedite the completion of the entire **Project** even though the completion of this particular **Contract** may thereby be delayed.

ARTICLE 40. NO ESTOPPEL

40.1 Neither the **City** nor any **Agency**, officer, agent or employee thereof, shall be bound, precluded or estopped by any determination, decision, approval, order, letter, payment or certificate made or given under or in connection with this **Contract** by the **City**, the **Commissioner**, the **Resident Engineer**, or any other officer, agent or employee of the **City**, either before or after the final completion and acceptance of the **Work** and payment therefor:

40.1.1 From showing the true and correct classification, amount, quality or character of the **Work** actually done; or that any such determination, decision, order, letter, payment or certificate was untrue, incorrect or improperly made in any particular, or that the **Work**, or any part thereof, does not in fact conform to the requirements of this **Contract**; and

40.1.2 From demanding and recovering from the **Company** any overpayment made to it, or such damages as the **City** may sustain by reason of the **Company's** failure to perform each and every part of its **Contract**.

CHAPTER VIII
LABOR PROVISIONS

ARTICLE 41. EMPLOYEES

41.1 The **Company** and its **Subcontractors** shall not employ on the **Work**:

41.1.1 Anyone who is not competent, faithful and skilled in the **Work** for which he/she shall be employed; and whenever the **Commissioner** shall inform the **Company**, in writing, that any employee is, in his/her opinion, incompetent, unfaithful or disobedient, that employee shall be discharged from the **Work** forthwith, and shall not again be employed upon it; or

41.1.2 Any labor, materials or means whose employment, or utilization during the course of this **Contract**, may tend to or in any way cause or result in strikes, work stoppages, delays, suspension of **Work** or similar troubles by workers employed by the **Company** or its **Subcontractors, Consultants or Subconsultants**, or by any of the trades working in or about the buildings and premises where **Work** is being performed under this **Contract**, or by **Other Contractors** or their **Subcontractors** pursuant to other Contracts, or on any other building or premises owned or operated by the **City**, its **Agencies**, departments, boards or authorities. Any violation by the **Company** of this requirement may, upon certification of the **Commissioner**, be considered as proper and sufficient cause for declaring the **Company** to be in default, and for the **City** to take action against it as set forth in Chapter X of this **Contract**, or such other article of this **Contract** as the **Commissioner** may deem proper; or

41.1.3 In accordance with Section 220.3-e of the Labor Law of the State of New York (hereinafter "Labor **Law**"), the **Company** and its **Subcontractors, Consultants or Subconsultants,** shall not employ on the **Work** any apprentice, unless he/she is a registered individual, under a bona fide program registered with the New York State Department of Labor. The allowable ratio of apprentices to journey-level workers in any craft classification shall not be greater than the ratio permitted to the **Company** as to its **Work** force on any job under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered as above, shall be paid the wage rate determined by the **Comptroller** of the **City** for the classification of **Work** actually performed. The **Company** or **Subcontractor** will be required to furnish written evidence of the registration of its program and apprentices as well as all the appropriate ratios and wage rates, for the area of the construction prior to using any apprentices on the **Contract Work**.

ARTICLE 42. NO DISCRIMINATION

42.1 The **Company** specifically agrees, as required by Labor Law Section 220-e, as amended, that:

42.1.1 In the hiring of employees for the performance of **Work** under this **Contract** or any subcontract hereunder, neither the **Company**, **Subcontractor**, nor any person acting on behalf of such **Company** or **Subcontractor**, shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the **Work** to which the employment relates;

42.1.2 Neither the **Company**, **Subcontractor**, nor any person on its behalf shall, in any manner, discriminate against or intimidate any employee hired for the performance of work under this **Contract** on account of race, creed, color or national origin;

42.1.3 There may be deducted from the amount payable to the **Company** by the **City** under this **Contract** a penalty of fifty ($50.00) dollars for each person for each **Day** during which

such person was discriminated against or intimidated in violation of the provisions of this **Contract**; and

42.1.4 This **Contract** may be cancelled or terminated by the **City** and all moneys due or to become due hereunder may be forfeited, for a second or any subsequent violation of the terms or conditions of this article.

42.1.5 The aforesaid provisions of this article covering every **Contract** for or on behalf of the State or a municipality for the manufacture, sale or distribution of materials, equipment or supplies shall be limited to operations performed within the territorial limits of the State of New York.

42.2 The Company specifically agrees, as required by Section 6-108 of the Administrative Code, as amended, that:

42.2.1 It shall be unlawful for any person engaged in the construction, alteration or repair of buildings or engaged in the construction or repair of streets or highways pursuant to a **Contract** with the **City** or engaged in the manufacture, sale or distribution of materials, equipment or supplies pursuant to a **Contract** with the **City** to refuse to employ or to refuse to continue in any employment any person on account of the race, color or creed of such person.

42.2.2 It shall be unlawful for any person or any servant, agent or employee of any person, described in Article 42.1.2, to ask, indicate or transmit, orally or in writing, directly or indirectly, the race, color or creed or religious affiliation of any person employed or seeking employment from such person, firm or corporation.

42.2.3 Breach of the foregoing provisions shall be deemed a violation of a material provision of this **Contract**.

42.2.4 Any person, or the employee, manager or owner of or officer of such firm or corporation who shall violate any of the provisions of this section shall, upon conviction thereof, be punished by a fine of not more than one hundred ($100.00) dollars or by imprisonment for not more than thirty (30) **Days**, or both.

42.3 This **Contract** is subject to the requirements of Executive Order No. 50 (1980) ("E.O. 50"), as revised, 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 **Company** agrees that it:

42.3.1 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; and

42.3.2 Will not engage in any unlawful discrimination in the selection of **Subcontractors** on the basis of the owner's race, color, creed, national origin, sex, age, disability, marital status or sexual orientation; and

42.3.3 Will state in all solicitations or advertisements for employees placed by or on behalf of the **Company** that all qualified applicants will receive consideration for employment without unlawful discrimination based on race, creed, color, national origin, sex, age,

citizens status, disability, marital status, sexual orientation, or that it is an equal employment opportunity employer; and

42.3.4 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

42.3.5 Will furnish all information and reports including an Employment Report before the award of the **Contract** which are required by E.O. 50, the Rules and Regulations promulgated thereunder, and orders of the Department of Business Services, Division of Labor Services (**"DLS"**) and will permit access to its books, records and accounts by the **DLS** for the purposes of investigation to ascertain compliance with such rules, regulations, and orders.

42.4 The **Company** 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 there under. After a hearing held pursuant to the rules of the **DLS**, the Director of the **DLS** may direct the **Commissioner** to impose any or all of the following sanctions:

42.4.1 Disapproval of the **Company**; and/or

42.4.2 Suspension or termination of the **Contract**; and/or

42.4.3 Declaring the **Company** in default; and/or

42.4.4 In lieu of any of the foregoing sanctions, the Director of the **DLS** may impose an employment program.

Failure to comply with E.O. 50 and the rules and regulations promulgated there under, in one or more instances may result in the **Agency** declaring the **Company** to be non-responsible.

The **Company** 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 there under with a **Subcontractor** who is not in compliance with the requirements of E.O. 50 and the rules and regulations promulgated there under.

42.5 The **Company** specifically agrees, as required by Section 6-123 of the Administrative Code, that:

42.5.1 The **Company** will not engage in any unlawful discriminatory practice in violation of Title VIII of the Administrative Code;

42.5.2 every agreement between the **Company** and its **Subcontractors** in excess of $50,000 shall include a provision that the **Subcontractor** shall not engage in any unlawful discriminatory practice as defined in title viii of the Administrative Code (Section 8-101 et. seq.); and

42.5.3 Any failure to comply with this Article 42.5 may subject the **Company** to the remedies set forth in Section 6-123 of the Administrative Code, including, where appropriate, sanctions such as withholding of payment, imposition of an employment program, finding the **Company** to be in default, cancellation of the **Contract**, or any other sanction or remedy provided by **Law** or **Contract**.

ARTICLE 43. LABOR LAW REQUIREMENTS

43.1 The **Company** shall strictly comply with all applicable provisions of the Labor Law, as amended. Such compliance is a material term of this **Contract**.

43.2 The **Company** specifically agrees, as required by Labor Law Section 220 and 220-d, as amended, that:

43.2.1 Hours of **Work**: No laborer, worker, or mechanic in the employ of the **Company**, **Subcontractor** or other person doing or contracting to do the whole or a part of the **Work** contemplated by this **Contract** shall be permitted or required to work more than eight (8) hours in any one (1) calendar **Day**, or more than five (5) **Days** in any one (1) week, except as provided in the Labor Law and in cases of extraordinary emergency including fire, flood, or danger to life or property, or in the case of national emergency when so proclaimed by the President of the United States of America.

43.2.2 In situations in which there are not sufficient laborers, workers and mechanics who may be employed to carry on expeditiously the **Work** contemplated by this **Contract** as a result of such restrictions upon the number of hours and days of labor, and the immediate commencement or prosecution or completion without undue delay of the **Work** is necessary for the preservation of the **Site** and/or for the protection of the life and limb of the persons using the same, such laborers, workers, and mechanics shall be permitted or required to work more than eight (8) hours in any one (1) **Day**; or five (5) **Days** in any one (1) week; provided, however, that upon application of any **Company**, the **Commissioner** shall have first certified to the Commissioner of Labor of the State of New York (hereinafter "Commissioner of Labor") that such public **Work** is of an important nature and that a delay in carrying it to completion would result in serious disadvantage to the public; and provided, further, that such Commissioner of Labor shall have determined that such an emergency does in fact exist as provided in Labor Law Section 220.2.

43.2.3 Failure of the **Commissioner** to make such a certification to the Commissioner of Labor shall not entitle the **Company** to damages for delay or for any cause whatsoever.

43.2.4 Prevailing Rate of Wages: The wages to be paid for a legal day's **Work** to laborers, workers, or mechanics employed upon the **Work** contemplated by this **Contract** or upon any materials to be used thereon shall not be less than the "prevailing rate of wage" as defined in Labor **Law** Section 220, and as fixed by the **Comptroller** in the attached Schedule of Wage Rates and in updated schedules thereof. The prevailing wage rates and supplemental benefits to be paid are those in effect at the time the **Work** is being performed.

43.2.5 Requests for interpretation or correction in the Information for Bidders includes all requests for clarification of the classification of trades to be employed in the performance of the **Work** under this **Contract**. In the event that a trade not listed in the **Contract** is in fact employed during the performance of this **Contract**, the **Company** shall be required to obtain from the **Agency** the prevailing wage rates and supplementary benefits for the trades used and to complete the performance of this **Contract** at the price at which the **Contract** was awarded.

43.2.6 Minimum Wages: Except for employees whose wage is required to be fixed pursuant to Labor Law Section 220, all persons employed by the **Company** and any **Subcontractor**

in the manufacture or furnishing of the supplies, materials, or equipment, or the furnishing of work, labor, or services, used in the performance of this **Contract**, shall be paid, without subsequent deduction or rebate unless expressly authorized by **Law**, not less than the sum mandated by **Law**. Minimum wages shall be the rates fixed by Federal **Law** and regulations.

43.3 Working Conditions: No part of the **Work**, labor or services shall be performed or rendered by the **Company** in any plants, factories, buildings or surroundings or under working conditions which are unsanitary or hazardous or dangerous to the health and safety of employees engaged in the performance of this **Contract**. Compliance with the safety, sanitary and factory inspection **Laws** of the state in which the **Work** is to be performed shall be prima facie evidence of compliance with this article.

43.4 Prevailing Wage Enforcement: The **Company** agrees to pay for all costs incurred by the **City** in enforcing prevailing wage requirements, including the cost of any investigation conducted by or on behalf of the **Agency** or the **Comptroller,** where the **City** discovers a failure to pay prevailing wages by the **Company** or its **Subcontractor(s)**. The **Company** also agrees, that should it fail or refuse to pay for any such investigation, the **Agency** is hereby authorized to deduct from a **Company's** account an amount equal to the cost of such investigation.

43.4.1 The Labor Law Section 220 and Section 220-d, as amended, provide that this **Contract** shall be forfeited and no sum paid for any Work done hereunder on a second conviction for willfully paying less than:

43.4.1(a) The stipulated wage scale as provided in Labor Law Section 220, as amended, or

43.4.1(b) Less than the stipulated minimum hourly wage scale as provided in Labor Law Section 220-d, as amended.

43.4.2 For any breach or violation of either Working Conditions (Article 43.3) and Minimum Wages (Article 43.2.6), the party responsible therefore shall be liable to the **City** for liquidated damages, which may be withheld from any amounts due on any **Contracts** with the **City** of such party responsible, or may be recovered in suits brought by the Corporation Counsel in the name of the **City**, in addition to damage for any other breach of this **Contract**, a sum equal to the amount of any underpayment of wages due to any employee engaged in the performance of this **Contract**. In addition, the **Commissioner** shall have the right to cancel **Contracts** and enter into other **Contracts** for the completion of the original **Contract**, with or without public letting, and the original **Company** shall be liable for any additional cost. All sums withheld or recovered as deductions, rebates, refunds, or underpayment of wages hereunder, shall be held in a special deposit account and shall be paid without interest, on order of the **Comptroller**, directly to the employees who have been paid less than minimum rates of pay as set forth herein and on whose account such sums were withheld or recovered, provided that no claims by employees for such payments shall be entertained unless made within two (2) years from the date of actual notice to the **Company** of the withholding or recovery of such sums by the **City**.

43.4.3 A determination by the **Comptroller** that a **Company** and/or its **Subcontractor** willfully violated Labor Law Section 220 will be forwarded to the **City's** five District Attorneys for review.

43.4.4 The **Company's** or **Subcontractor's** noncompliance with this article and Labor **Law** Section 220, may result in an unsatisfactory performance evaluation and the **Comptroller**

may also find and determine that the **Company** or **Subcontractor** willfully violated the New York Labor **Law**.

43.4.4(a) An unsatisfactory performance evaluation for noncompliance with this article may result in a determination that the **Company** is a non-responsible bidder on subsequent procurements with the **City** and thus a rejection of a future award of a contract with the **City**, as well as any other sanctions provided for by **Law**.

43.4.4(b) Labor **Law** Section 220-b, as amended, provides that when two (2) final determinations have been rendered against a **Company** or **Subcontractor** within any consecutive six (6) year period determining that such **Company** or **Subcontractor** has willfully failed to pay the prevailing rate of wages or to provide supplements in accordance with the Labor **Law** and this article, whether such failures were concurrent or consecutive and whether or not such final determinations concerning separate public work projects are rendered simultaneously, such **Company** or **Subcontractor** shall be ineligible to submit a bid on or be awarded any public work contract with the **City** for a period of five (5) years from the second final determination. If the final determination involves the falsification of payroll records or the kickback of wages or supplements, the **Company** or **Subcontractor** shall be ineligible to submit a bid on or be awarded any public work contract with the **City** for a period of five (5) years from the first final determination.

43.4.4(c) Labor **Law** Section 220, as amended, provides that the **Company** or **Subcontractor** found to have violated this article may be directed to make payment of wages or supplements including interest found to be due, and the **Company** or **Subcontractor** may be directed to make payment of a further sum as a civil penalty in an amount not exceeding twenty-five (25%) percent of the total amount found to be due.

43.5 The **Company** and its **Subcontractors** shall within ten (10) **Days** after mailing of a Notice of Award or written order, post in prominent and conspicuous places in each and every plant, factory, building, and structure where employees of the **Company** and its **Subcontractors** engaged in the performance of this **Contract** are employed, notices furnished by the **City**, in relation to prevailing wages and supplements, minimum wages and other stipulations contained in Section 220 of the Labor **Law**, and the **Company** and its **Subcontractors** shall continue to keep such notices posted in such prominent and conspicuous places until **Final Acceptance** of the supplies, materials, equipment, or **Work**, labor, or services required to be furnished or rendered under this **Contract**.

43.6 The **Company** shall strictly comply with all of the provisions of Articles 43.6.1 through 43.6.5, and provide for all workers, laborers or mechanics in its employ, the following:

43.6.1 Notices Posted At **Site**: Post, in a location designated by the **City**, schedules of prevailing wages and supplements for this **Project**, a copy of all re-determinations of such schedules for the **Project**, the Workers' Compensation **Law** Section 51 notice, all other notices required by law to be posted at the **Site**, the **City** notice that this **Project** is a public works **Project** on which each worker is entitled to receive the prevailing wages and supplements for the occupation at which it or she is working, and all other notices which the **City** directs the **Company** to post. The **Company** shall provide a surface for such notices which is satisfactory to the **City**. The **Company** shall maintain and keep current such notices in a legible manner and shall replace any notice or schedule which is damaged, defaced, illegible or removed for any reason. The **Company** shall post such notices before commencing any **Work** on the **Site** and shall maintain such notices until all **Work** on the **Site** is complete; and

43.6.2 Daily **Site** Sign-in Sheets: Maintain daily **Site** sign-in sheets, and require that **Subcontractors** maintain daily **Site** sign-in sheets for its employees, which include blank spaces for an employee's name to be both printed and signed, job title, date started and Social Security number, the time the employee began **Work** and the time the employee left **Work**, until **Final Acceptance** of the supplies, materials, equipment, or **Work**, labor, or services to be furnished or rendered under this **Contract** unless exception is granted by the Comptroller upon application by the **Agency.** In the alternative, subject to the approval of the CCPO, the **Company** and **Subcontractor** may maintain an electronic or biometric sign-in system, which provides the information required by this Article 43.6.2**;** and

43.6.3 Individual Employee Information Notices: Distribute a notice, to each worker, laborer or mechanic employed under this **Contract**, in a form provided by the **Agency**, that this **Project** is a public work project on which each worker, laborer or mechanic is entitled to receive the prevailing wage and supplements for the occupation at which it or she is working. Worker, laborer or mechanic includes employees of the **Company** and all **Subcontractors** and all employees of suppliers entering the **Site**. Such notice shall be distributed to each worker before it or she starts performing any **Work** of this **Contract**. At the time of distribution, the **Company** shall have each worker, laborer or mechanic sign a statement, in a form provided by the **Agency**, certifying that the worker has received the notice required by this article, which signed statement shall be maintained with the payroll records required by this **Contract**; and

43.6.4 **Site** Laminated Identification Badges: Provide laminated identification badges which indicate the worker's, laborer's or mechanic's name, trade, employer's name and employment starting date (month/day/year). Further, require as a condition of employment on the **Site**, that each and every worker, laborer or mechanic wear the laminated identification badge at all times and that it may be seen by any representative of the **City**; and

43.6.5 Language Other Than English Used On **Site**: Provide the **ACCO** notice when three (3) or more employees (worker and/or laborer and/or mechanic) on the **Site**, at any time, speak a language other than English. The **ACCO** will then provide the **Company** the notices in Article 43.6.1 in that language or languages as may be required. The **Company** is responsible for all distributions under Article 43; and

43.6.6 Provision of Records: The **Company** and **Subcontractor(s)** shall produce within five (5) **Days** on the **Site** of the **Work** and upon a written order of the **Engineer**, the **Commissioner**, the **ACCO**, the **Agency EAO**, or the **Comptroller,** such records as are required to be kept by this Article 43.6; and

43.6.7 The failure of the **Company** or **Subcontractor(s)** to comply with the provisions of Articles 43.6.1 through 43.6.6 may result in the **Commissioner** declaring the **Company** or **Subcontractor(s)** in default and/or the withholding of payments otherwise due under the **Contract.**

43.7 The **Company** and its **Subcontractors** shall keep such employment and payroll records as are required by Section 220 of the Labor **Law**.

43.8 At the time the **Company** makes application for each partial payment and for final payment, the **Company** shall submit to the **Commissioner** a written payroll certification, in the form provided by this **Contract**, of compliance with the prevailing wage, minimum wage and other provisions and stipulations required by Labor **Law** Section 220. This certification of compliance with the

provisions of this article shall be a condition precedent to payment and no payment shall be made to the **Company** unless and until each such certification shall have been submitted to and received by the **Commissioner**.

43.9 This **Contract** is executed by the **Company** with the express warranty and representation that the **Company** is not disqualified under the provisions of Section 220 of the Labor Law for the award of the **Contract**.

43.10 Any breach or violation of any of the foregoing shall be deemed a breach or violation of a material provision of this **Contract**, and grounds for cancellation thereof by the **City**.

ARTICLE 44. PAYROLL REPORTS

44.1 The **Company** shall maintain on the **Site** the original payrolls or transcripts thereof which the **Company** and its **Subcontractor(s)** are required to maintain pursuant to Labor **Law** Section 220. The **Company** and **Subcontractor(s)** shall submit original payrolls or transcripts, subscribed and affirmed by it as true, with each and every payment requisition. The **Company and Subcontractor(s)** shall produce within five (5) **Days** on the **Site** of the **Work** and upon a written order of the **Commissioner**, the **ACCO**, the **Agency EAO**, or the **Comptroller**, such original payrolls or transcripts thereof, subscribed and affirmed by it as true, and the statements signed by each worker pursuant to this Chapter VIII. In addition, the **Company** and **Subcontractor(s)** shall furnish to the **Commissioner** upon written demand any other information to satisfy the **Commissioner** that this Chapter VIII and the Labor **Law**, as to the hours of employment and rates of wages, are being observed. The **Company** shall maintain the payrolls or transcripts thereof for six (6) years from the date of completion of the **Work** on this **Contract**.

44.2 When directed by the **Commissioner**, the **Company** or **Subcontractor** shall provide the **Commissioner** with an attendance sheet for each **Day** on which **Work** is performed on the **Site**. Such attendance sheet shall be in a form acceptable to the **Agency** and shall provide information for employees of the **Company** and **Subcontractor(s)**.

ARTICLE 45. DUST HAZARDS

45.1 Should a harmful dust hazard be created in performing the **Work** of this **Contract**, for the elimination of which appliances or methods have been approved by the Board of Standards and Appeals of the City of New York, such appliances and methods shall be installed, maintained, and effectively operated during the continuance of such harmful dust hazard. Failure to comply with this provision after notice shall make this **Contract** void.

CHAPTER IX
PARTIAL AND FINAL PAYMENTS

ARTICLE 46. CONTRACT PRICE

46.1 The **City** shall pay, and the **Company** agrees to accept, in full consideration for the **Company's** performance of the **Work** subject to the terms and conditions hereof, the lump sum price or unit prices which this **Contract** was awarded, plus the amount required to be paid for any **Extra Work** ordered by the **Commissioner** under Article 32, less credit for any **Work** omitted pursuant to Article 35.

ARTICLE 47. BID BREAKDOWN ON LUMP SUM

47.1 Within the proposal submission, the **Company** shall submit to the **Commissioner** a breakdown of its bid price, or of lump sums bid for items of the **Contract**, showing the various operations to be performed under the **Contract**, as directed in the progress schedule required under Article 15 and as outlined in the "Progress Payment Schedule" Exhibit in Book 2 of the Request for Proposal, and the value of each of such operations, the total of such items to equal the lump sum price bid. Said breakdown must be approved in writing by the **Commissioner** at the time of price proposal submission followed by an approval in writing within fifteen (15) **Days** after the commencement date specified in the Notice to Proceed.

47.2 No partial payment will be approved until the **Company** submits a bid breakdown that is acceptable to the **Resident Engineer**.

47.3 The **Company** shall also submit such other information relating to the bid breakdown as directed by the **Commissioner**. Thereafter, the breakdown may be used only for checking the **Company's** applications for partial payments hereunder, but shall not be binding upon the **City**, the **Commissioner**, for any purpose whatsoever.

ARTICLE 48. PARTIAL PAYMENTS

48.1 From time to time as the **Work** progresses satisfactorily, but not more often than once a month, the **Company** may submit to the **Commissioner** a requisition for a partial payment in the prescribed form, based on the percentage of the completed work done during the payment period for each one of the items identified in the "Progress Payment Schedule" Exhibit in Book 2 of the Request for Proposal.

48.2 Partial payments may be made for materials, fixtures and equipment in advance of their actual incorporation in the **Work**, as the **Commissioner** may approve, and upon the terms and conditions set forth in the General Conditions.

48.3 The **Company** shall also submit to the **Commissioner** in connection with every application for partial payment a verified statement in the form prescribed by the **Comptroller** setting forth the information required under Labor Law Section 220-a.

48.4 Within thirty (30) **Days** after receipt of such satisfactory payment application, the **Resident Engineer** will prepare and certify, and the **Commissioner** will approve, a voucher for a partial payment in the amount of such approved estimate, less any and all deductions authorized to be made by the **Commissioner** under the terms of this **Contract** or by **Law**.

ARTICLE 49. PROMPT PAYMENT

49.1 The Prompt Payment provisions of the **PPB** Rules in effect at the time of the Proposal will be applicable to payments made under this **Contract**. The provisions require the payment to **Company** of interest on payments made after the required payment date, except as set forth in the **PPB** Rules.

49.2 The **Company** shall submit a proper invoice to receive payment, except where the **Contract** provides that the **Company** will be paid at predetermined intervals without having to submit an invoice for each scheduled payment.

49.3 Determination of interest due will be made in accordance with the **PPB** Rules.

49.4 If the **Company** is paid interest, the proportionate share of that interest shall be forwarded by the **Company** to its **Subcontractor(s)**.

49.5 The **Company** shall pay each **Subcontractor** or **Materialman** not later than seven (7) **Days** after receipt of payment out of amounts paid to the **Company** by the **City** for **Work** performed by the **Subcontractor** or **Materialman** under this **Contract**.

49.6 The **Company** shall include in each of its subcontracts a provision requiring each **Subcontractor** to make payment to each of its **Subcontractors** or suppliers for **Work** performed under this **Contract** in the same manner and within the same time period set forth above.

ARTICLE 50. SUBSTANTIAL COMPLETION PAYMENT

50.1 When the **Work** in the opinion of the **Commissioner**, has been substantially but not entirely completed, he/she shall issue a certificate of **Substantial Completion**.

50.2 The **Company** shall submit with the **Substantial Completion** requisition:

50.2.1 A Final Verified Statement of any and all alleged claims against the **City** and any pending dispute resolution procedures in accord with the **PPB** Rules and this **Contract**, in any way connected with or arising out of this **Contract** (including those as to which details may have been furnished pursuant to Articles 17, 33, 34, and 36) setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the **Company** claims the performance of the **Work** or a particular part thereof was delayed, and an itemized statement and breakdown of the amount claimed for each such delay.

50.2.1(a) With respect to each such claim, the **Commissioner**, the **Comptroller** and, in the event of litigation, the Corporation Counsel of the **City** shall have the same right to inspect, and to make extracts or copies of, the **Company's** books, vouchers, records, etc., as is referred to in Articles 17, 33, 34, and 36. Nothing contained in this article is intended to or shall relieve the **Company** from the obligation of complying strictly with Articles 17, 33, 34, and 36. The **Company** is warned that unless such claims are completely set forth as herein required, the **Company** upon acceptance of the **Substantial Completion** payment pursuant to this article, will have waived any such claims.

50.2.2 A **Final Approved Punch List**.

50.2.3 Where required, a request for a substantial or final extension of time.

50.3 The **Commissioner** shall issue a voucher calling for payment of any part or all of the balance due for **Work** performed under the **Contract**, including monies retained under Article 27, less any and all deductions authorized to be made by the **Commissioner**, under this **Contract** or by **Law**, and less twice the amount the **Commissioner** considers necessary to ensure the completion of the balance of the **Work** by the **Company**. Such a payment shall be considered a Partial and not a Final Payment. No **Substantial Completion** payment shall be made under this article where the **Company** shall fail to complete the **Work** within the time fixed for such completion in the Schedule A of the General Conditions, or within the time to which completion

may have been extended, until an extension or extensions of time for the completion of **Work** have been acted upon pursuant to Article 19.

50.4 No further partial payments shall be made to the **Company** after the **Commissioner** issues a Certificate of **Substantial Completion**, except the **Substantial Completion** payment and **Company's** requisition that were properly filed with the **Commissioner** prior to the date of **Substantial Completion**; however, the **Commissioner** may grant a waiver for further partial payments after the date of **Substantial Completion** to permit payments for change order **Work** and/or release of retainage and deposits pursuant to Articles 27 and 30. Such waiver shall be in writing.

50.5 The **Company** acknowledges that nothing contained in this article is intended to or shall in any way diminish the force and effect of Article 19.

ARTICLE 51. FINAL PAYMENT

51.1 After completion and **Final Acceptance** of the **Work**, the **Company** shall submit all required certificates and documents, together with a requisition for the balance claimed to be due under the **Contract**, less the amount authorized to be retained for maintenance under Article 30. A verified statement similar to that required in connection with applications for partial payments shall also be submitted to the **Commissioner**.

51.2 Amended Verified Statement of Claims: The **Company** shall also submit with the final requisition any amendments to the final verified statement of any and all alleged claims against the **City**, and any pending dispute resolution procedures in accord with the **PPB** Rules and this **Contract**, in any way connected with or arising out of this **Contract** (including those as to which details may have been furnished pursuant to Articles 17, 33, 34, and 36.) that have occurred subsequent to **Substantial Completion**, setting forth with respect to each such claim the total amount thereof, the various items of labor and materials included therein, and the alleged value of each such item; and if the alleged claim be one for delay, the alleged cause of each such delay, the period or periods of time, giving the dates when the **Company** claims the performance of the **Work** or a particular part thereof was delayed, and an itemized statement and breakdown of the amount claimed for each such delay. With reference to each such claim, the **Commissioner**, the **Comptroller** and, in the event of litigation, the Corporation Counsel of the **City** shall have the same right to inspect, and to make extracts or copies of, the **Company's** books, vouchers, records, etc., as is referred to in Articles 17, 33, 34, and 36. Nothing contained in this article, is entitled to or shall relieve the **Company** from the obligation of complying strictly with Articles 17, 33, 34, and 36. The **Company** is warned that unless such claims are completely set forth as herein required, the **Company**, upon acceptance of the Final Payment pursuant to Article 52, will have waived any such claims.

51.3 Preparation of Final Voucher: Upon determining the balance due hereunder other than on account of claims, the **Resident Engineer** will prepare and certify, for the Commissioner's approval, a voucher for final payment in that amount less any and all deductions authorized to be made by the **Commissioner** under this **Contract** or by **Law**. In the case of a lump sum **Contract**, the **Commissioner** shall certify the voucher for final payment within thirty (30) **Days** from the date of completion and acceptance of the **Work**, provided all requests for extensions of time have been acted upon.

51.3.1 All prior certificates and vouchers upon which partial payments were made, being merely estimates made to enable the **Company** to prosecute the **Work** more advantageously, shall be subject to correction in the final voucher, and the certification

of the **Resident Engineer** thereon and the approval of the **Commissioner** thereof, shall be conditions precedent to the right of the **Company** to receive any money hereunder. Such final voucher shall be binding and conclusive upon the **Company**.

51.3.2 Payment pursuant to such final voucher, less any deductions authorized to be made by the **Commissioner** under this **Contract** or by **Law**, shall constitute the final payment, and shall be made by the **Comptroller** within thirty (30) **Days** after the filing of such voucher in his/her office.

51.4 The **Company** acknowledges that nothing contained in this article is intended to or shall in any way diminish the force and effect of Article 19.

ARTICLE 52. ACCEPTANCE OF FINAL PAYMENT

52.1 The acceptance by the **Company**, or by anyone claiming by or through it, of the final payment, whether such payment be made pursuant to any judgment of any Court, or otherwise, shall constitute and operate as a release to the **City** from any and all claims of and liability to the **Company** for anything heretofore done or furnished for the **Company** relating to or arising out of this **Contract** and the **Work** done hereunder, and for any prior act, neglect or default on the part of the **City** or any of its officers, agents or employees, excepting only a claim against the **City** for the amounts deducted or retained in accordance with the terms and provisions of this **Contract** or by **Law**, and excepting any claims, not otherwise waived, or any pending dispute resolution procedures which are contained in the verified statement filed with the **Company's** substantial and final requisitions pursuant to Articles 50 and 51.

52.2 The **Company** is warned that the execution by it of a release, in connection with the acceptance of the final payment, containing language purporting to reserve claims other than those herein specifically excepted from the operation of this article, or those for amounts deducted by the **Commissioner** from the final requisition or by the **Comptroller** from the final payment as certified by the **Resident Engineer** and approved by the **Commissioner**, shall not be effective to reserve such claims, anything stated to the **Company** orally or in writing by any officer, agent or employee of the **City** to the contrary notwithstanding.

52.3 Should the **Company** refuse to accept the final payment as tendered by the **Comptroller**, it shall constitute a waiver of any right to interest thereon.

52.4 The **Company**, however, shall not be barred from commencing an action for breach of **Contract** under this provision to the extent permitted by **Law** and by the terms of the **Contract** provided that a detailed and verified statement of claim is served upon the contracting **Agency** and **Comptroller** not later than forty (40) **Days** after the mailing of such final payment. The statement shall specify the items upon which the claim will be based and any such claim shall be limited to such items.

ARTICLE 53. APPROVAL BY ART COMMISSION

53.1 All works of art, including paintings, mural decorations, stained glass, statues, bas-reliefs and other sculptures, monuments, fountains, arches, and other structures of a permanent character intended for ornament or commemoration, and every design of the same to be used in the performance of this **Contract**, and the design of all bridges, approaches, buildings, gates, fences, lamps, or structures to be erected, pursuant to the terms of this **Contract**, shall be submitted to the Art Commission and shall be approved by the Art Commission prior to the erection or placing in the position of the same. The final payment shall not become due or

payable under this **Contract** unless and until the Art Commission shall certify that the design for the **Work** herein contracted for has been approved by the said Art Commission, and that the same has been executed in substantial accordance with the design so approved, pursuant to the provisions of Chapter 37, Section 854 of the **City** Charter, as amended.

CHAPTER X
COMPANY'S DEFAULT

ARTICLE 54. COMMISSIONER'S RIGHT TO DECLARE COMPANY IN DEFAULT PAYMENT

54.1 In addition to those instances specifically referred to in other Articles herein, the **Commissioner** shall have the right to declare the **Company** in default of this **Contract** if:

54.1.1 The **Company** fails to commence **Work** when notified to do so by the **Commissioner**; or if

54.1.2 The **Company** shall abandon the **Work**; or if

54.1.3 The **Company** shall refuse to proceed with the **Work** when and as directed by the **Commissioner**; or if

54.1.4 The **Company** shall, without just cause, reduce its working force to a number which, if maintained, would be insufficient, in the opinion of the **Commissioner**, to complete the **Work** in accordance with the Progress Schedule; or if

54.1.5 The **Company** shall fail or refuse to increase sufficiently such working force when ordered to do so by the **Commissioner**; or if

54.1.6 The **Company** shall sublet, assign, transfer, convert or otherwise dispose of this **Contract** other than as herein specified; or sell or assign a majority interest in the **Company**; or if

54.1.7 The **Company** fails to secure and maintain all required insurance; or if

54.1.8 A receiver or receivers are appointed to take charge of the **Company's** property or affairs; or if

54.1.9 The **Commissioner** shall be of the opinion that the **Company** is or has been unnecessarily or unreasonably or willfully delaying the performance and completion of the **Work**, or the award of necessary subcontracts, or the placing of necessary material and equipment orders; or if

54.1.10 The **Commissioner** shall be of the opinion that the **Company** is or has been willfully or in bad faith violating any of the provisions of this **Contract**; or if

54.1.11 The **Commissioner** shall be of the opinion that the **Work** cannot be completed within the time herein provided therefor or within the time to which such completion may have been extended; provided, however, that the impossibility of timely completion is, in the **Commissioner's** opinion, attributable to conditions within the **Company's** control; or if

54.1.12 The **Work** is not completed within the time herein provided therefor or within the time to which the **Company** may be entitled to have such completion extended; or if

54.1.13 Any statement or representation of the **Company** in the **Contract** or in any document submitted by the **Company** with respect to the **Work**, the **Project**, or the **Contract** (or for purposes of securing the **Contract**) was untrue or incorrect when made; or if.

54.1.14 The **Company** or any of its officers, directors, partners, five (5%) percent shareholders, principals, or other persons substantially involved in its activities, commits any of the acts or omissions specified as the grounds for debarment in the **PPB** Rules.

54.2 Before the **Commissioner** shall exercise his/her right to declare the **Company** in default, the **Commissioner** shall give the **Company** an opportunity to be heard, upon not less than two (2) **Days** notice.

ARTICLE 55. EXERCISE OF THE RIGHT TO DECLARE DEFAULT

55.1 The right to declare in default for any of the grounds specified or referred to in Article 54 shall be exercised by sending the **Company** a notice, signed by the **Commissioner**, setting forth the ground or grounds upon which such default is declared (hereinafter referred to as a "Notice of Default").

55.2 The **Commissioner's** determination that the **Company** is in default shall be conclusive, final and binding on the parties and such a finding shall preclude the **Company** from commencing a plenary action for any damages relating to the **Contract**. If the **Company** protests the determination of the **Commissioner**, the **Company** may commence a lawsuit in a court of competent jurisdiction of the State of New York under Article 78 of the New York Civil Practice Law and Rules.

ARTICLE 56. QUITTING THE SITE

56.1 Upon receipt of such notice the **Company** shall immediately discontinue all further operations under this **Contract** and shall immediately quit the **Site**, leaving untouched all plant, materials, equipment, tools and supplies then on the **Site**.

ARTICLE 57. COMPLETION OF THE WORK

57.1 The **Commissioner**, after declaring the **Company** in default, may then have the **Work** completed by such means and in such manner, by **Contract** with or without public letting, or otherwise, as he/she may deem advisable, utilizing for such purpose such of the **Company's** plant, materials, equipment, tools and supplies remaining on the **Site**, and also such **Subcontractors**, as he/she may deem advisable.

57.2 After such completion, the **Commissioner** shall make a certificate stating the expense incurred in such completion, which shall include the cost of re-letting and also the total amount of liquidated damages (at the rate provided for in the **Contract**) from the date when the **Work** should have been completed by the **Company** in accordance with the terms hereof to the date of actual completion of the **Work**. Such certificate shall be binding and conclusive upon the **Company**, its Sureties, and any person claiming under the **Company**, as to the amount thereof.

57.3 The expense of such completion, including any and all related and incidental costs, as so certified by the **Commissioner**, and any liquidated damages assessed against the **Company**, shall be charged against and deducted out of monies which are earned by the **Company** prior to the date of default. Should the expense of such completion, as certified by the **Commissioner**, exceed the total sum which would have been payable under the **Contract** if it had been completed by the **Company**, any excess shall be paid by the **Company**.

ARTICLE 58. PARTIAL DEFAULT

58.1 In case the **Commissioner** shall declare the **Company** in default as to a part of the **Work** only, the **Company** shall discontinue such part, shall continue performing the remainder of the **Work** in strict conformity with the terms of this **Contract**, and shall in no way hinder or interfere with any **Other Company(s)** or persons whom the **Commissioner** may engage to complete the **Work** as to which the **Company** was declared in default.

58.2 The provisions of this Chapter relating to declaring the **Company** in default as to the entire **Work** shall be equally applicable to a declaration of partial default, except that the **Commissioner** shall be entitled to utilize for completion of the part of the **Work** as to which the **Company** was declared in default only such plant, materials, equipment, tools and supplies as had been previously used by the **Company** on such part.

ARTICLE 59. PERFORMANCE OF UNCOMPLETED WORK

59.1 In completing the whole or any part of the **Work** under the provision of this Chapter X, the **Commissioner** shall have the power to depart from or change or vary the terms and provisions of this **Contract**, provided, however, that such departure, change or variation is made for the purpose of reducing the time or expense of such completion. Such departure, change or variation, even to the extent of accepting a lesser or different performance, shall not affect the conclusiveness of the **Commissioner's** certificate of the cost of completion referred to in Article 57, nor shall it constitute a defense to an action to recover the amount by which such certificate exceeds the amount which would have been payable to the **Company** hereunder but for its default.

ARTICLE 60. OTHER REMEDIES

60.1 In addition to the right to declare the **Company** in default pursuant to this Chapter X, the **Commissioner** shall have the absolute right, in his/her sole discretion and without a hearing, to complete or cause to complete in the same manner as described in Articles 57 and 59, any or all unsatisfactory or uncompleted punch list **Work** that remains after the completion date specified in the Final Approved Punch List. A written notice of the exercise of this right shall be sent to the **Company** who shall immediately quit the **Site** in accordance with the provisions of Article 56.

60.2 The previous provisions of this Chapter X shall be in addition to any and all other legal or equitable remedies permissible in the premises.

60.3 The exercise by the **City** of any remedy set forth herein shall not be deemed a waiver by the **City** of any other legal or equitable remedy contained in this **Contract** or provided under **Law**.

60.4 The expense of such completion, including any and all related and incidental costs, as so certified by the **Commissioner**, shall be charged against and deducted out of monies which have been earned by the **Company** prior to the date of the exercise of the right set forth in

Article 60.1; the balance of such monies, if any, subject to the other provisions of this **Contract**, to be paid to the **Company** without interest after such completion. Should the expense of such completion, as certified by the **Commissioner**, exceed the total sum which would have been payable under the **Contract** if it had been completed by the **Company**, any excess shall be paid by the **Company**.

CHAPTER XI
MISCELLANEOUS PROVISIONS

ARTICLE 61. COMPANY'S WARRANTIES

61.1 In consideration of, and to induce, the award of this **Contract** to the **Company**, the **Company** represents and warrants:

61.2 That it is financially solvent, sufficiently experienced and competent to perform the **Work**; and

61.2.1 That the facts stated in its bid and the information given by it pursuant to the Information for Bidders is true and correct in all respects; and

61.2.2 That it has read and complied with all requirements set forth in the **Contract**.

ARTICLE 62. CLAIMS AND ACTIONS THEREON

62.1 Any claim, that is not subject to dispute resolution under the **PPB** Rules or this **Contract**, against the **City** for damages for breach of **Contract** shall not be made or asserted in any lawsuit, unless the **Company** shall have strictly complied with all requirements relating to the giving of notice and of information with respect to such claims, as herein before provided.

62.2 Nor shall any lawsuit be instituted or maintained on any such claims unless such lawsuit is commenced within six (6) months after the date the **Commissioner** issues a Certificate of **Substantial Completion** pursuant to Article 62; except that:

62.2.1 Any claims arising out of events occurring after the date the **Commissioner** issues a Certificate of **Substantial Completion** and before **Final Acceptance** of the **Work** shall be asserted within six (6) months of **Final Acceptance** of the **Work**;

62.2.2 Any claims for monies deducted, retained or withheld under the provisions of this **Contract** shall be asserted within six (6) months after the date when such monies becomes due and payable hereunder; and

62.2.3 If the **Commissioner** exercises his/her right to terminate the **Contract** pursuant to Article 70, any such lawsuit shall be commenced within six (6) months of the date the **Commissioner** exercises said right.

ARTICLE 63. INFRINGEMENT

63.1 The **Company** shall be solely responsible for and shall indemnify the **City** against any and all claims and judgments for damages for any infringement of copyright and patents or use of patented articles, tools, materials, equipment, appliances or processes in the performance or completion of the **Work**, including all costs and expenses which the **City** shall or may incur or be obligated to pay by reason thereof.

ARTICLE 64. NO CLAIM AGAINST OFFICERS, AGENTS OR EMPLOYEES

64.1 No claim whatsoever shall be made by the **Company** against any officer, agent or employee of the **City** for, or on account of, anything done or omitted to be done in connection with this **Contract**.

ARTICLE 65. SERVICES OF NOTICES

65.1 The **Company** hereby designates the business address specified in its bid, as the place where all notices, directions or other communications to the **Company** may be delivered, or to which they may be mailed. Actual delivery of any such notice, direction or communication to the aforesaid place, or depositing it in a postpaid wrapper addressed thereto in any post office box (P.O. Box) regularly maintained by the United States Postal Service, shall be conclusively deemed to be sufficient service thereof upon the **Company** as the date of such delivery or deposit.

65.2 Such address may be changed at any time by an instrument in writing, executed and acknowledged by the **Company**, and delivered to the **Commissioner**.

65.3 Nothing herein contained shall, however, be deemed to preclude or render inoperative the service of any notice, direction or other communication upon the **Company** personally, or, if the **Company** is a corporation, upon any officer thereof.

ARTICLE 66. UNLAWFUL PROVISIONS DEEMED STRICKEN FROM CONTRACT

66.1 If this **Contract** contains any unlawful provision not an essential part of the **Contract** and which shall not appear to have been a controlling or material inducement to the making thereof, the same shall be deemed of no effect and shall, upon notice by either party, be deemed stricken from the **Contract** without affecting the binding force of the remainder.

ARTICLE 67. ALL LEGAL PROVISIONS DEEMED INCLUDED

67.1 It is the intent and understanding of the parties to this **Contract** that each and every provision of **Law** required to be inserted in this **Contract** shall be and is inserted herein. Furthermore, it is hereby stipulated that every such provision is to be deemed to be inserted herein, and if, through mistake or otherwise, any such provision is not inserted, or is not inserted in correct form, then this **Contract** shall forthwith upon the application of either party be amended by such insertion so as to comply strictly with the **Law** and without prejudice to the rights of either party hereunder.

ARTICLE 68. TAX EXEMPTION

68.1 The **City** is exempt from payment of Federal, State, local taxes and Sales and Compensation Use Taxes of the State of New York and of cities and counties on all materials and supplies sold to the **City** pursuant to the provisions of this **Contract**. These taxes are not to be included in bids. However, this exemption does not apply to tools, machinery, equipment or other property leased by or to the **Company** or a **Subcontractor**, or to supplies and materials which even though they are consumed, are not incorporated into the completed **Work** (consumable supplies), and the **Company** and its **Subcontractors** shall be responsible for and pay any and all applicable taxes, including Sales and Compensation Use Taxes, on such leased tools, machinery, equipment or other property and upon all such unincorporated supplies and materials.

68.2 The **Company** agrees to sell and the **City** agrees to purchase all supplies and materials, other than consumable supplies, required, necessary or proper for or incidental to the construction of the **Project** covered by this **Contract**. The sum paid under this **Contract** for such supplies and materials shall be in full payment and consideration for the sale of such supplies and materials herein.

68.2.1 The **Company** agrees to construct the **Project** and to perform all **Work**, labor and services rendered, necessary, proper or incidental thereto for the sum shown in the bid for the performance of such **Work**, labor and services, and the sum so paid pursuant to this **Contract** for such **Work**, labor, etc., shall be in full consideration for the performance by the **Company** of all its duties and obligations under this **Contract** in connection with said **Work** and labor.

68.3 The purchase by the **Company** of the supplies and materials sold hereunder shall be a purchase or procurement for resale and therefore not subject to the New York State or **City** Sales or Compensation Use Taxes or any such taxes of cities or counties. The sale of such supplies and materials by the **Company** to the **City** is exempt from the aforesaid sales or compensating use taxes. With respect to such supplies and materials, the **Company**, at the request of the **City**, shall furnish to the **City** such Bills of Sale and other instruments as may be required by the **City**, properly executed, acknowledged and delivered assuring to the **City** title to such supplies and materials, free of liens and/or encumbrances, and the **Company** shall mark or otherwise identify all such materials as the property of the **City**.

68.4 Title to all materials to be sold by the **Company** to the **City** pursuant to the provisions of the **Contract** shall immediately vest in and become the sole property of the **City** upon delivery of such supplies and materials to the **Site** and prior to its becoming a part of the permanent structure and/or construction. Notwithstanding such transfer of title, the **Company** shall have the full and continuing responsibility to install such materials and supplies in accordance with the provisions of this **Contract**, protect them, maintain them in a proper condition and forthwith repair, replace and make good any damage thereto, theft or disappearance thereof, and furnish additional materials in place of any that may be lost, stolen or rendered unusable, without cost to the **City**, until such time as the **Work** covered by the **Contract** is fully accepted by the **City**. Such transfer of title shall in no way affect any of the **Company's** obligations hereunder. In the event that, after title has passed to the **City**, any of such supplies and materials are rejected as being defective or otherwise unsatisfactory, title to all such supplies and materials shall be deemed to have been transferred back to the **Company**.

68.5 The purchase by **Subcontractors** of supplies and materials to be sold hereunder shall also be a purchase or procurement for resale to the **Company** (either directly or through other **Subcontractors**) and therefore not subject to the aforesaid Sales or Compensation Use Taxes, provided that the subcontract agreements provide for the resale of such supplies and materials prior to and separate and apart from the incorporation of such supplies and materials into the permanent structure and/or construction and that such subcontract agreements are 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 matters to be provided, and provided further that the subcontract agreements provide separate prices for materials and all other services and matters. Such separation shall actually be followed in practice, including the separation of payments for supplies and materials from the payments for other **Work** and labor and other things to be provided.

68.6 The **Company** and its **Subcontractors** and Materialmen shall obtain any and all necessary **Company** Exempt Purchase Certificates or Resale Certificates from the appropriate governmental **Agency** or **Agencies**, and furnish a **Company** Exempt Purchase Certificate or Resale Certificate to all persons, firms or corporations from which they purchase supplies and materials for the performance of the **Work** covered by this **Contract**.

68.7 In the event any of the provisions of this article shall be deemed to be in conflict with any other provisions of this **Contract** or create any ambiguity, then the provisions of this article shall control.

ARTICLE 69. INVESTIGATION(S) CLAUSE

69.1 The parties to this **Contract** agree to cooperate fully and faithfully with any investigation, audit or inquiry conducted by a United States, a State of New York (State) or a **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 conducted by 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.

69.2 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 examine witnesses under oath concerning the award of or performance under any transaction, agreement, lease, permit, **Contract**, or license entered into with 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;

69.3 If any person refuses to testify for a reason other than the assertion of his/her privilege against self incrimination in an investigation, audit or inquiry conducted by a **City** or State governmental **Agency** or authority empowered directly or by designation to compel the attendance of witnesses and to take testimony under oath, or by the Inspector General of the governmental **Agency** that is a party in interest in, and is seeking testimony concerning the award of, or performance under any transaction, agreement, lease, permit, **Contract**, or license entered into with the **City**, the State, or any political subdivision thereof or any local development corporation within the **City**, then;

69.4 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 (5) days written notice to the parties involved to determine if any penalties should attach for the failure of a person to testify.

69.5 If any non-governmental party to the hearing requests an adjournment, the **Commissioner** who convened the hearing may, upon granting the adjournment, suspend any **Contract**, lease, permit, or license, pending the final determination pursuant to Article 69.7 without the **City** incurring any penalty or damages for delay or otherwise.

69.6 The penalties which may attach after a final determination by the **Commissioner** may include but shall not exceed:

69.6.1 The disqualification for a period not to exceed five (5) years from the date of an adverse determination for any person, or any 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 the **City**; and/or

69.6.2 The cancellation or termination of any and all such existing **City Contracts**, leases, permits or licenses that the refusal to testify concerns and that have not been assigned as permitted under this **Agreement**, 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** 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 **City**.

69.7 The **Commissioner** shall consider and address in reaching his/her determination and in assessing an appropriate penalty the factors in Articles 69.7.1 and 69.7.2. The **Commissioner** may also consider, if relevant and appropriate, the criteria established in Articles 69.7.3 and 69.7.4, in addition to any other information which may be relevant and appropriate:

69.7.1 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.

69.7.2 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.

69.7.3 The nexus of the testimony sought to the subject entity and its **Contracts**, leases, permits or licenses with the **City**.

69.7.4 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 under Article 69.6, provided that the party or entity has given actual notice to the **Commissioner** upon the acquisition of the interest, or at the hearing called for in Article 69.4, 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.

69.8 Definitions:

69.8.1 The term "license" or "permit" as used herein shall be defined as a license, permit, franchise or concession not granted as a matter of right.

69.8.2 The term "person" as used herein 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.

69.8.3 The term "entity" as used herein shall be defined as any firm, partnership, corporation, association, joint venture, or person that receives monies, benefits, licenses, leases, or permits from or through the **City** or otherwise transacts business with the **City**.

69.8.4 The term "member" as used herein shall be defined as any person associated with another person or entity as a partner, director, officer, principal or employee.

69.9 In addition to and notwithstanding any other provision of this **Contract**, the **Commissioner** may in his/her sole discretion terminate this **Contract** upon not less than three (3) **Days** written notice in the event the **Company** fails to promptly report in writing to the **Commissioner** of the Department of Investigations ("DOI") 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 **Company**, or affecting the performance of this **Contract**.

ARTICLE 70. TERMINATION BY THE CITY

70.1 In addition to termination pursuant to any other article of this **Contract**, the **Commissioner** may, at any time, terminate this **Contract** by written notice to the **Company**. In the event of termination, the **Company** shall, upon receipt of such notice, unless otherwise directed by the **Commissioner**:

70.1.1 Stop **Work** on the date specified in the notice;

70.1.2 Take such action as may be necessary for the protection and preservation of the City's materials and property;

70.1.3 Cancel all cancelable orders for material and equipment;

70.1.4 Assign to the City and deliver to the Site or another location designated by the Commissioner, any non-cancelable orders for material and equipment that is not capable of use except in the performance of this Contract and has been specifically fabricated for the sole purpose of this Contract and not incorporated in the Work;

70.1.5 Take no action which will increase the amounts payable by the City under this Contract.

70.2 In the event of termination by the **City** pursuant to this article, payment to the **Company** shall be in accordance with Articles 70.2.1, 70.2.2 or 70.2.3, to the extent that each respective article applies.

70.2.1 Lump Sum Contracts or Items: On all lump sum **Contracts**, or on lump sum items in a **Contract**, the **City** will pay the **Company** the sum of Articles 70.2.1(a) and 70.2.1(b), less all payments previously made pursuant to this **Contract**. On lump sum **Contracts** only, the **City** will also pay the **Company** an additional sum as provided in 70.2.1(c).

70.2.1(a) For **Work** completed prior to the notice of termination, the **Company** shall be paid a pro rata portion of the lump sum bid amount, plus approved change orders, based upon the percent completion of the **Work**, as determined by the **Commissioner**. For the purpose of determining the pro rata portion of the lump sum bid amount to which the **Company** is entitled, the Bid Breakdown submitted in accordance with

Article 47 shall be considered, but shall not be dispositive. The **Commissioner's** determination hereunder shall be final, binding and conclusive.

70.2.1(b) For non-cancelable material and equipment, less salvage value, that is not capable of use except in the performance of this **Contract** and has been specifically fabricated for the sole purpose of this **Contract**, but not yet incorporated in the **Work**, the **Company** shall be paid the lesser of:

70.2.1(b)(i) The direct cost, as defined in Article 70.2.5; or

70.2.1(b)(ii) The fair and reasonable value, whichever is less, of such material and equipment, plus necessary and reasonable delivery costs.

70.2.1(b)(iii) In addition, the **Company** shall be paid five (5%) percent of Article 70.2.1(b)(i) or Article 70.2.1(b)(ii), whichever applies.

70.2.1(c) Except as otherwise provided in Article 70.2.1(d), on all lump sum **Contracts**, the **Company** shall be paid the percentage indicated below applied to the difference between the total lump sum bid amount and the total of all payments made prior to the notice of termination plus all payments allowed pursuant to Articles 70.2.1(a) and 70.2.1(b):

70.2.1(c)(i) Five (5%) percent of the first five million ($5,000,000.) dollars; and

70.2.1(c)(ii) Three (3%) percent of any amount between five million ($5,000,000.) dollars and fifteen million ($15,000,000.) dollars; plus

70.2.1(c)(iii) One (1%) percent of any amount over fifteen million ($15,000,000.) dollars.

70.2.1(d) In the event the City terminates a lump sum **Contract** pursuant to this article within ninety (90) days after registration of the **Contract** with the **Comptroller**, the **Company** shall be paid one (1%) percent of the difference between the lump sum bid amount and the total of all payments made pursuant to this article.

70.2.2 Unit Price Contracts or Items: On all unit price **Contracts**, or on unit price items in a **Contract**, the **City** will pay the **Company** the sum of Articles 70.2.2(a) and 70.2.2(b), less all payments previously made pursuant to this **Contract**:

70.2.2(a) For all completed units, the unit price stated in the **Contract**, and

70.2.2(b) For units that have been ordered but are only partially completed, the **Company** will be paid:

70.2.2(b)(i) A pro rata portion of the unit price stated in the **Contract** based upon the percent completion of the unit and

70.2.2(b)(ii) For non-cancelable material and equipment, payment will be made pursuant to Article 70.2.1(b).

70.2.3 Time and Material Contracts or Items: On all **Contracts** or items in a **Contract** where time and material records are specified as the basis for payment of the **Work**, the **Company** shall be paid in accordance with Article 32, less all payments previously made pursuant to this **Contract**.

70.2.4 Direct Costs: Direct Costs as used in this article shall mean:

70.2.4(a) The actual purchase price of material and equipment, plus necessary and reasonable delivery costs,

70.2.4(b) The actual cost of labor involved in construction and installation at the **Site**, and

70.2.4(c) The actual cost of necessary bonds and insurance purchased pursuant to requirements of this **Contract** less any amounts that have been or should be refunded by the **Company's** sureties or insurance carriers.

70.2.4(d) Direct Cost shall not include overhead.

70.3 In no event shall any payments under this article exceed the **Contract** price for such items.

70.4 All payments pursuant to this article shall be in the nature of liquidated damages and shall be accepted by the **Company** in full satisfaction of all claims against the **City**.

70.5 The **City** may deduct or set off against any sums due and payable pursuant to this article, any deductions authorized by this **Contract** or by **Law** (including but not limited to liquidated damages) and any claims it may have against the **Company**. The **City's** exercise of the right to terminate the **Contract** pursuant to this article shall not impair or otherwise effect the **City's** right to assert any claims it may have against the **Company** in a plenary action.

70.6 Where the **Work** covered by the **Contract** has been substantially completed, as determined in writing by the **Commissioner**, termination of the **Work** shall be handled as an omission of **Work** pursuant to Articles 35 and 39, in which case a Change Order will be issued to reflect an appropriate reduction in the **Contract** Sum, or if the amount is determined after final payment, such amount shall be paid by the **Company**.

ARTICLE 71. CHOICE OF LAW, CONSENT TO JURISDICTION AND VENUE

71.1 This **Contract** shall be deemed to be executed in the **City** of New York, State of New York, regardless of the domicile of the **Company**, and shall be governed by and construed in accordance with the **Laws** of the State of New York and the **Laws** of the United States, where applicable.

71.2 The parties agree that any and all claims asserted against the **City** arising under this **Contract** or related thereto shall be heard and determined in the courts of the State of New York ("New York State Courts") located in the **City** and County of New York. To effect this **Contract** and intent, the **Company** agrees:

71.2.1 If the **City** initiates any action against the **Company** in Federal Court or in New York State Court, service of process may be made on the **Company** either in person, wherever such **Company** may be found, or by registered mail addressed to the

Company at its address as set forth in this **Contract**, or to such other address as the **Company** may provide to the **City** in writing; and

71.2.2 With respect to any action between the **City** and the **Company** in New York State Court, the **Company** hereby expressly waives and relinquishes any rights it might otherwise have:

71.2.2(a) To move to dismiss on grounds of forum non conveniens;

71.2.2(b) To remove to Federal Court; and

71.2.2(c) To move for a change of venue to a New York State Court outside New York County.

71.2.3 With respect to any action brought by the **City** against the **Company** in Federal Court located in the **City**, the **Company** expressly waives and relinquishes any right it might otherwise have to move to transfer the action to a United States Court outside the **City**.

71.2.4 If the **Company** commences any action against the **City** in a Court located other than in the **City** and State of New York, upon request of the **City**, the **Company** shall either consent to a transfer of the action to a State 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 **Company** shall consent to dismiss such action without prejudice and may thereafter reinstate the action in a State Court of competent jurisdiction in the **City**.

71.3 If any provision(s) of this article is held unenforceable for any reason, each and all other provision(s) shall nevertheless remain in full force and effect.

ARTICLE 72. PARTICIPATION IN AN INTERNATIONAL BOYCOTT

72.1 The **Company** agrees that neither the **Company** nor any substantially owned affiliated company is participating or shall participate in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations of the United States Department of Commerce promulgated thereunder.

72.2 Upon the final determination by the Commerce Department or any other **Agency** of the United States as to, or conviction of the **Company** or a substantially-owned affiliated company thereof, participation in an international boycott in violation of the provisions of the Export Administration Act of 1979, as amended, or the regulations promulgated thereunder, the **Comptroller** may, at his/her option, render forfeit and void this **Contract**.

72.3 The **Company** shall comply in all respects, with the provisions of Section 6-114 of the Administrative Code and the rules and regulations issued by the **Comptroller** thereunder.

ARTICLE 73. PARTICIPATION BY MINORITY-OWNED AND WOMEN-OWNED BUSINESS ENTERPRISES IN CITY PROCUREMENT

73.1 M/WBE PROGRAM

Local Law No. 129 of 2005 added Section 6-129 to the Administrative Code of the City of New York. The local law creates a program for participation by minority-owned and women-owned

business enterprises (MBEs and WBEs) in City procurement. As stated in the 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. The contract provisions contained herein are made pursuant to Local Law 129, and the rules of the Department of Small Business Services ("DSBS") promulgated thereunder.

If this Contract is subject to the Minority-Owned and Women-Owned Business Enterprise (" M/WBE") Program created by Local Law 129, the specific requirements of M/WBE participation for this Contract are set forth in Schedule B of the Contract (entitled the "Subcontractor Utilization Plan"), and are detailed below.

The Company must comply with all applicable M/WBE requirements for this Contract.

Article 73.2 below, sets forth provisions related to the participation goals for construction and professional services contracts.

Article 73.3 below, sets forth miscellaneous provisions related to the M/WBE program.

73.2 PARTICIPATION GOALS FOR CONSTRUCTION AND PROFESSIONAL SERVICES CONTRACTS

73.2.1 The **Target Subcontracting Percentage** applicable to this Contract is set forth on Schedule B, Part I to this Contract (as outlined in the RFP section of this Contract).

The **"Target Subcontracting Percentage"** is the percentage of the total Contract which Agency anticipates that the prime Company for this Contract would in the normal course of business award to one or more subcontractors for amounts under $1 million for construction and professional services.

A prospective Company may seek a full or partial pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Article 73.2.10 below. To apply for the full or partial waiver of the **Target Subcontracting Percentage**, a prospective Company must complete Part III (Page 4) of Schedule B, and must submit such request no later than seven (7) days prior to the date and time the bids or proposals are due, in writing to the Agency by e-mail at _____ or via facsimilie at _____. Bidders/proposers who have submitted requests will receive a response no later than two (2) calendar days prior to the date bids or proposals are due, provided, however, that if that date would fall on a weekend or holiday, a response will be provided by close-of-business on the business day before such weekend or holiday date.

73.2.2 The **Subcontractor Participation Goals** established for this Contract are set forth on Schedule B, Part I to this Contract, as outlined in the RFP section of this Contract.

The **Subcontractor Participation Goals** represent a percentage of the total dollar value of all construction and/or professional services subcontracts under this Agreement for amounts under $1 million.

73.2.3 If **Subcontractor Participation Goals** have been established for this Contract, Company agrees or shall agree as a material term of the Agreement that, with respect to the total amount of the Agreement to be awarded to one or more subcontractors pursuant to

subcontracts for amounts under $1 million, Company shall be subject to the **Subcontractor Participation Goals**, unless the goals are modified by Agency in accordance with Local Law 129 and Part A, Section 11 below.

73.2.4 If **Subcontractor Participation Goals** have been established for this Contract, a prospective Company shall be required to submit with its bid or proposal, as applicable, a completed Schedule B, Part II Subcontractor Utilization Plan (see Page 2-3) indicating: (a) the percentage of work it intends to subcontract; (b) the percentage of work it intends to award to subcontractors for amounts under $1 million; (c) in cases where the prospective Company intends to award subcontracts for amounts under $1 million, a description of the type and dollar value of work designated for participation by MBEs and/or WBEs; and (d) the general time frames in which such work by MBEs and/or WBEs is scheduled to occur. In the event that this Subcontractor Utilization Plan indicates that the bidder or proposer, as applicable, does not intend to award the **Target Subcontracting Percentage,** the bidder or proposer, as applicable shall be deemed non-responsive, unless Agency has granted the bidder or proposer, as applicable, a pre-award waiver of the **Target Subcontracting Percentage** in accordance with Local Law 129 and Article 73.2.10 below:

THE BIDDER/PROPOSER MUST FULLY COMPLETE THE SUBCONTRACTOR UTILIZATION PLAN INCLUDED HEREIN (SCHEDULE B, PART II). BIDS/PROPOSALS WHICH DO NOT INCLUDE A COMPLETED SUBCONTRACTOR UTILIZATION PLAN WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS A FULL WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE IS GRANTED (SCHEDULE B, PART III). IN THE EVENT THAT THE SUBCONTRACTOR UTILIZATION PLAN (SCHEDULE B, PART II) INDICATES THAT THE BIDDER/PROPOSER DOES NOT INTEND TO AWARD THE TARGET SUBCONTRACTING PERCENTAGE, THE BID/PROPOSAL WILL BE DEEMED TO BE NON-RESPONSIVE, UNLESS THE AGENCY HAS GRANTED A WAIVER OF THE TARGET SUBCONTRACTING PERCENTAGE (SCHEDULE B, PART III).

73.2.5 Where a Subcontractor Utilization Plan has been submitted, the Company shall, within 30 days of issuance by Agency of a notice to proceed, 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. In the event that the Company's selection of a subcontractor is disapproved, the Company shall have a reasonable time to propose alternate subcontractors.

73.2.6 M/WBE firms must be certified by DSBS in order for the Company to credit such firms' participation toward the attainment of the M/WBE participation goals. Such certification must occur prior to the firms' commencement of work as subcontractors. A list of M/WBE firms may be obtained from the DSBS website at www.nyc.gov/getcertified, by e-mailing DSBS at MWBE@sbs.nyc.gov, by calling the DSBS Certification Hotline at (212) 513-6311, or by visiting or writing DSBS at 110 William Street, New York, New York, 10038, 7th floor. Eligible firms that have not yet been certified may contact DSBS (as indicated above) in order to seek certification.

73.2.7 Where a Subcontractor Utilization Plan has been submitted, the Company shall, with each voucher for payment, and/or periodically as Agency may require, submit statements, certified under penalty of perjury, which shall include, but not be limited to, the total amount paid to subcontractors (including subcontractors that are not MBEs or WBEs);

the names, addresses and contact numbers of each MBE and WBE hired as a subcontractor pursuant to such plan as well as the dates and amounts paid to each MBE or WBE. The Company shall also submit, along with its voucher for final payment, the total mount paid to subcontractors (including subcontractors that are not MBEs or WBEs); and 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 hired pursuant to such plan, the work performed by, and the dates and amounts paid to each.

73.2.8 If payments made to, or work performed by MBEs or WBEs are less than the amount specified in the Company's Subcontractor Utilization Plan, Agency shall take appropriate action, in accordance with Local Law 129 and Article II below, unless the Company has obtained a modification of its Subcontractor Utilization Plan in accordance with Local Law 129 and Article 73.2.11 below.

73.2.9 Where a Subcontractor Utilization Plan has been submitted, and the Company requests a change order, the value of which exceeds 10 percent of the Agreement, Agency shall establish participation goals for the work to be performed pursuant to the change order.

73.2.10 Pre-award waiver of **Target Subcontracting Percentage**. Agency may grant a full or partial waiver of the **Target Subcontracting Percentage** to a bidder or proposer, as applicable, who demonstrates--before submission of the bid or proposal--that it has legitimate business reasons for proposing the level of subcontracting in its Subcontractor Utilization Plan. In making its determination, Agency shall consider factors that shall include, but not be limited to, whether the bidder or proposer, as applicable, 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 for under one million dollars represented by the **Target Subcontracting Percentage**. In making such determination, Agency may consider whether the Subcontractor Utilization Plan is consistent with past subcontracting practices of the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, and whether the bidder or proposer, as applicable, has made good faith efforts to identify portions of the Contract that it intends to subcontract.

73.2.11 Modification of Subcontractor Utilization Plan. A Company may request a modification of its Subcontractor Utilization Plan (**Subcontractor Participation Goals**) after award of this Contract. The Agency may grant such request if it determines that the Company has established, with appropriate documentary and other evidence, that it made reasonable, good faith efforts to meet the **Subcontractor Participation Goals**. In making such determination, Agency shall consider evidence of the following efforts, as applicable, along with any other relevant factors:

(a) The Company 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 Company provided notice of specific opportunities to participate in the Contract, in a timely manner, to minority and women's business organization;

(c) The Company sent written notices, by certified mail or facsimile, in a timely manner, to advise MBEs and WBEs that their interest in the Contract was solicited;

(d) The Company 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 Subcontractor Utilization Plan, and for which the Company claims an inability to retain MBEs or WBEs;

(e) The Company held meetings with MBEs and/or WBEs prior to the date their bids or proposals were due, for the purpose of explaining in detail the scope and requirements of the work for which their bids or proposals were solicited;

(f) The Company made efforts to negotiate with MBEs and/or WBEs as relevant to perform specific subcontracts;

(g) Timely written requests for assistance made by the Company to Agency's M/WBE liaison officer and to DSBS;

(h) Description of how recommendations made by DSBS and Agency 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.

Agency's M/WBE officer shall provide written notice to the Company of the determination.

73.2.12 If **Subcontractor Participation Goals** have been established for this Contract, Agency shall evaluate and assess the Company's performance in meeting those goals, and such evaluation and assessment shall become part of the Company's overall contract performance evaluation.

73.3 MISCELLANEOUS

73.3.1 The Company shall take notice that, if this solicitation requires the establishment of a Subcontractor Utilization Plan, the resulting contract may be audited by DSBS to determine compliance with Section 6-129. See 6-129(e)(10). Furthermore, such resulting contract may also be examined by the City's Comptroller to assess compliance with the Subcontractor Utilization Plan.

73.3.2 Pursuant to DSBS rules, construction contracts that include a requirement for a Subcontractor Utilization Plan shall not be subject to the law governing Locally Based Enterprises set forth in Administrative Code Section 6-108.1.

73.3.3 DSBS is available to assist contractors and potential contractors in determining the availability of MBEs and WBEs to participate as subcontractors, and in identifying opportunities that are appropriate for participation by MBEs and WBEs in contracts.

73.3.4 Prospective contractors are encouraged to enter into joint ventures with MBEs and WBEs.

73.3.5 By submitting a bid or proposal the Company hereby acknowledges its understanding of the M/WBE requirements set forth herein and the pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, and if awarded this Contract, the Company hereby agrees to comply with the M/WBE requirements of this Contract and pertinent provisions of Local Law 129 of 2005, and any rules promulgated thereunder, all of which shall be deemed to be material terms of this Contract. The Company hereby

agrees to make all reasonable, good faith efforts to solicit and obtain the participation of M/WBE's to meet the required **Subcontractor Participation Goals.**

73.4 ENFORCEMENT

73.4.1 If Agency determines that a bidder or proposer, as applicable, has, in relation to this procurement, violated Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, Agency may disqualify such bidder or proposer, as applicable, from competing for this Contract and the Agency may revoke such bidder's or proposer's prequalification status, if applicable.

73.4.2 Whenever Agency believes that the Company or a subcontractor is not in compliance with Section 6-129 or the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency shall send a written notice to the Company describing the alleged noncompliance and offering an opportunity to be heard. Agency shall then conduct an investigation to determine whether such Company or subcontractor is in compliance.

73.4.3 In the event that the Company has been found to have violated Section 6-129, the DSBS rules promulgated pursuant to Section 6-129, or any provision of this Contract that implements this Section 6-129, including, but not limited to any Subcontractor Utilization Plan, Agency may determine that one of the following actions should be taken:

(a) entering into an agreement with the Company allowing the Company to cure the violation;

(b) revoking the Company's pre-qualification to bid or make proposals for future contracts;

(c) making a finding that the Company is in default of the Contract;

(d) terminating the Contract;

(e) declaring the Company 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) assess liquidated damages or reduction of fees, provided that liquidated damages may be based on amounts representing costs of delays in carrying out the purposes of the program established by Section 6-129, or in meeting the purposes of the Contract, the costs of meeting utilization goals through additional procurements, the administrative cost of such contract to the Company that has been found to be in noncompliance; or

(k) take any other appropriate remedy.

73.4.4 Whenever Agency has reason to believe that an MBE 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), or has violated any provision of Section 6-129, Agency shall notify the commissioner of DSBS who shall determine whether the certification of such business enterprise should be revoked.

73.4.5 Statements made in any instrument submitted to Agency pursuant to Section 6-129 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 or WBE in any instrument submitted pursuant to Section 6-129 shall, in addition, be grounds for revocation of its certification.

73.4.6 The Company's record in implementing its Subcontractor Utilization Plan shall be a factor in the evaluation of its performance. Whenever a contracting agency determines that a Company's compliance with a Subcontractor Utilization Plan has been unsatisfactory, the agency shall, after consultation with the city chief procurement officer, file an advice of caution form for inclusion in VENDEX as caution data.

ARTICLE 74. ANTITRUST

74.1 The **Company** hereby assigns, sells and transfers to the **City** all right, title and interest in and to any claims and causes of action arising under the antitrust **Laws** of New York State or of the United States relating to the particular goods or services purchased or procured by the **City** under this **Contract**.

ARTICLE 75. INTENTIONALLY LEFT BLANK

ARTICLE 76. HEALTH INSURANCE COVERAGE

76.1 If the price for which this **Contract** was awarded exceeds $100,000, or if the price for which this **Contract** was awarded when combined with other construction or services contracts awarded the **Company** by the **City** in the year prior to award of this **Contract** exceeds $100,000, the **Company** shall be required to submit the annexed Health Insurance Coverage Form following registration of the **Contract**, upon request of the **Agency.**

ARTICLE 77. PROHIBITION OF TROPICAL HARDWOODS

77.1 Tropical hardwoods, as defined in Section 165 of the New York State Finance **Law** ("Finance **Law**"), shall not be utilized in the performance of this **Contract** except as expressly permitted by Section 165 of the Finance **Law**.

ARTICLE 78. SECTION U – CONTRACT REQUIREMENTS APPLYING TO WORK RELATED TO PRIVATELY OWNED UTILITY FACILITIES

78.0 The **Company** is hereby notified that pursuant to the law and franchise agreements issued by the **City**, certain private utility companies named in Schedule U-1 ("the **Companies"**) own and/or operate surface and/or subsurface facilities within the limits of this **Contract**. The existence of these facilities impact the productivity of the City work called for in the **Contract**. In order to improve coordination of the City construction with the private utility facilities, and to minimize the potential for delays to the City work and disruption to the public, the **City** has entered into a separate agreement with the **Companies** regarding work in this contract related to private utility facilities owned and/or operated by such Companies ("Utility Agreement"). Pursuant to this **Agreement** the following requirements shall apply to the **Company** for this

project with respect to facilities owned and/or operated by the **Companies** named in Schedule U-1.

78.1 During the Design of this contract, to the extent reasonably possible, the **Companies** endeavored to identify the type, location, and estimated quantities of work related to their facilities. The locations of these facilities and the standard details and methods for supporting, protecting, upgrading/replacing, and/or working around them, have been indicated on the plans and/or listed in the specifications for this contract, and a schedule of estimated quantities of utility work expected to be encountered on this contract has been listed on Schedule U-2.

78.2 The **Company** is hereby notified that the **City** deems the private utility work identified on the plans and/or listed in the Specifications to be known conditions which may impact the performance of, and/or interfere with, City work. The duration of the contract as shown in Schedule A thus includes the time which may be necessary for the **Company** to remove, repair, protect, support, shift, temporarily remove and replace, work around and/or work in the presence of the **Companies'** facilities, or remove existing and install new facilities as described on the plans and/or specifications pertaining to private utility work of the contract during the progress of the City work. The duration of contract shown in Schedule A also includes the time which may be necessary for the company to perform whatever portion of the private utility work which the company elects to perform with its own forces or by specialty contractors retained by it.

78.3 Compensation for the private utility Work is a matter of adjustment between the **Company** and the **Companies**. In particular, the **City** will not compensate the **Company** for any direct and/or indirect costs related to the private utility Work, including, but not limited to, lost profit, increased overhead, additional costs due to any delays, or any other impact costs. Upon receipt of a Notice of Award from the **City**, the **Company** shall immediately commence negotiations with each of the **Companies** concerning the manner in which and the price for which the **Company,** through its own forces or by others hired by it, will perform and be paid by the **Company** for all necessary private utility Work as defined above that the **Company(ies)** choose(s) not to perform with its(their) own forces or by specialty contractors hired by it (them) ("Agreement"). (Specialty Company's work is limited to (i) installation and removal, (ii) cleanup and disposal of hazardous materials, (iii) splicing live electrical and telecommunications facilities, and (iv) work not traditionally performed by general construction contractors.) Payment to the **Company** by the **Company** for the private utility Work shall be made on a monthly basis, and is due within 30 days of the **Company's** approval of the invoice submitted by the **Company.**

78.4 The **Companies** have provided an Engineer's Estimate of the quantity of each of the types of utility work expected to be encountered in the contract in Schedule U-2. Although the parties may negotiate an Agreement in any format or manner they deem fit, the **Company** is hereby advised that the **Companies** have previously certified to the **City** that they will agree to compensate the **Company** on-a unit price basis according to the Quantity and Types of utility work expected to be encountered on this Contract as stated in Schedule U-2. The **Company** shall notify the **City** upon concluding an Agreement with each of the Companies, which shall be binding and final once concluded. If, however, within four (4) weeks of the award of the contract, but prior to the start of construction, any of the **Companies** and the **Company** have not concluded an Agreement as described above, then the **Company** and the affected **Company(ies)** hereby agree to submit any dispute regarding compensation for performing the utility work as identified in Schedule U-2 to a binding arbitration process as described in Paragraph 8 below. The City will endeavor to schedule the commencement of the contract until after the Company has negotiated an agreement with each of the **Companies**, and/or concludes the Binding Arbitration process described in Paragraph 8. However, in the event the **City** determines that construction must begin prior to the conclusion of the negotiations, both parties shall agree to

complete the arbitration within 3 weeks, or no more than 7 weeks after the issuance of the Notice of Award.

78.5 If during construction the **Company** encounters a utility related work that it believes is not covered by the **Agreement** as described above, then the Company shall immediately notify the **Company** in writing, with a copy to the **City,** describing the nature and location of the utility work in question. The **Company** then has five (5) business days to investigate the conditions and then:

78.5.1 Advise the **Company** and the **City** in writing that no such work related to its facilities exists at the location in question, and hence that the **Company** may proceed with **City** work without providing for such work.

78.5.2 Advise the Company and the **City** in writing that the **Agreement** negotiated pursuant to Paragraph (4), above, provides for the work in question, specifying the exact unit items and/or terms of the **Agreement** that cover the work;

78.5.3 Advise the **Company** and the **City** in writing that it intends to perform the necessary work itself, including, but not limited to, relocating its facility out of the way of the proposed City work. In this case, the **Company** shall provide at the same time, a written schedule for the performance of the work it proposes to perform, which shall be subject to approval by the **City** based on its impact to the **Company's** currently approved progress schedule. Upon approval of the **Company's** schedule by the **City**, the **Company** shall provide access to the work site to the **Company** and/or any contractors hired by it to perform this work; or,

78.5.4 Reasonably specify in writing the scope of work to be performed by the **Company** on behalf of the **Company** that is not covered under the **Agreement** negotiated pursuant to Paragraph (4), including, but not limited to, relocating, supporting, and/or protecting the **Company's** facilities, and/or shifting the **City** facility, and/or otherwise changing its operations to work in the presence of the **Company's** facilities. Should the **Company** elect this option, it must adequately define, and provide an initial price offer for, the work required to be performed.

78.6 Upon receipt of the **Company's** determination pursuant to paragraphs 5.1, 5.2, or 5.4, above, the **Company** shall determine and communicate to the **Company** in writing within three (3) business days, reasonable means and methods of performing the work defined by the **Company.** These means and methods are subject to approval of the **Company**, which shall not be unreasonably withheld. If, however, the **Company** objects to the **Company's** proposed means and methods then it shall define an alternate method of construction.

Upon receipt of the **Company's** approval or its proposed alternate method of construction, the **Company** shall commence performance of the work defined by the **Company** as soon as possible, and shall perform the work in a good, workmanlike, and efficient manner, using the means and methods approved by the **Company**, in order to permit the City work to proceed in the most expeditious manner possible, but without imposing unreasonable and/or unnecessary costs on the **Company**. It is expressly understood by all parties that the **City's** rights pursuant to Article 4 of the **Agreement** apply to private utility work performed pursuant to this section.

78.7 In the event of any dispute between the **Company(ies)** and the **Company** regarding any issue related to the performance of, or payment for, utility work, including, but not limited to, any indirect or impact costs incurred by the **Company** due to the utility work and/or to the existence

of facilities owned or operated by the **Company(ies)** on the line of the work, the **Company(ies)** and the **Company** hereby agree to submit to each other a "Final Offer," in writing, by certified mail. Each party shall then have three business days to consider each other's Final Offer. In the event that neither party accepts the other's Final Offer within those three days, the **Company(ies)** and the **Company** agree to immediately submit the dispute to binding arbitration as described in Paragraph 8.

During the process of any arbitration, the **Company(ies)** and the **Company** shall maintain separate records of the actual quantity and cost of labor, materials, and equipment expended, and to provide copies of this information to the other party on a daily basis for reconciliation. Should either party disagree in any way with the records maintained and provided by the other, such exception should be noted in writing to the other. However, these records ate solely for the benefit of presentation to the arbitrator, whose decision may not necessarily be based on these records and in any event is final. Both parties should be aware that the **City** will not confirm or deny the accuracy of any records maintained by either party. While the arbitration is pending, the **Company** shall pay the **Company** on a monthly basis, based on the price offered by the **Company** to the **Company** for the performance of the work.

78.8 The arbitration of the issues described above shall be conducted pursuant to the Construction Industry Arbitration Rules of the American Arbitration Association (hereinafter "the Rules" and "AAA") in effect on the date the arbitration is initiated except as set forth herein. The arbitration award shall be final and binding upon the parties to the arbitration and judgment upon the award may be entered in a court having jurisdiction.

a) Once an arbitrator(s) has been appointed by the AAA, the arbitration shall be scheduled as promptly as possible given the arbitrator(s) and the parties' schedules.

b) No later than seven days prior to the first arbitration hearing, **Company** and **Company** shall submit to the arbitrator(s), and to each other, a summary of each party's respective position and such other information as is deemed appropriate, along with a copy of each party's Final Offer as specified in paragraph 7.

c) The arbitration shall be conducted and concluded in two days.

d) On the morning of the first day of the arbitration, the **Company** and/or representatives shall have 3-1/2 hrs to make a presentation of its claim to the arbitrator. During its presentation, **Company** shall not be permitted to produce any documents or cost records which have not already been provided to the **Company.** The **Company** shall be permitted to produce any analysis or description of its claim which has been prepared for the purpose of its presentation.

e) After lunch, the **Company** and/or its representatives shall have two hours to ask the **Company** questions about its claim and its presentation. Thereafter the arbitrator(s) shall have two hours to ask **Company** questions about its claim and its presentation.

f) On the morning of the second day of the arbitration, the **Company** and/or its representatives shall have 3 1/2 hours to make. a presentation of its claim to 'the arbitrator. During its presentation, the **Company** shall not be permitted to produce any documents or cost records which have not already been provided to the **Company.** The **Company** shall be permitted to produce any analysis or description of its claim which has been prepared for the purpose of its presentation.

g) After lunch, the **Company** and/or its representatives shall have two hours to ask the **Company** questions about its claim and its presentation. Thereafter the arbitrator(s) shall have two hours to ask the **Company** questions about its claim and its presentation.

h) Subject to the above time limitations, the arbitrator(s) may conduct the arbitration in such manner as the arbitrator(s) deems reasonable.

i) The arbitrator(s) shall then have three (3) business days to select in writing, as the arbitrator ('s) award, that party's Final Offer which appears to be more reasonable, based on the presentations at the arbitration hearings.

j) The arbitrator shall have no discretion to grant an award other than one of the two Final Offers submitted by the parties.

k) Any award for work that has already been performed shall be paid on the 7th day after receipt of the arbitrator's decision, or on the 30th day after completion of the work, whichever is later. Payment for work not yet completed at the time of the arbitrator's decision shall be paid within 30 days of completion of work. Interest shall accrue from the date payment is due at the rate of 9% per annum. Either party may cause judgment to be entered in accordance with the arbitrator(s) decision in a court in the State of New York, County of New York.

l) The arbitrator's fees and any other costs of the arbitration shall be initially shared equally by **Company** and **Company**. The non-prevailing party shall then pay all arbitrator's fees and costs of the arbitration and shall reimburse the prevailing party for its share of such fees and costs theretofore paid.

m) The parties may, at any time, settle any matter submitted to arbitration.

78.9 The **Company** and all subcontractors hired by it agree to waive any rights they may have, if any, under law, contract or otherwise to compel the **City** to assert any right the **City** may have; including the issuance of any directives or so-called "order outs" under the New York City Administrative Code, to require any or all of the **Companies** to maintain, repair, replace, protect, support, shift, alter, relocate, and/or remove utility facilities in connection with the work to be performed under this contract. However, nothing in this section shall preclude the **City** from exercising its rights under the Law to issue such a directive to the **Company**.

78.10 Each of the named **Companies**, at its option, shall be named as an additional insured on all insurance policies required to be maintained under this contract. In the event that a **Company** opts to be so named as an additional insured, the actual incremental cost, if any, to the **Company** of providing such insurance coverage shall be borne by that **Company**. The **Company** shall provide a written statement from its insurance provider documenting the actual cost of this added coverage to the **Company**. Under no circumstances shall the cost of insurance coverage on behalf of any **Company** be borne by the **City**. Nothing in this paragraph shall be interpreted to imply the City's acceptance of any additional responsibility or liability for any matter related to the performance of private utility work. In particular, the Company and the **Company** bear joint and full responsibility to ensure that any private utility work performed by the **Company** is in compliance with all applicable government and Company regulations.

78.11 The **Companies**, by virtue of a prior agreement with the **City**, have agreed to perform their obligations described in this section. It is expressly understood that the cost of private utility work shall not be a charge against the City, but shall be a matter for adjustment between the **Company** and the **Company** or **Companies** concerned. The **City** and the **Company** agree that

the **Companies** are third party beneficiaries of this section of the contract. The provisions of this section shall govern in all cases where **Company** property interferes with or is about to be disturbed by the City work, notwithstanding any other provision of the **Contract**.

78.12 The **Company** agrees that the provisions of this section are material provisions of the contract, and that the **Company's** failure to comply with the procedures set forth above are sufficient for the **Commissioner** to declare the **Company** in default pursuant to Article 48 of Part D.

78.13 The **Company** is hereby advised that New York State Labor Law applies to public work. The work described in this Section U of the **Contract** is not public work.

78.14 The **Company** is hereby advised that companies required to be named as Additional Insured in Part C, Schedule "A" own and/or operate facilities on which work will be performed pursuant to contract unit items payable by the City. The insurance requirements in Paragraph 10 of this Section U apply to: (i) additional Companies, if any, who were not named in Schedule "A" but which have work described in Section U; and (ii) additional coverage, if any, Companies named in Schedule "A" may require for the work described in his Section U.

ARTICLE 79. CONFLICTS OF INTEREST

79.1 Section 2604 of the **City** Charter and other related provisions of the **City** Charter, the Administrative Code and the Penal Law are applicable under the terms of this **Contract** in relation to Conflicts of Interest and shall be extended to **Subcontractors** authorized to perform work, labor and services pursuant to this **Contract** and further, it shall be the duty and responsibility of the **Company** to so inform its respective **Subcontractors**. Notice is hereby given that, under certain circumstances, penalties may be invoked against the donor as well as the recipient of any form of valuable gift.

ARTICLE 80. MERGER CLAUSE

80.1 The Written **Contract** herein, contains all the terms and conditions agreed upon by the parties hereto, and no other agreement, oral or otherwise, regarding the subject matter of this **Contract** shall be deemed to exist or to bind any of the parties hereto, or to vary any of the terms contained herein.

ARTICLE 81. STATEMENT OF WORK

81.1 The **Company** shall furnish all labor and materials and perform all **Work** in strict accordance with the **Specifications** and **Addenda** thereto, numbered _____.

ARTICLE 82. COMPENSATION TO BE PAID TO COMPANY

82.1 The **City** will pay and the **Company** will accept in full consideration for the performance of the **Contract**, subject to additions and deductions as provided herein, the total sum of: _____ Dollars, ($_____), this said sum being the Amount at which the **Contract** was awarded to the **Company** at a public letting thereof, based upon the **Company's** bid for the **Contract**.

HEALTH INSURANCE COVERAGE FORM

[To be completed and submitted upon request of the **Agency** if the price for which this **Contract** was awarded exceeds $100,000, or if the price for which this **Contract** was awarded when combined with other construction or services contracts awarded the **Contractor** by the **City** in the year prior to award of this **Contract** exceeds $100,000.]

Please answer the following questions. Please take notice that the answers to these questions, or a failure or refusal to answer, may be made publicly available.

1. _____ [name of **Contractor**] offers health insurance to its employees.

   ☐ Yes ☐ No ☐ N/A (**Contractor** has fewer than 2 employees) ☐ Refuse to answer

   ☐ Employee health insurance provided by 3rd party, e.g., union (specify) _____

   ☐ Employer covers some employees (describe) _____

2. If the answer to Question 1 is "Yes," _____ [name of **Contractor**] makes such coverage available to employee spouses and domestic partners on an equal basis.
   [NOTE: if **Contractor** covers employees only, but covers neither spouses nor domestic partners, answer "Yes"]

   ☐ Yes ☐ No ☐ Refuse to answer

_____ _____
Name Date

_____
Title

SECTION 1.04

EXECUTION OF THE CONTRACT

NOTE: Prior to execution of the Contract, the Construction Contracting Entity of the Company shall furnish evidence that it has entered into a proper agreement with the Engineering Entity of the Company. This evidence may be a copy of the signed agreement between the two Entities, or a notarized affidavit signed by both Entities indicating that such an agreement exists and has been executed.

Book 1
Section 1.04

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SECTION 1.04 EXECUTION OF THE CONTRACT

1.04. 1. Execution

IN WITNESS WHEREOF, The Commissioner of the Department of Transportation on behalf of The City of New York and the Company, have executed this agreement in quadruplicate, two parts of which are to remain with the Commissioner, one other to be filed with the Comptroller of the City, and the fourth to be delivered to the Company.

THE CITY OF NEW YORK

By_____
Commissioner, Department of Transportation

_____
(Name of Company)

By_____
(Member of Firm or Officer of Corporation)

(Where Company is a Corporation, add):
Attest:

_____
Secretary (Seal)

1.04.2. Acknowledgment by Commissioner

State, City and County of New York, ss.:

On this_____day of_____, 20___,
before me personally came_____
to me known and known to me to be the _____
Commissioner of the Department of Transportation of The City of New York, the person described as such in and who as such executed the foregoing instrument and he acknowledged to me that he executed the same as Commissioner for the purposes therein mentioned.

_____
Notary Public or Commissioner of Deeds

* * * * * * * * * * *

1.04.3. Acknowledgment by Individual

State, City and County of New York, ss.:

On this_____day of_____, 20___,
before me personally came_____
_____
to me known and known to me to be the same person described in and who executed the foregoing instrument and he acknowledged to me that he executed the same for the purposes therein mentioned.

_____
Notary Public or Commissioner of Deeds

1.04.4. Acknowledgment by Corporation

State, City and County of New York, ss.:

On this_____day of_____, 20___,
before me personally came_____
who being by me duly sworn, did depose and say that he resides in the City
of_____; that he is the_____
of the_____
the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation: that the meal affixed to the said instrument is such corporate 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 or Commissioner of Deeds

* * * * * * * * * * *

1.04.5. Acknowledgment by Partnership

State, City and County of New York, ss.:

On this_____day of_____, 20___,
before me personally came_____
_____
to me known and known to me to be a member of_____
_____, the firm described in and which executed the foregoing instrument and he acknowledged to me that he subscribed the name of said firm thereto on behalf of said firm for the purposes therein mentioned.

_____
Notary Public or Commissioner of Deeds

APPROPRIATION

1.04.6. Certificate of the Commissioner of
the Department of Transportation

In conformity with the provisions of Section 93c-3.0 of the Administrative Code of The City of New York, it is hereby certified that estimated cost of the work, materials and supplies required by the within Contract, amounting to_____
Dollars ($_____)
is chargeable to the appropriation of the Department of Transportation, for the
year _____entitled

I hereby certify that the specifications contained in this contract comply w terms of the Budget to my best information and belief.

_____
Commissioner, Department of Transportation

* * * * * * * * * * *

1.04.7. Comptroller's Certificate

The City of New York,_____, 20___,
In pursuance of the provisions of Section 93c-3.0 of the Administrative Code of The City of New York, I hereby certify that there remains unapplied and unexpended a balance of the appropriation or fund____
_____
_____
applicable to this Contract, sufficient to pay the estimated expense of executing the same,
viz.: S_____

_____
Deputy and Acting Comptroller

1.04.8. Restoration Bond

"INTENTIONALLY LEFT BLANK"

PERFORMANCE BOND 1

1.04.9. Performance Bond

KNOW ALL MEN BY THESE PRESENTS, That we,_____

_____

_____

hereinafter referred to as the "Principal," and_____

_____

_____

_____

_____

_____
hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as "The City," or to its successors and assigns, in the penal sum of

_____

_____

_____

($_____) Dollars, lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors. administrators, successors, and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with The City for

_____

_____

_____

_____
a copy of which Contract is annexed to and hereby made a part of this Bond as though herein set forth in full;

PERFORMANCE BOND 2

Now, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns, shall well and faithfully perform the said Contract and all modifications, amendments, additions and alterations thereto that may hereafter be made, according to its terms and its true intent and meaning, including repair and/or replacement of defective work and guarantees of maintenance for the periods stated in the Contract, and shall fully indemnify and save harmless The City from all costs and damage which it may suffer by reason of failure so to do, and shall fully reimburse and pay The City for all outlay and expense which The City may incur in making good any such default, and shall protect the said City of New York against, and pay any and all amounts, damages, costs and judgments which may or shall be recovered against said City or its officers or agents of which the said City of New York may be called upon to pay to any person or corporation by reason of any damages arising or growing out of the doing of said work, or the repair or maintenance thereof, or the manner of doing the same, or the neglect of the said PRINCIPAL, or his (their, its) agents or servants, or the improper performance of the said work by the said PRINCIPAL, or his (their, its) agents or servants, or the infringement of any patent or patent rights by reason of the use of any materials furnished or work done as aforesaid or otherwise, then this obligation shall be null and void, otherwise to remain in full force and effect.

The Surety (Sureties), for value received, hereby stipulates and agrees, if requested to do so by the City, to fully perform and complete the Work to be performed under the Contract, pursuant to the terms, conditions, and covenants thereof, if the City determines that the Principal, for any cause, has failed or neglected to fully perform and complete such Work. The Surety (Sureties) further agrees to commence and diligently perform the Work specified in the Contract, including physical site work, within twenty-five (25) business days after written notice thereof from the City and to complete all Work within such time as the City may fix. The Surety and the City reserve all rights and defenses each may have against the other; provided, however, that the Surety expressly agrees that its reservation of rights shall not provide a basis for non-performance of its obligation to commence and complete all Work as provided herein.

The Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties) and its bond shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or to the said Contract or the Work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any Work to be performed or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments, waivers, assignments subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

PERFORMANCE BOND 3

IN WITNESS WHEREOF, the Principal and the Surety (Sureties) have hereunto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to
be signed by their proper officers, this_____day of_____,20_____

(Seal) _____(L.S.)

By_____

_____
Surety

(Seal)

By_____

_____
Surety

(Seal)

By_____

_____
Surety

(Seal)

By_____

_____
Surety

(Seal)

By_____

_____
Surety

Bond Premium Rate _____

Bond Premium Cost_____

If the Company (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Company (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.
There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the Contract.

PERFORMANCE BOND 4

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of_____)
ss .:
County of_____)

On this_____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 _____of_____
_____
the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation, and that he signed his name thereto by like order.

_____

* * * * * * * * * * *

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of_____)
ss .:
County of_____)

On this_____day of _____, 20___,
before me personally appeared_____
to me known and known to me to be one of the members of the firm of_____
_____
described in and which executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

PERFORMANCE BOND 5

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of_____)
ss .:
County of_____)

On this_____day of_____,20___, before me personally appeared_____ to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.

Each executed bond should be accompanied by (a) appropriate acknowledgments of the respective parties; (b) appropriate duly certified copy of Power of Attorney or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety; (c) a duly certified extract from By-laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued, and (d) duly certified copy of latest published financial statement of assets and liabilities of Surety.

* * * * * * * * * * *

Affix Acknowledgments and Justification of Sureties.

PAYMENT BOND 1

1.04.10. Payment Bond

KNOW ALL MEN BY THESE PRESENTS, That we,_____

_____

_____

_____

hereinafter referred to as the "Principal," and_____

_____

_____
hereinafter referred to as the "Surety" ("Sureties") are held and firmly bound to THE CITY OF NEW YORK, hereinafter referred to as "The City," or to its successors and assigns, in the penal

sum of_____

_____

_____

_____

($_____) Dollars, lawful money of the United States, for the payment of which said sum of money well and truly to be made, we, and each of us, bind ourselves, our heirs, executors, administrators, successors and assigns, jointly and severally, firmly by these presents.

WHEREAS, the Principal is about to enter, or has entered, into a Contract in writing with

The City for_____

_____

_____
a copy of which Contract is annexed to and hereby made a part of this bond, as though herein set forth in full;

Now, THEREFORE, the conditions of this obligation are such that if the Principal, his or its representatives or assigns or other subcontractors to whom work under this contract is sublet and his or their successors and assigns shall promptly pay or cause to be paid all lawful claims for.

PAYMENT BOND 2

(a) Wages and compensation for labor performed and services rendered by all persons engaged in the prosecution of the work under said contract, and any amendment or extension thereof or addition thereto, whether such persons be agents, servants or employees of the Principal or of any such subcontractor, including all persons so engaged who perform the work of laborers or mechanics at or in the vicinity of the site of the project regardless of any contractual relationship between the Principal or such subcontractors, or his or their successors or assigns, on the one hand and such laborers or mechanics on the other, but not including office employees not regularly stationed at the site of the project; and

(b) Materials and supplies (whether incorporated in the permanent structure or not), as well as teams, fuels, oils, implements or machinery furnished, used or consumed by said Principal or any subcontractor at or in the vicinity of the site of the project in the prosecution of the work under said contract and any amendment or extension thereof or addition thereto; then this obligation shall be void; otherwise to remain in full force and effect.

This bond is subject to the following additional conditions, limitations and agreements:

(a) The Principal and Surety (Sureties) agree that this bond shall be for the benefit of any Materialman or laborer having a just claim, as well as The City itself.

(b) All persons who have performed labor, rendered services or furnished materials and supplies, as aforesaid, shall have a direct right of action against the Principal and his, its or their successors and assigns, and the Surety (Sureties) herein, or against either or both or any of them and their successors and assigns. Such persons may sue in their own name, and may prosecute the suit to judgment and execution without the necessity of joining with any other person as party plaintiff.

(c) The Principal and Surety (Sureties) agree that neither of them will hold The City liable for any judgment for costs or otherwise, obtained by either or both of them against a laborer or Materialman in a suit brought by either a laborer or Materialman under this bond for moneys allegedly due for performing work or furnishing material.

(d) The Surety (Sureties) or its successors and assigns shall not be liable for any compensation recoverable by an employee or laborer under the Workmen's Compensation Law.

(e) In no event shall the Surety (Sureties), or its successors or assigns, be liable for a greater sum than the penalty of this bond or be subject to any suit, action or proceeding hereon that is instituted by any person, firm, or corporation hereunder later than two (2) years after the complete performance of said contract and final settlement thereof.

PAYMENT BOND 3

The Principal, for himself and his successors and assigns, and the Surety (Sureties), for itself and its successors and assigns, do hereby expressly waive any objection that might be interposed as to the right of The City to require a bond containing the foregoing provisions, and they do hereby further expressly waive any defense which they or either of them might interpose to an action brought hereon by any person, firm or corporation, including subcontractors, Materialmen and third persons, for work, labor, services, supplies or material performed, rendered, or furnished as aforesaid upon the ground that there is no law authorizing The City to require the foregoing provisions to be placed in this bond.

And the Surety (Sureties), for value received, for itself and its successors and assigns, hereby stipulates and agrees that the obligation of said Surety (Sureties), and its bonds shall be in no way impaired or affected by any extension of time, modification, omission, addition, or change in or of the said contract or the work to be performed thereunder, or by any payment thereunder before the time required therein, or by any waiver of any provisions thereof, or by any assignment, subletting or other transfer thereof or of any part thereof, or of any work to be performed, or any moneys due or to become due thereunder; and said Surety (Sureties) does hereby waive notice of any and all of such extensions, modifications, omissions, additions, changes, payments. waivers, assignments, subcontracts and transfers, and hereby expressly stipulates and agrees that any and all things done and omitted to be done by and in relation to assignees, subcontractors, and other transferees shall have the same effect as to said Surety (Sureties) as though done or omitted to be done by or in relation to said Principal.

IN WITNESS WHEREOF, the Principal and the Surety (Sureties), have here unto set their hands and seals, and such of them as are corporations have caused their corporate seals to be hereunto affixed and these presents to

be signed by their proper officers, this_____day of_____ _____, 20_____

(Seal) _____
Principal
By_____

(Seal) _____
Surety
By_____

PAYMENT BOND 4

(Seal) _____
Surety
By_____

(Seal) _____
Surety
By_____

(Seal) _____
Surety
By_____

(Seal) _____
Surety
By_____

If the Company (Principal) is a partnership, the bond should be signed by each of the individuals who are partners.

If the Company (Principal) is a corporation, the bond should be signed in its correct corporate name by a duly authorized officer, agent, or attorney-in-fact.

There should be executed an appropriate number of counterparts of the bond corresponding to the number of counterparts of the contract.

PAYMENT BOND 5

ACKNOWLEDGMENT OF PRINCIPAL, IF A CORPORATION

State of_____)
ss .:
County of_____)

On this_____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 _____of_____ _____ the corporation described in and which executed the foregoing instrument; that he knows the seal of said corporation; that one of the seals affixed to said instrument is such seal; that it was so affixed by order of the directors of said corporation; and that he signed his name thereto by like order.

_____

* * * * * * * * *

ACKNOWLEDGMENT OF PRINCIPAL, IF A PARTNERSHIP

State of_____)
ss .:
County of_____)

On this_____day of_____, 20___, before me personally appeared_____ to me known and known to me to be one of the members of the firm of_____ _____ described in and who executed the foregoing instrument and he acknowledged to me that he executed the same as and for the act and deed of said firm.

PAYMENT BOND 6

ACKNOWLEDGMENT OF PRINCIPAL, IF AN INDIVIDUAL

State of_____)
ss .:
County of_____)

On this _____day of _____, 20___, before me personally appeared_____
to me known and known to me to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same.

_____

Each executed bond should be accompanied by (a) appropriate acknowledgments of the respective parties; (b) appropriate duly certified copy of Power of Attorney or other certificate of authority where bond is executed by agent, officer or other representative of Principal or Surety; (c) a duly certified extract from by-laws or resolutions of Surety under which Power of Attorney or other certificate of authority of its agent, officer or representative was issued, and (d) duly certified copy of latest published financial statement of assets and liabilities of Surety.
Affix Acknowledgments and Justification of Sureties.

* * * * * * * * *

SECTION 1.05

SCHEDULE "A"

SCHEDULE "A"
Bonding, Contractual, and Insurance Requirements

ITEM	**REFERENCE**	**REQUIREMENTS**
Bid Bond		Not Required
Performance Security	Administrative Requirements, Book 1, Section 1.03, Agreement, Article 25	Required;100% of Contract Price
Payment Security	Administrative Requirements, Book 1, Section 1.03, Agreement, Article 26	Required; 100% of Contract Price
Retained Percentage	Administrative Requirements, Book 1, Section 1.03, Agreement, Article 29	5% of Each Payment
Maintenance and Guarantee	Administrative Requirements, Book 1, Section 1.03, Agreement, Article 30	1% of Contract Price Book for a period of one year after date of Final Acceptance of the last item of work to be certified.
Term of Completion	Administrative Requirements, Book 1, Section 1.03, Agreement, Article 20.	____CCD Term of completion is defined as the sum of the following durations: Pre-construction and construction duration. Term of Completion is reached when all of the project scope is substantially complete. The term of completion is to be defined by the Company but not to exceed 1460 ccd.
Pre-Construction Duration	Engineering Requirements, Book 2: Volume 2 Exhibit H**,** Special Provisions, Article 63	____CCD Pre-Construction Duration is the duration in consecutive calendar days (ccd) from the day the Notice to Proceed (NTP) is given to the day the Construction Duration commences. The term of completion is to be defined by the Company but not to exceed 365 ccd.
Construction Duration	Engineering Requirements, Book 2: Volume 2 Exhibit H, Special Provisions, Article 63	_____ CCD Construction Duration is the duration in consecutive

ITEM	**REFERENCE**	**REQUIREMENTS**
		calendar days (ccd) from the day the Company mobilizes at the site for the purpose of executing the proposed scope of work to the date that such work is deemed by the City to be substantially complete. The term of completion is to be defined by the Company but not to exceed **1095** ccd.
Liquidated Damages	Engineering Requirements, Book 2: Volume 2 Exhibit H, Special Provisions, Article 63	**$3,000** per calendar day, for each consecutive day (ccd) that the Pre-Construction duration exceeds the duration specified by the Company. **No limit.**
Incentive	Engineering Requirements, Book 2: Volume 2 Exhibit H, Special Provisions, Article 63	**$16,000** per calendar day, for each day of project completion prior to the Construction Duration as defined here and submitted by the Company in its Technical Proposal, up to the maximum of **200** calendar days (maximum **$3,200,000**).
Disincentive	Engineering Requirements, Book 2: Volume 2 Exhibit H, Special Provisions, Article 63	**$16,000** per calendar day, for each day of project completion after the Construction Duration as defined here and submitted by the Company in its Technical Proposal. **No limit.**
Subcontracts	Administrative Requirements, Book 1, Contract, Article 23	_____% To be completed by the Company and submitted with its Technical Proposal for NYCDOT's approval
Insurance	Administrative Requirements, Book 1, Contract	Coverage indicated by (X) below required under the Contract

For all insurance coverage required under the Contract, the Company will provide two (2) executed copies of the insurance policies no later than thirty (30) days after the commencement of work. No

contract payments will be accepted for processing until such policies are received and approved. Failure to provide required policies shall be grounds for default.

Insurance certificates, policies and endorsements shall be sent to Contracts/Purchase Section, 40 Worth Street, Room 824, New York, NY 10013.

The Following Coverage Shall Be Provided if Marked With an "X":

(X)	Workers Compensation	Statutory Amount
(X)	Employer's Liability	$1,000,000 Per Occurrence
(X)	Commercial General Liability: Combined Single Limit – Bodily Injury and Property Damage	$5,000,000 Per Occurrence $10,000,000 aggregate/policy year. **(City of New York including its officials and employees, NYCT, SIRTOA and the Metropolitan Transportation Authority (MTA) including its subsidiaries and affiliates Added as Additional Insurers)**
(X)	Automobile Liability: Combined Single Limit – Bodily Injury and Property Damage	$1,000,000.00 per accident The following coverage must be provided: (X) Comprehensive Form (X) Hired (X) Owned (X) Non-Owned **(City of New York including its officials and employees, NYCT, and the Metropolitan Transportation Authority (MTA) including its subsidiaries and affiliates Added as Additional Insurers)** If vehicles are used for transporting hazardous materials, the Company shall provide pollution liability broadened coverage for covered autos (endorsement CA 99 48) as well as proof of MCS 90
(X)	Unemployment Insurance	Statutory
(X)	Professional Liability Insurance	$1,000,000 Per Occurrence
(X)	Personal Property of the City	$25,000 Per Occurrence
(X)	Builders Risk	All risk/completed value. 100% of Total Contract Amount. (City of New York and the Company named as loss payee for the work in order of precedence, as their interests may appear.)
( )	Jones Act	
( )	US Longshoreman's and Harbor Worker	

	Compensation Act	
(X)	Railroad Protective Liability	$2,000,000.00 per occurrence $6,000,000.00 aggregate **NYCT, and the Metropolitan Transportation Authority (MTA) including its subsidiaries and affiliates are the Named Insurers** **(City of New York including its officials and employees Added as Additional Insurers)**
(X)	Pollution/Environmental Liability Insurance	$5,000,000.00 Per Occurrence **(City of New York including its officials and employees, NYCT, SIRTOA and the Metropolitan Transportation Authority (MTA) including its subsidiaries and affiliates Added as Additional Insurers)**

REFER TO BOOK 2: VOLUME 2 ENGINEERING REQUIREMENTS EXHIBIT G FOR ADDITIONAL INFORMATION ON RAILROAD INSURANCE REQUIREMENTS

SECTION 1.06

GENERAL PROVISIONS

Note: In case of conflicts between the General Provisions and the Agreement, the Agreement will govern.

Book 1
Section 1.06

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REFER TO BOOK 2: VOLUME 2 – ENGINEERING REQUIREMENTS, EXHIBIT H – SPECIAL PROVISIONS FOR ADDITIONAL INFORMATION.

SECTION 1.06 GENERAL PROVISIONS

1.06.1. - Work Described.

The Company, shall furnish all the labor, materials and equipment, etc., necessary or proper for the purpose of executing the contract work, and in a good, substantial and workmanlike manner, in strict accordance with the plans, the specifications and the directions of the Commissioner, and contract herein contained or hereto annexed; the Company shall regulate, grade, pave or repave with the specified pavement on the designated foundation, and set or reset or construct such curbs, and lay or relay or construct such sidewalks, and set or reset header stones, manholes, etc., as may be required; all as herein provided; and maintain said work as stipulated in this contract. Any work or materials that may have been accidentally omitted in the description of the work, but which is clearly implied, shall be furnished by the Company the same as if it had been specifically stated, without any additional charge to the City.

1.06.2. - Understanding of the Plans and Specifications.

The Company hereby distinctly and expressly declares and acknowledges that, before the signing of this contract, it has carefully read the same, and the whole thereof, together with and in connection with the plans and specifications, and that it has made such examination of this contract and of said plans and specifications, and material required to be furnished and the location where said work is to be done, and such investigation of the work required to be done as to enable it to thoroughly understand the intention of the same, and the requirements, covenants, agreements, stipulations and restrictions contained in this contract and in said plans and specifications; and distinctly agrees that it will not hereafter make any claim or demand upon the City based upon or arising out of any alleged misunderstanding or misconception on its part of the said requirements, covenants, stipulations and restrictions; and that any information given to the Company by the Commissioner or others as to the quantities in the work, prior to or during the progress of the work, shall have no bearing or effect whatsoever upon the total amount of work to be paid for in the final settlement.

1.06.3. - Conflicting Plans and Specifications.

Anything shown on the plans and not mentioned in the specifications, or mentioned in the specifications and not shown on the plans, shall have the same effect as if shown or mentioned, respectively, in both.

Should any conflict occur in or between the plans and specifications, the Company shall be deemed to have estimated on the more expensive way of doing the work unless it shall have asked for and obtained a decision in writing from the Commissioner before the submission of its price proposal, as to what shall govern.

Any doubt as to the meaning of this contract and the specifications thereof or any obscurity as to the wording of them, or any discrepancy between them, or any discrepancy between figures and drawings will be explained by the Commissioner upon written request by the proposer during the proposal period. The Commissioner’s explanation will be accepted by the Company, who hereby agrees to execute the work in accordance with such explanation, and to make no charge or claim for any extra or additional work or damage on account thereof.

1.06.4. - Deviations from Plans and Specifications.

No deviation from the plans and specifications will be allowed, unless the same has been previously authorized by and written permission therefore obtained from the Commissioner.

1.06.5. - Measurement of Work and Materials.

All quantities of work and materials to be paid for will be measured and determined according to the plans or working drawings to be issued from time to time and specifications, when the work conforms thereto. No allowance will be made on any part of the work for any excess above the quantities required by such plans, lines and specifications. Should the dimensions of any part of the work, or of the materials, be less than those required by the plans, the actual quantities only will be allowed in measurement.

1.06.6. - Workmanship, Contract and Standard Drawings.

All workmanship shall be first class in every particular and all materials and construction shall be as hereinafter more particularly described and in accordance with the Contract Plans and the Standard Drawings on file in the office of the Commissioner, all of which shall also form part of these specifications.

Wherever any feature of the work is not fully set forth in these specifications, it shall be understood that the same be governed by the rules of the best modern practice, as determined by the Commissioner.

1.06.7. - All Work and Materials Necessary to be Furnished.

It is especially understood and agreed by the Company that anything, whether materials or labor, which may not be shown, indicated or described on either the plans or in the specifications, but which is necessary for the proper operation and perfect completion of the entire work under this contract according to the true intent and meaning of the plans and specifications, shall be furnished by it as part of its contract without any extra cost to the City as though it were herein particularly set forth or shown on the plans.

1.06.8. - Definitions of Terms.

Whenever in the specifications and contract the following terms, words, expressions or pronouns in place of them are used, the meaning and intent shall be interpreted as follows:

Whenever it is provided that anything is "to be" or "to be done," "if" or "as" or "when" or "where approved," "required," "directed," "prescribed," "permitted," "ordered," "designated," "deemed necessary," or "satisfactory," or words of like import, it shall be taken to mean and intend, approved, required, directed, prescribed, permitted, ordered, deemed necessary or satisfactory, as the case may be, by the Commissioner.

Whenever the words "desirable," 'suitable" "sufficient," "satisfactory," or others of a similar purport are used, it is hereby agreed that the desirability, suitability, sufficiency, satisfactoriness, or other denominated condition shall be as determined by the Commissioner.

Whenever the term "railroad area" is used, it refers to and means the area below the existing bridges and any other portion of the area below the existing bridges that the railway companies occupy. Whenever the word "approach" is used, it refers to and means the abutting pavement that has to be adjusted to fit the new work.

Whenever reference is made herein to any other specifications, plan or section of these specifications, it shall mean the latest revision thereof in effect at the time of invitation to price proposal, unless otherwise specifically provided.

When a tentative revision of a specification is in effect which is later than the latest standard specification, the tentative revision shall govern.

1.06.9. – Copies of Executed Contract Furnished to the Company.

After the award of the contract, the Company will be furnished with four (4) copies of the executed contract. Additional copies, if available, will be furnished to the Company, when requested.

1.06.10. - Supplementary Contract Drawings and Specifications.

When, in the opinion of the Commissioner, it becomes necessary to more fully explain the work to be done or to illustrate the work further or to show any changes which may be required, supplementary drawings and specifications will be prepared by the Commissioner or will be forwarded by the Commissioner if they are prepared by a collaborating agency. Four (4) prints of each of these drawings and four (4) sets of these specifications will be furnished to the Company. These supplementary drawings and specifications shall be binding upon the Company with the same force as the Contract Plans and Specifications.

No work affected by the supplementary drawings and specifications shall be done if the revisions occasioned thereby require an adjustment in the prices bid, until a written agreement has been reached and the Company has received written authorization from the Commissioner to proceed with the work.

1.06.11. - Company to Verify Dimensions.

The Company shall verify all dimensions and details, on the drawings and other data received from the Commissioner and shall notify it of all errors, omissions, conflicts and discrepancies found therein. Notice of such errors shall be given before the Company proceeds with the work. Figures shall be used in preference to small scale drawings.

1.06.12. - Copies to Subcontractors.

The Company shall furnish each of its Subcontractors and material men copies of such portions of the plans, supplementary drawings, and specifications as may be required for its work.

1.06.13. - Shop and Working Drawings.

(A) <u>General</u>

The Company shall promptly prepare and submit accurate and complete shop and working drawings for all parts of the work (including drawings showing the locations and details of steel reinforcement) as may be required for the proper performance of the work, and such other detail drawings, diagrams, photographs or bulletins as may be demanded by the Commissioner, in accordance with the plans and specifications. It shall submit these shop and working drawings as directed herein, and have them approved by the appropriate agency as specified, before any work covered by these drawings shall be undertaken. In addition, any electrical drawing which requires the approval of the Bureau of Electrical Control shall have its stamp of approval affixed thereon before work covered by said drawings may be undertaken.

(B) Scope

Shop and working drawings shall accurately and distinctly represent the following:

1. All working and erection dimensions.

2. Arrangements and sectional views.

3. Necessary details, including complete information for making necessary connections with other work.

4. Kinds of materials and finishes.

5. All other information requested by the Commissioner, and as required under other headings of the Specifications.

(C) Structural Steel Shop Drawings

Structural steel shop drawings shall show all dimensions and details. They shall include erection, camber and match marking diagrams; lists of field rivets, bolts, nuts and other parts for structural steel, castings and metal parts. Shop drawings for castings shall be so complete that the parts may be duplicated without reference to patterns, other drawings, or individual shop practice. Shipping statements for castings shall contain the actual weight of each member or piece.

(D) Steel Reinforcement Shop Drawings

Steel reinforcement shop drawings shall be made to a sufficiently large scale to show clearly the arrangement, splicing and spacing of the reinforcement bars. The drawings shall show the location of construction joints and shall give all pertinent dimensions of the concrete construction, to the end that the details and lengths of bars may be readily checked. They shall show the bars in their true position, tying in the reinforcement steel with the concrete and structural steel construction

(E) Electrical Shop and Working Drawings

Electrical shop and working drawings shall show complete wiring and installation details, and shall include the following:

1. Equipment details and ratings.

2. Conduit, cable and wiring runs and layouts.

3. Conduit, cable, cabinet and box support details.

4. Cabinet and box connection diagrams.

5. Complete wiring diagrams.

6. Any other items and details which the Commissioner may require.

(F) Sizes of Shop and Working Drawings

All shop and working drawings shall be made with ink on tracing paper and shall be of the standard size 34" x 22", which includes a border of 2" on the left and a border of 1/2" on the other three sides. Sketches may be 8-1/2" x 11" including 1/4" border. Each drawing shall be dated, numbered and shall have an identifying title.

(G) Submission of Shop and Working Drawings

The Company shall submit the following number of prints:

1. Three (3) for each structural shop or working drawing, and for each mechanical drawing not having electrical work.

2. Five (5) for each electrical drawing and for each mechanical drawing having electrical work.

A satisfactory drawing will be stamped "Approved", be dated, and one copy thereof will be returned to the Company. Should the drawing be not approved, one copy of the drawing with the corrections and changes indicated thereon will be returned to the Company, and the Company shall independently check and make such corrections and changes, and again submit prints of the drawing for approval in the number specified above. Each submission of drawings shall be accompanied by a letter of transmittal in triplicate. If the drawings show variations from the contract requirements because of standard shop practice or other reasons, the Company shall make specific mention of such variations in its letter of submittal and shall clearly indicate them on the shop drawings.

(H) Unchecked Submissions to be Returned Unexamined

Any submission not containing the signature of the checker as an indication that the drawing has been completely checked, will be deemed to be substantially incomplete, and will be returned marked "UNEXAMINED" by the Engineer.

(I) Prints of Approved Shop and Working Drawings

Upon approval of the drawings by the Commissioner, the Company shall insert the date of final approval on the original tracing and shall promptly furnish prints of the approved drawings in

accordance with the following schedule:

1. Five (5) for each structural shop or working drawing, and for each mechanical drawing not having electrical work.

2. Seven (7) for each electrical drawing and for each mechanical drawing having electrical work.

(J) Company's Responsibility

The approval of shop and working drawings will be as to general design only and such approval shall not relieve the Company of responsibility for the accuracy of such drawings nor the proper fitting of the work, and any incorrect work resulting there from shall be corrected by the Company without additional cost to the City.

(K) Tracings of Approved Shop and Working Drawings

Upon completion of the work, the Company shall check all approved tracings and make them conform to the work as executed, and shall furnish, for the records of the Department, a complete set of legible, corrected and approved shop drawings. The submission will be in electronic format – AutoCAD and PDF.

1.06.14. - As-Built Drawings.

As-built drawings shall be made by the consulting entity of the Company. They shall contain data, measurements and information necessary to accurately show the work "as installed", special attention being given to data on concealed construction and on construction that differs from the plans in their present form. Any variation of the work as installed from that shown on the plans shall be clearly marked on the as-built drawings.

The sizes and type of material for as-built drawing sheets shall be as specified for tracings of approved shop and working drawings.

The Company shall provide one (1) additional set of all as-built tracings pertaining to sewers, water mains and their appurtenances installed in the work.

1.06.15. - Bulletins.

Where the Company has submitted prints in the form of technical bulletins or other printed matter as a shop drawing, having diagrams or drawings thereon of material or equipment installed in the work, it shall furnish six (6) sets thereof so that the Design Build Bureau may have all the necessary information for the proper operation, maintenance and repair of the material and equipment and for ordering of future replacements.

1.06.16. - Reference Drawings.

A limited number of original shop, working and other reference drawings pertaining to the existing construction for BINs 2269730, 2269740, 2269750, 2269760, 2269770, 2269780, 2269790, 2270170

are included in Book 2 - Engineering Requirements, Exhibit A – Engineering Support Data, Section 13.

Additionally, an index of other available reference material for the project bridges and surrounding structures including the Terminal Building and Richmond Bank Stadium is included in Book 2 - Engineering Requirements, Exhibit A – Engineering Support Data, Section 13. This additional reference material will be provided to the short listed Proposers in Adobe Acrobat format.

It is distinctly understood that these drawings, are made available to the Company only as information in the possession of the City, without any warranty, expressed or implied, as to their present accuracy or sufficiency. The information therein contained may not be complete nor disclose the true conditions that may be met during the course of the work under this contract. The Company must make its own measurements at the site and make its field check of all information obtained from these drawings before putting them to use.

1.06.17. - Records of Borings.

Refer to Book 2 – Engineering Requirements, Exhibit A – Engineering Support Data Section 5 – Geotechnical and Environmental Sampling and Testing Program (North Ramp).

1.06.18. - Records of Subsurface Structures, Etc.

The Company expressly stipulates that it is its understanding and it agrees that the duty of anticipating the sub-soil materials, subsurface conditions and existing subsurface structures is upon it, and that it made such investigation and research of its own for this purpose as it deems necessary.

The Company admits that it has carefully examined the locations of the work, has made special inquiry at the office of the companies or individuals or various City Departments having cognizance and control of pipes, tunnels, conduits, sewers, foundations, bulkhead walls and other subsurface structures, and it has determined to its satisfaction the character, size, location and lengths of such aforementioned structures, and it has made further personal inspection and investigation as it deemed proper to determine the correctness of the information so obtained; and it clearly understands that the City does not insure the accuracy of such reports or information, and it agrees that it will not make any claim against the City for damage or extra work caused or occasioned by its relying upon such records, reports or information furnished by any City Departments or any companies either as a whole or in part, except if such records or reports were specifically given in the Request for Proposal for the purpose of the Company preparing its Technical Proposal and subsequent to the Price Proposal reflecting the cost of such Technical Proposal.

1.06.19. - Duties of the Company.

The Company shall personally see that the requirements of the contract, of the plans, and of the specifications are fully and faithfully complied with by all its Subcontractors, materialmen and workmen at all times, that all of this work is prosecuted with the utmost diligence, and that all materials are provided promptly in sufficient quantities in order not to delay the work. It shall exercise the closest inspection of all materials delivered, promptly returning defective materials without waiting for their rejection by the Engineer. It shall also become thoroughly familiar with the plans and specifications and shall promptly report to the Commissioner all errors, discrepancies or omissions, which it may discover

in them. It shall abide by the decisions and explanations of the Commissioner made in regard to such matters.

1.06.20. - Company Assumes Risk of Loss or Damage.

The Company agrees to assume and to make no claim on account of any and all loss or damage arising out of the nature of the work to be done under this contract, or for any unforeseen obstructions or difficulties which may be encountered in the prosecution of the same, or from the action of the elements, or from encumbrances on or near the line of the work.

1.06.21. - Company's Representative and Temporary Structures.

(A) Company's Representative

The Company or its authorized representative shall be present on the work site at all times while work is being progressed, to receive and promptly execute all orders or directions of the Commissioner. The foregoing provision shall be complied with irrespective of whether work is being progressed by the Company or its Subcontractor's forces.

(B) Company's Field Office

The Company shall, during the period of construction, erect or provide for its own use a temporary field office, in which readily accessible copies of all Contract Documents and approved shop and working drawings shall be kept. The field office shall be located at or near the site and shall be provided with a telephone.

(C) Material Sheds

Material sheds used by the Company for the storage of tools, materials and equipment, shall be kept at locations which will not interfere at any time with the progress of the work.

(D) Substantial Construction

All the Company's temporary structures shall be of substantial construction and neat appearance and shall be painted a uniform gray, unless another color is ordered by the Engineer.

(E) Company's Sign

The Company shall post and keep posted, at the site, on the outside of its field office, exterior fence or wall, a legible sign giving the full name and address of the Company, and the telephone numbers of responsible representatives of the Company who can be reached in the event of an emergency at any time when there is no representative or watchman at the site.

(F) Contracts of Limited Scope

When, in the opinion of the Engineer, the scope of the work to be done under the contract does not require a field office, material sheds or watchmen, the Engineer may exempt the Company from providing any or all of the above services.

(G) Telephone Tie Line

Companies whose main/regional offices are located outside the City shall make available to the Bureau a (212) or (718) tie line to their telephone service. Failure to provide such tie line shall be considered a substantial breech of the Agreement.

1.06.22. - Company's Plant.

The Company may occupy with its construction plant any unused location within the area controlled by the Department, subject to the approval of the Engineer. If the Company desires to use additional area outside of that controlled by the Department, it shall arrange for such area at its own expense. The location of the Company's stationary and mobile equipment shall be subject to the Engineer's approval.

Sufficient construction plant shall be provided and maintained at all points where work is in progress to meet adequately all the demands of the work, with ample margin for emergencies or overload. The plant shall be of such capacity as will permit a rate of progress to insure completion of the work within the time stipulated in the contract.

The Commissioner shall have the right to reject or condemn any plant, apparatus, staging or other appliance which, in its opinion, is unsafe, improper or inadequate. Whether or not the Commissioner exercises this right, the Company shall not be relieved from its sole responsibility for the safe, proper and lawful construction, maintenance and use of such plant, apparatus, staging or other appliance or for the adequacy of such plant.

All materials shall be properly stacked in convenient places adjacent to the site, or where directed, and protected in a satisfactory manner. All stacking of materials on streets shall be done in compliance with local laws and ordinances. If it should become necessary to remove and restack materials to avoid impeding the progress of any part of the work, or for any other reason deemed sufficient by the Commissioner, the Company shall remove and restack such materials, as directed, at its own expense.

1.06.23. - Rules, Laws, and Requirements.

(A) Permits

The Company shall, at its own cost, obtain all necessary permits, give all necessary notices, pay all legal fees and comply with all Federal, State and City Building and Sanitary Laws, ordinances and regulations applicable to this contract and to the work to be done hereunder.

Photostatic copies of all required permits shall be filed with the Commissioner.

(B) Disposal of Construction Waste

The Company shall dispose of all waste materials in a legal and proper manner. Should the facilities of the New York City Department of Sanitation be used, waste material shall be disposed of in accordance with the rules and regulations of the Department of Sanitation. The Company shall submit an affidavit to the Commissioner indicating that it has complied with said rules and regulations, the site used, and proof

of purchase of dump tickets. Should the Company use a site other than the Department of Sanitation, the Company shall submit an Affidavit to the Commissioner indicating that it has complied with all laws for removal of waste material, the site used, and a paid receipt. Failure to comply with this provision shall be deemed a material breach of this contract.

(C) Conformance with Federal, State and City Agencies

The Company shall, in performance of this contract in its different works, conform to the rules and regulations of the various agencies which have any jurisdiction or authority affecting either the execution of the work, its sanitary or other conditions, the use or occupancy of the public grounds, roadways, streets, or which govern protection to the public.

(D) Notices

The Company shall give notice, in writing, to all Federal, State and City agencies, having jurisdiction, whose facilities or functions will be affected by the work, at least forty-eight (48) hours before commencing construction.

The Company shall notify the Commissioner at least forty-eight (48) hours in advance of the start of paving work.

(E) Closing of Streets - Formal Request for Approval

No street shall be closed for contract construction until Form MP 125 (REQUEST, TO CLOSE STREET) has been submitted to and approved by the Commissioner. This form must be filed notwithstanding that a provision in the contract may provide for the closing of streets.

(F) Requirements for Sidewalk Construction Contracts

The Company shall not proceed with any sidewalk construction unless ordered to do so by the Commissioner or its authorized representative. Sidewalks shall be constructed only in those specific areas as designated in the Commissioner's order.

(G) Rules Governing Navigation
The Company shall observe all laws, rules and regulations prescribed by the Supervisor of the Harbor, the United States Coast Guard, and the United States Corps of Engineers.

Proper and sufficient temporary warning signs and lights for the prevention of accidents to boats shall be furnished and maintained by the Company, as required by Federal regulations.

During the entire period of construction, no interruption to waterway traffic will be permitted for any length of time. Any protective measures specified herein below shall be such that the channel depth and headroom between the water level land underside of the bridge or traveling platform shall be maintained. Should it be suspected that the channel depth may have been impaired or that an obstruction may exist from the work, the Company shall, upon request by the Coast Guard or Corps of Engineers, provide the necessary equipment and personnel to undertake a survey to determine the presence of any

obstruction, or objects, or silting that may have occurred during construction. The cost for this work shall be borne by the Company.

The Company shall provide a safety net directly below the underside of the bridge to cover the entire work area. The net shall be strong enough to catch any materials, debris or persons from falling into the water. The safety net shall be subject to the approval of the Commissioner. The Company shall also provide a fire-retarding asbestos tarpaulin above the safety net and an asbestos tarpaulin directly beneath the area where flame cutting, welding or any burning operations are being done. The material for and method of providing the fire-retarding asbestos tarpaulin shall be subject to the approval of the Engineer.

(H) Company to Examine Site

The Company is assumed to have visited the site of the work and to have familiarized himself with the present conditions, and to have judged for himself the extent and nature of the work to be done under this contract, and no extra compensation will be allowed it because of its failure to include in its bid all costs of labor and materials for which it is required to furnish.

(I) Protect Existing Construction

The Company shall protect from injury all parts of the work, and any damage caused by it or its agents to any part of existing construction shall be repaired by it at its expense to the full satisfaction of the Commissioner.

(J) Scaffolding and Ladders

The Company shall furnish and securely set scaffolding, platforms and ladders required for the erection and inspection of its work. All such facilities shall be of good, sound materials, adequately dimensioned, substantially braced and tied, and shall be approved by the Commissioner.

Refer to Book 2 – Engineering Requirements, Exhibit G regarding work in and around railroad property.

(K) No Advertising Signs

The Company shall not display any advertising signs on or about the site of the work, other than its name and address, without the written permission of the Commissioner.

(L) Sanitary Services

The Company shall provide toilet and other sanitary facilities for the use of its employees on the project, in accordance with the requirements of the New York State Labor Law and in accordance with the regulations of the City of New York. The Company shall furnish all labor, energy, water, heating and all other services necessary to maintain these facilities in a clean and sanitary condition. Toilets and other sanitary facilities shall be connected to sewers. After completion of the work and when directed, the temporary toilet facilities shall be completely removed.

(M) Sanitary Nuisances

The Company shall not permit any sanitary nuisances to be committed by its employees in or about the work and shall enforce all sanitary regulations of the City and State Health Authorities.

(N) Medical Service

The Company shall provide such equipment and facilities as are necessary or required in case of accident for First Aid Service to anyone injured in the progress of the work and shall have standing arrangements for the removal and hospital treatment of any employee who is injured or becomes ill.

(O) Water in Excavations

Whenever water is encountered or collects in the excavations or trenches, the Company shall remove the same in a satisfactory manner.

1.06.24. - Conflicts of Interest.

The Charter of the City of New York in relation to conflicts of interests (Sec. 886) provides, among a number of safeguards, that:

1. No employee or person whose salary is payable in whole or in part from the City Treasury (Subdivision c.) shall accept any valuable gift, whether in the form of service, loan, thing or promise, or any other form from any person, firm or corporation which to its knowledge, is interested directly or indirectly, in any manner whatsoever in business dealings with the City; and

2. Any violation of any of the provisions of the section shall, at the option of the Comptroller, render forfeit and void the contract, work, business, sale or transaction affected.

Other sections of the City Charter, the Administrative Code and the Penal Law are applicable in implementing the basic conflicts of interest Section and under certain circumstances penalties may be invoked against the donor as well as the recipient of any form of valuable gift.

Notice is hereby given that sections of the City Charter, the Administrative Code and the Penal Law alluded to herein shall apply under the terms of this contract to circumstances relevant to conflicts of interest and shall be extended in application to Subcontractors authorized to perform work, labor and services pursuant to this contract and further it shall be the duty and responsibility of the Company to so inform its Subcontractors.

1.06.25. - Schedule of Operations.

Before beginning field operations, the Company shall submit, for approval by the Commissioner, a Schedule of Operations, which shall give and explain in detail the method of doing each phase of the work, the kind and quantity of equipment and labor proposed to be used therefore, and a step-by-step description of the operations. The Schedule of Operations shall be integrated with the requirements for the maintenance of traffic.

If required, the Company shall submit a detailed drawing showing and explaining its proposed methods of doing the work.

Approval of the detailed Schedule of operations shall not relieve the Company from its responsibility for the safety of its methods or for carrying out the work in conformity with the Contract Documents.

The above Schedule of Operations is in addition to, and not in lieu of, the Progress Schedule required by Article 15 of the Agreement.

1.06.26. - Job Meetings.

The Company agrees to attend in person or by a representative duly recognized and approved by the Commissioner, and to procure the like attendance of all Subcontractors required by the Engineer to be present, at any and all conferences called by the Commissioner upon twenty-four (24) hours notice thereof, either at the Site of the Work or at the Office of the Bureau of Bridges, 2 Rector Street, New York, N.Y. 10006, as directed in said notice.

1.06.27. - Controls, Surveys and Layout.

The Company shall furnish all stakes, range poles, range sights, scaffolding, platforms and staging required, and shall maintain the said controls.

The Company shall take cognizance of datum planes used in the work.

The Company shall provide the required survey parties and all necessary surveying equipment. It shall make all necessary computations and determine the alignment, elevation and position for all construction work. The Company shall be responsible for the accuracy of all lines and grades established by it. The Commissioner may check any or all of the survey work done by the Company, but such check shall not relieve the Company of its responsibility for the accuracy of its work.

The diazo/ammonia process is not acceptable for the reproduction of tracings, and is prohibited.

The Company shall submit to the Commissioner a certification from a Professional Engineer or Land Surveyor, licensed in the State of New York that the lines and grades used in the completed work comply with the contract requirements or such revisions thereof which the Commissioner shall direct or order.

<u>Preservation of Monuments, Points, Stakes, etc.</u>

The Company shall safeguard all points, stakes, grade marks, monuments and bench marks, made or established on or near the line of the work, and it agrees to accept the responsibility for and to remedy at its cost any mistakes that may be caused by the unauthorized disturbance or removal of such points, stakes, grade marks, monuments and bench marks.

The Company shall not disturb or excavate within 1,524 mm (5 ft.) any City monument which may be within the limits of or be disturbed by the work herein contemplated, or in any manner disturb the same, but shall cease work at such places until the said monument has been referenced and reset or otherwise

disposed of, except upon special permit from the Commissioner in accordance with the City ordinance therefor. After permission is given to remove any monument, the Company shall take up and preserve such monument and, if required, remove same to the nearest Bureau yard.

Any expense incurred in replacing any points, stakes or bench marks, which the Company, or any person working under it, may have failed to preserve, shall be charged to the Company and deducted from the amount to be paid it for doing the work under this contract.

Licensed Surveyor

The Company's survey parties shall take all preliminary measurements, prepare all sketches and obtain other field data, as required, when so ordered by the Commissioner. Copies of survey notes and sketches shall be delivered to the Commissioner, when required, and such copies shall be signed by, and bear the seal of a Professional Engineer or Land Surveyor licensed in the State of New York.

All survey work shall be performed by and under the supervision of a Professional Engineer or Land Surveyor, licensed in the State of New York.

The Company must furnish the necessary forms, templates, lines, spirit levels, stakes and other tools, implements and materials and employ competent and skillful men to correctly set out from the grade marks or stakes all details of the work, in full accordance with the plans, specifications, and directions of the Commissioner.

1.06.28. - Protection of the Work, Persons and Property.

The Company shall protect the work, persons and property in accordance with the Provisions of Article 13 of the Agreement, and furthermore as follows:

(A) Maintenance of Existing Drains, etc.

Where the work herein contemplated intercepts or affects in any way any stream, ditch, drain or culvert, the Company shall, where required, arrange for keeping the same permanently open by building drains, culverts, or other structures or by rebuilding, repairing, or extending those existing with materials of the quality specified herein, of the size required, and as directed for each case.

(B) Drains to be Kept Clean
During the progress of the work, and until the completion and accept-thereof, the drains, and connections built under this contract shall be kept thoroughly serviceable throughout, and shall be left serviceable.

(C) Protection of Water Pipes, etc.

The Company shall maintain, without injury, all City main and service water pipes, sewer connections, and the City fire alarm system which may be affected in any manner by the work under this contract, including any such protective measures as may be required in cold weather to prevent them from freezing; or, failing to do so, the Commissioner shall be and it is hereby authorized to relay and recaulk and repair the same immediately, in each block, as the work progresses, and the cost thereof shall be

charged to the Company, and the City hereby is authorized to retain and deduct said cost out of the moneys which may be due or become due to the Company.

(D) Materials on Public Property

No excavated or other materials necessary to be disposed of, excepting as herein otherwise specified, shall be dumped or placed within the limits of any existing or projected public street or road, nor shall any materials be excavated and removed from such locations, without the written permission of the Commissioner.

(E) Materials on Private Property

The Company hereby agrees that no excavated material or materials of construction will be placed by it or for it upon private property unless an affidavit granting such permission has been obtained from the owners or lessees of said private property and filed with the Commissioner. In the event that materials are placed on private property without permission, and such materials are not removed and such damages not remedied by the Company within forty-eight (48) hours after the receipt by it of a written notice from the Commissioner to do so, it agrees that the Commissioner shall be and is hereby authorized to dispose of such materials, and to remedy such damages, and to deduct the expense thereof from the money due or to become due under this contract.

(F) Repair of Damaged Property

In case any damage or injury shall or may result to pipes, lampposts and other works of any utility, railroad or other company, or to any private property or to any sidewalk along the line of the work, in consequence of any act or omission on the part of the Company or its employees, agents or Subcontractors in carrying out any of the provisions or requirements of this contract, the Company shall make such repairs as are necessary in consequence thereof, at its own expense and to the satisfaction of the Commissioner, or in case of damages to property of utility companies, pay such amount as shall or may be sufficient to cover the cost of repairing such damages.

All water service pipes damaged in performance of the work under this contract shall be repaired by a licensed plumber at the expense of the Company and under the rules and regulations of the Department of Environmental Protection.

In case of failure on the part of the Company to promptly make such repairs, the Commissioner may have such repairs made and deduct the cost thereof out of the moneys due or to become due under this contract, or The City may retain from the moneys due or to become due under this contract a sum, estimated by the Commissioner as sufficient to pay the cost of making such repairs by third parties.

(G) Walks Replaced

New flagging or concrete sidewalk furnished to replace any breakage shall be of the same thickness and quality as that broken or displaced and will not be included in the final measurements.

(H) Underground Facilities

Intent: Companies must comply with New York State Industrial Code Rule 53. Care and caution shall be exercised by the Company while performing the work, to insure that continuing service to all underground facilities will be maintained. The cost of any and all work necessary to ensure continuing service to private underground facilities is to be borne by the private utility company and not by the City. In addition, care shall be taken so as not to damage anything that will remain a part of the finished product.

In particular, until hand-dug test holes have been made to verify the locations of underground facilities, powered or mechanical equipment may be used for the removal of pavement, but only to the depth of such pavement. Maximum bit diameter shall be 4-1/2", Maximum length 2'-0", Maximum penetration 12".

Use of powered or mechanical equipment will be permitted, as follows:

1. Resurfacing Projects - Use not permitted. All pavement breaking shall be accomplished by using hand-held pneumatic or hydraulic tools.

2. Sewer and/or Water Main Installations Hoe-Rams will be permitted as long as the above Intent is followed. Longitudinal cuts shall be made with concrete saw or vermeer-type cutting wheel. Hoe-Ram will be permitted to crack the pavement between longitudinal cuts just prior (same day) to the excavation (where surrounding pavement is to remain).

3. Street and Highway Reconstruction Hoe-Rams will be permitted as long as the above Intent is followed. Use must be the same day as excavation (no holes are to be left overnight). Use permitted for water main and sewer work in conjunction with roadway reconstruction as long as same day as excavation (no holes are to be left overnight).

4. Bridge and Structural Reconstruction Hoe-Rams will be permitted as long as the above intent is followed, except where there is a partial demolition of deck (e.g., the existing structural steel frame is to be reused).

1.06.29. - Street Surface Railroads.

If, within the limits of the contracts, a street surface railroad company shall fail to make the repairs or lay pavements ordered by the Commissioner, then, upon written notice from the Commissioner, the Company shall perform the work within the railroad franchise area, or such portion thereof as may be directed by the Commissioner, in accordance with the terms of this contract, and at the prices fixed herein. And the Company hereby agrees to make a contract with the railroad company to perform the aforesaid work in accordance with the terms of this contract and at the prices fixed herein, unless other terms are mutually agreed upon. Provided, however, that if the railroad company performs the aforesaid work or any portion thereof, then the Company shall not perform the within specified work within the railroad franchise area, and in that event the Company shall not demand or receive any compensation therefore or any sum of money whatever as damages of any kind, nature or description or for prospective profits lost because of the failure of The City to allow the Company to perform said work within the railroad franchise area, other than that provided for in this contract for work actually performed.

1.06.30. - Company Not to Discommode Private Companies.

During the progress of the work, the Company shall afford the necessary facilities to any and all companies owning railroad tracks, pipes, subways, ducts, or other surface or sub-surface structures on the line of the work, for their preservation from injury.

In case it is necessary to remove, repair, protect, support, or replace these structures or any portions of them that may be on the line of the work, the Company shall give notice, in writing, to the company or companies owning such structures, so that said companies may remove, repair, protect, support, or temporarily remove and replace their structures at their expense, and the Company shall not cause any hindrance to or interference with said companies in performing such work on their structures. If said companies, within five (5) days after receipt of such notice, shall fail to commence performance of such work, the Company shall, upon the approval of the Commissioner perform the same, it being expressly understood that the cost thereof shall not be a charge against the City, but shall be a matter for adjustment between the Company and the company or companies concerned.

Pursuant to the above, the Company agrees to confer with and to make or entertain an offer from such company or companies owning the said structures, and the Company further agrees to enter into an agreement with said company or companies by what terms and at what prices the removal, repair, protection, support, or temporary removal and replacement of the said structures will be undertaken and accomplished, and in the event of the failure to make such agreement with said company or companies, it will not complain nor make any demand for additional compensation for the removal, repair, protection, support, or temporary removal and replacement of the said structures, it being expressly understood that the cost thereof shall not be a charge against the City, but shall be a matter for adjustment between the Company and the company or companies concerned.

The provisions of this section shall be understood to include all work performed to remove, repair, protect, support or temporarily remove and replace privately owned utility property, including all work which may be authorized by the Engineer to avoid interference with privately owned utility property. The provisions of this section shall govern in all cases where private utility property interferes with or is about to be disturbed by the City work, notwithstanding any other provisions of the contract.

The Company shall give notice in writing, at least seventy-two (72) hours before breaking ground, for the purpose of constructing the work hereunder, to any bus company operating in the streets affected by the work and to any and all private utility companies whose structures may be affected by such work.

1.06.31. - Approval of Materials.

(A) Local Laws
All materials, appliances and types or methods of construction shall be in accordance with the contract documents and shall, in no event, be less than that necessary to conform to the requirements of the Administrative Code and the Charter of the City of New York.

(B) Approval of Manufacturers

The names of proposed manufacturers, materialmen and dealers who are to furnish materials, fixtures, equipment, appliances or other fittings shall be submitted to the Commissioner for approval, as early as possible to afford proper investigation and checking.

(C) Repute of Manufacturer

No manufacturer will be approved for any materials to be furnished under the contract unless it shall be of good reputation, shall have a plant of ample capacity and shall have successfully produced similar products.

(D) Documentary Evidence of Tests

For any materials which may not be inspected by the City or its designated representatives, satisfactory documentary evidence that the materials have passed the required inspection and testing must be furnished to the Commissioner prior to their incorporation in the work.

(E) Materials and Workmanship

ALL MATERIALS, fixtures, supplies and equipment furnished under the Contract shall be new and unused, except as approved by the Agency or as specified, and of standard first-grade quality and of the best workmanship and design. The City of New York encourages use of recycled products where practicable. No inferior or low grade articles will be either approved or accepted, and all work of assembling and construction must be done in a neat, first-class and workmanlike manner.

(F) Information to Suppliers

In asking for prices on materials under any item of the contract, the Company shall supply the manufacturer or the dealer with such complete information from the specifications and the plans as may in any case be necessary, and in every case it shall inform the manufacturer or dealer of all the general conditions and requirements herein contained.

(G) Standards

Whenever reference is made to the furnishing of materials or testing thereof to conform to the standards of any technical society, organization or body, it shall be construed to mean the latest standard, code or specification adopted and published at the date of advertisement for bids, even though reference has been made to an earlier standard.

When no reference is made to a code, standard or specification, the Standard Specification of the American Society for Testing and Materials (A.S.T.M.) shall govern.

(H) Commissioner to Select Inspectors

Except as specifically provided in the contract documents, the Commissioner will select and designate all persons, firms, or corporations to make or witness each and every inspection, test or analysis, with or without reports.

(I) Access to Manufacturing Plants

The Commissioner or its designated representative shall have free access at all times to the works, laboratories and refineries where the materials are prepared, and shall be permitted to take such samples therefrom as it may deem necessary.

(J) Samples of Materials

The Company shall submit to the Commissioner for approval, as and when required, samples of materials proposed to be used, as follows:

1. Samples shall be in triplicate, of sufficient size or number to show the quality, type, range of color, finish and texture or material.

2. Each of the samples shall be labeled, bearing the name and quality of material, Company's name, date, and contract number.

3. A letter of transmittal, in triplicate, from the Company requesting approval, must accompany all such samples.

4. Transportation charges to the Commissioner's Office must be prepaid on all samples forwarded.

5. Samples for testing purposes shall be in accordance with the requirements of the contract documents.

(K) (Not in use)

(L) Timely Submission

Samples shall be submitted in due time so as to permit proper consideration without delaying any operation under the project. Materials should not be ordered until approval is received in writing from the Commissioner. All materials shall be furnished equal in every respect to the approved samples.

(M) Approval of Samples

The approval of any samples will be given as promptly as possible, and shall be only for the characteristic color, texture, strength, or other feature of the material named in such approval, and no other.

When this approval is issued by the Commissioner, it is done with the distinct understanding that the materials to be furnished will fully and completely comply with the contract documents, the determination of which may be made at some later date by a laboratory test or by other procedure. Use of materials will be permitted only so long as the quality remains equal to the approved sample and complies in every respect with the contract documents. The Commissioner will be the final judge as to acceptability of laboratory test data and performance in service of materials submitted.

(N) Valuable Samples

Valuable samples such as hardware, electrical fixtures, etc., not destroyed by inspection or test, will be returned to the Company and may be incorporated into the work after all questions of acceptability have

been settled, providing suitable permanent records are made as to location of the samples and their properties.

(0) Equivalent Quality of Materials - "Approved Equal'

All materials and equipment which are designated in the contract documents by a number in a catalog of any manufacturer or by a manufacturer's grade or trade name are designated for the purpose of describing the article and fixing the standard of the quality and finish. Materials and equipment which are, in the opinion of the Commissioner, the equivalent to that specified, will be accepted.

The submission of any material, or article, as the "approved equal" of the materials or articles set forth in the contract documents as a standard shall be accompanied by illustrations, drawings, descriptions, catalogs, records of tests, samples and any and all other information essential for judging the equality to the materials, finish and durability of that specified as standard, as well as information indicating satisfactory use under similar operating conditions.

Where the contract documents provide that the manufacturer's directions are to be followed, such printed directions shall be submitted to the Commissioner.

Samples taken from various deliveries during the progress of the work and during the maintenance period, when tested and analyzed, shall exhibit qualities equal or superior to those of the sample submitted with or described in the bid, and no change of materials shall be made without written permission of the Commissioner.

(P) Notice Prior to Manufacture

The Company shall give notice, in writing, to the Commissioner, sufficiently in advance of its intention to commence the manufacture or preparation of materials especially manufactured or prepared for use in or as a part of the permanent construction. Such notice shall contain a request for inspection, the date of commencement, and the expected date of completion of the manufacture or preparation of materials. Upon receipt of such notice, the Commissioner will arrange to have a representative present at such times during the manufacture as may be necessary to inspect the materials, or it will notify the Company that the inspection will be made at a point other than the point of manufacture, or it will notify the Company that inspection will be waived.

(Q) No Shipping before Inspection

The Company shall comply with the foregoing before shipping any material.

(R) Certificate of Manufacture

When the Commissioner so requires, the Company shall furnish to it authoritative evidence in the form of manufacturer’s certification that the materials to be used in the work have been manufactured and tested in conformity with the contract documents. These certificates shall include copies of the results of physical tests and chemical analyses, where necessary, that have been made directly on the product, or on similar products being fabricated by the manufacturer.

When materials or manufactured products comprise such small quantities that it will not be practical to make physical tests or chemical analyses directly on the products furnished, a certificate stating the results of such tests or analyses of similar materials which were concurrently produced may, at the discretion of the Commissioner, be considered as the basis for acceptance of such materials or manufactured products.

(S) Testing Compliance

The testing Personnel shall make the necessary inspections and tests, and the reports thereof shall be in such form as will facilitate checking to determine compliance with the contract documents indicating thereon all analyses and/or test data and interpreted results thereof.

(T) Reports

Six (6) copies of the reports shall be submitted and authoritative certification thereof must be furnished to the Commissioner as a prerequisite for the acceptance of any material or equipment.

(U) Rejection

If, in making any test, it is ascertained by the Commissioner that the material or equipment does not comply with the contract documents the Company will be notified thereof, and it will be directed to refrain from delivering said materials or equipment, or to promptly remove it from the site or from the work, and replace it with acceptable material without cost to the City.

Upon rejection of any material or equipment submitted as the equivalent of that specifically named in the contract documents the Company shall immediately proceed to furnish the designated material or equipment.

(V) Testing Apparatus and Laboratory

The Company shall provide and maintain at the plants suitable registering thermometric instruments, weighing devices and other apparatus necessary for the determination of the temperatures, the penetrations, the qualities of materials used, the grading of the mineral aggregates, and for all other tests required by the contract documents throughout the process of manufacture.

These instruments, etc., shall be of standard type and approved by the Commissioner. The Company shall also provide at the plant a suitable space in which a representative, designated by the Engineer, can carry out these tests under proper conditions.

1.06.32. - Costs of Tests Borne and Inspection.

The City will bear the costs of inspections and the making of tests deemed necessary to determine compliance with the contract documents of materials and equipment furnished hereunder, with the following exceptions:

1. Any material or equipment to be furnished hereunder as the equal to those designated in the contract documents which is tested by the City and found unacceptable because it does not meet the contract

requirements, will be rejected. When any such material is so rejected, the Company hereby agrees to pay the City such monies as were expended by it in the conduct of such tests. The Company further agrees that upon some rejection it will immediately proceed to furnish the designated material or equipment.

2. The Company shall bear the cost of testing material and equipment specifically called for by the contract documents to be tested by it and the cost of these tests shall be deemed to be included in the prices bid for the related items.

3. For the testing of concrete and asphalt paving materials, the Company shall, at its own expense, supply at the plant a technician from an approved certified testing laboratory to perform the necessary tests to assure complete compliance with the contract documents, for all work that will become a part of the permanent construction. Any material for temporary construction, such as asphalt ramping, etc., will not require a technician at the plant.

If, in the opinion of the Commissioner, said technician is not satisfactory, that technician shall be replaced.

Should the Company fail to provide a technician when required, the City will reduce the Company's final payment at a rate of $300.00 for each day that a technician is required but not provided, and the Maintenance and Guarantee period will be extended an additional one (1) year period for any asphalt and/or concrete work performed by the Company that utilizes materials batched without the services of a technician.

1.06.33. - Delivery of Materials.

(A) General

The Company shall furnish to the Commissioner a copy of each material order, indicating date of order and quality of material, and shall also notify the Commissioner when materials have been delivered to the site and in what quantities.

(B) Ample Quantities

The Company shall deliver materials in ample quantities to insure the most speedy and uninterrupted progress of the work so as to complete the work within the contract time.

(C) Seals and Labels

Manufacturer's containers shall be delivered with unbroken seals and shall bear proper labels.
(D) Coordination of Deliveries

The Company shall coordinate deliveries in order to avoid delay in or impeding the progress of the work.

(E) Delivery and Inspection of Materials

The materials for construction shall not be brought to or deposited in quantities greater than is necessary for convenient working, and shall be so deposited as to cause the least possible obstruction to streets and sidewalks, as may be determined by the Commissioner. All new material of every description shall be carefully inspected after it is brought to the site, and all such not conforming in quality and dimensions to the contract documents will be rejected and must be immediately removed from the site of the work. Not until this has been done and the rejected materials removed entirely from the site of the work, each of which conditions must be faithfully fulfilled, will the Company be permitted to proceed with the work.

1.06.34. - Transportation and Storing of Materials.

It shall be the duty of the Company to determine for itself the availability of transportation facilities and dockage for the use of its employees, equipment and materials, and the conditions under which such use will be permitted.

> If transportation facilities and dockage are available and are permitted to be used by the agency having jurisdiction, the Company shall pay all necessary costs and abide by the agency having jurisdiction and all regulations promulgated in connection therewith.

It is understood that the Commissioner makes no warranty or representations as to the availability or adequacy of such facilities.

1.06.35. - Partial Payments for Materials in Advance of Their Incorporation in the Work.

The following provisions will be applicable except when it is expressly specified in the "Special Provisions" of the contract that no partial payments will be made for materials in advance of their incorporation in the work:

In order to better insure the availability of materials, fixtures, and equipment when needed for the work, the Commissioner may authorize partial payment for certain materials, fixtures or equipment, prior to their incorporation in the work, but only in strict accordance with and subject to all the terms and conditions set forth in the following subdivisions designated (A) to (P) inclusive, unless another method of payment is elsewhere provided in the contract for specified materials, fixtures or equipment.

(A) The Company shall submit to the Commissioner a written request, in quadruplicate, for payment for materials purchased or to be purchased for which it desires to be paid prior to their actual incorporation in the work. The request shall be accompanied by a schedule of the types and quantities of materials and shall state whether such materials are to be stored on or off the site.

(B) Where the materials are to be stored off the site, they shall be stored at a place other than the Company's premises (except with the written consent of the Commissioner) and under the conditions prescribed or approved by the Commissioner. The Company shall set apart and separately store at the place or places of storage all materials and shall clearly mark same "PROPERTY OF THE CITY OF NEW YORK," and, further, shall not at any time move any of said materials to another off-site place of storage without prior written consent of the Commissioner. Materials may be removed from their place of storage, off the site, for incorporation in the work, upon approval of the Engineer.

(C) Where materials are to be stored at the site, they shall be stored at such locations as shall be designated by the Commissioner and only in such quantities as, in the opinion of the Commissioner, will not interfere with the proper performance of the work by the Company or by other Companies then engaged in performing work on the site. Such materials shall not be removed from their place of storage on the site except for incorporation in the work, without the approval of the Commissioner.

(D) INSURANCE

1. Storage off Site

Where the materials are stored off the site-and until such time as they are incorporated in the work, the Company shall fully insure such materials against any and all risks of destruction, damage or loss, including but not limited to, fire, theft and any other casualty or happening. The policy of insurance shall be payable to The City of New York. It shall be in such terms and amounts as shall be approved by the Commissioner and shall be placed with a company duly licensed to do business in the State of New York. The Company shall deliver the original and one copy of such policy or policies marked "Fully Paid" to the Commissioner.

2. Storage on the Site

Where the materials are stored at the site, the Company shall furnish satisfactory evidence to the Commissioner that they are properly insured against loss, by endorsements or otherwise, under the policy or policies of insurance obtained by the Company to cover losses to materials owned or installed by it. The policy of insurance shall cover fire and extended coverage against windstorm, hail, explosion and riot attending a strike, civil commotion, aircraft, vehicles and smoke.

(E) All costs, charges and expenses arising out of the storage of such materials shall be paid by the Company, and the City hereby reserves the right to retain out of any partial or final payment made under the contract an amount sufficient to cover such costs, charges and expenses with the understanding that the City shall have and may exercise any and all other remedies at law for the recovery of such costs, charges and expenses. There shall be no increase in the Contract Price for such costs, charges and expenses and the Company shall not make any claim or demand for compensation therefore.

(F) The Company shall pay any and all costs of handling and delivery of materials to the place of storage and from the place of storage to the site of the work: and the City shall have the right to retain from any partial or final payment an amount sufficient to cover the cost of such handling and delivery.

(G) In the event that the whole or any part of these materials is lost, damaged or destroyed in advance of their satisfactory incorporation in the work, the Company at its own cost, shall replace such lost, damaged or destroyed materials with materials of the same character and quality. The City will reimburse the Company for the cost of the replaced materials to the extent, and only to the extent, of the monies actually received by the City under the policies of insurance hereinbefore referred to. Until such time as the materials are replaced, the City will deduct from the value of the stored materials or from any other money due the Company, the amount paid to the Company for such lost, damaged or destroyed materials.

(H) Should any of the materials paid for by the City hereunder be subsequently rejected or incorporated in the work in a manner or by a method not in accordance with the contract documents, the Company shall remove and replace such defective or improperly incorporated material with materials complying with the contract documents. Until such materials are replaced, the City will deduct from the value of the stored materials or from any other money due the Company, the amount paid by the City for such rejected or improperly incorporated materials.

(I) Payment for the cost of materials made hereunder shall not be deemed to be an acceptance of such materials as being in accordance with the contract documents and the Company always retains and must comply with its duty to deliver to the site and properly incorporate in the work only materials which comply with the contract documents.

(J) The Company shall retain any and all risks in connection with the damage, destruction or loss of the materials paid for hereunder to time of delivery of the same to the site of the work and their proper incorporation in the work in accordance with the contract documents.

(K) The Company shall comply with all laws and regulations of any Governmental body or agency pertaining to the priority purchase, allocation and use of the materials.

(L) When requesting payment for such materials, the Company shall submit with the partial estimate duly authenticated documents of title, such as bills of sale, invoices or warehouse receipts, all in quadruplicate. The executed bills of sale shall transfer title to the materials from the Company to the City (in the event that the invoices state that the material has been purchased by a Subcontractor, bills of sale in quadruplicate will also be required transferring title to the materials from Subcontractor to the Company).

(M) Where the Company, with Commissioner's approval, purchased unusually large quantities of materials in order to assure their availability for the work, the Commissioner, at its option, may waive the requirements of Par. (L) provided the Company furnishes evidence in the form of an affidavit of the Company in quadruplicate, and such other proofs as the Commissioner may require, that it is the sole owner of such materials and has purchased them free and clear of all liens and other encumbrances. In such event, the Company shall pay for such materials and submit proof thereof, in the same manner as provided in Par. (L) hereof, within seven (7) days after receipt of payment therefor from the City. Failure on the part of the Company to submit satisfactory evidence that it has paid in full for all such materials shall preclude it from payments under the Contract.

(N) The Company shall include in each succeeding partial estimate requisition a summary of materials stored which shall set forth the quantity and value of materials in storage, on or off the site, at the end of each preceding estimate period; the amount removed for incorporation in the work; the quantity and value of materials delivered during the current period and the total value of materials on hand for which payment thereof will be included in the current payment estimate.

(O) Upon proof to the satisfaction of the Commissioner of the actual cost of such materials and upon submission of proper proof of title as required under Par. (L) or (M) hereof, payment will be made therefore to the extent of 85% provided however, that the cost so verified, established and approved shall not exceed the estimated cost of such materials included in the approved detailed breakdown

estimate submitted in accordance with Art. 40 of the Agreement; if it does, the City will pay only 85% approved estimated cost.

(P) Upon the incorporation in the work of any such materials which have been paid for in advance of such incorporation in accordance with the foregoing provisions, payment will be made for such materials incorporated in the work pursuant to Article 47 or Article 48 of the Agreement, less any sums paid pursuant to Par. (O) herein.

1.06.36. - (No Text)

1.06.37. - Maintenance Work by the City.

The Company agrees that, should it be necessary for City employees to do maintenance or emergency work on or near the site of the work, or to do any other work not part of the contract requirements but deemed expedient by the Commissioner, it will not cause any interference thereto, and it further agrees that it will not claim any damages or extra compensation if such maintenance or emergency work should delay it in its work or cause it to move its erection equipment and other materials.

If any such work by the City should delay the Company and cause it to move its plant and materials, its right to an extension of time for performing the whole work under this contract as provided in Article 19 of the Agreement, shall be considered as sufficient compensation thereof.

1.06.38. - Inspection of Existing Construction.

As the work progresses, the Company shall bring to the Commissioner's attention any defective condition of existing construction which is not specifically subject to correction under the contract documents in their present form.

The Company shall afford the Commissioner all cooperation and facilities to inspect existing construction during the course of field operations.

1.06.39. - Inspection During Progress of the Work.

The Engineer will inspect the materials furnished and the work done to ensure that they comply with the contract documents, and it shall have free access at all times to the works, laboratories and refineries where the materials are prepared, and shall be permitted to take such samples therefrom as it may deem necessary. Materials will be tested in the laboratory of the Commissioner or in any other laboratory of the City designated by it. When deemed necessary, materials may be tested in any other recognized and approved laboratory designated by the Commissioner. The Commissioner is hereby authorized and empowered to reject and refuse all labor and materials or methods of installation or application, or any part thereof, offered under or in fulfillment of this contract that do not comply in kind, quality or quantity with the terms thereof. Any materials delivered or offered to be delivered under this contract, which are rejected by the Commissioner as not conforming to the terms thereof, shall be forthwith removed by the Company, and materials which do so conform shall be forthwith furnished and delivered by it in place thereof.

The Company hereby agrees not to use any materials which have not been inspected and accepted, nor to perform any work except under inspection, to which end it further agrees to notify the Engineer when

lines, grades or inspection are required, so that the Commissioner may have time to provide the same. It is hereby agreed that the right of inspection herein provided for is intended solely for the benefit of the City, and the City shall not in any manner be bound by such inspection or by failure to inspect, or by the failure to discover any defective work or materials used in the work or non-compliance with any provisions of the contract documents, to accept work which does not in fact comply with the contract documents, or relieve the Company of the obligation to comply with each of the provisions of this contract. No inspection, approval or acceptance of any part of the work herein contracted for, or of the materials used herein, or any payment on account thereof, shall prevent the Commissioner from refusing to accept the work or materials at any time thereafter during the existence of this contract, because the same do not comply with the requirements of the contract.

The Commissioner reserves the right at all times to undertake and perform such work as may be necessary in opening or removing portions of the work for the purpose of examination. The Company shall satisfactorily restore the work so disturbed. Should the work be found faulty in any respect, the portions disturbed shall be restored without cost to the City.

1.06.40. - Assistance to be Furnished.

The Company shall furnish such laborers as may be necessary to aid the Commissioner in its inspections, and in case it shall neglect or refuse to do so, such laborers as may be necessary will be employed by the Commissioner, and the expense thereof will be deducted from and paid out of any money then due or which may thereafter become due to the Company for work performed under this contract.

1.06.41. - Condemned Work.

If after inspection any work is condemned by the Commissioner as defective or improperly done, such defective or improper work shall be taken down and rebuilt or the defects otherwise remedied as the Commissioner may direct. And if the Company refuses or neglects to remove such condemned work, or otherwise correct the defects, as the Commissioner may direct, then the Commissioner may obtain, use and employ materials, persons, and equipment to do the same, and the expense thereof will be deducted from any money which may then be due or thereafter become due to the Company for work performed under this contract.

1.06.42. - Final Inspection.

When in the opinion of the Company, the work is complete and ready for final inspection, it shall so notify the Commissioner in writing. The Commissioner will arrange to give the entire work a thorough inspection, either in person or by a designated representative. Before final payment will be made, any defects or omissions noted on this inspection must be corrected by the Company without additional compensation.

1.06.43. - Restoration.

Any existing construction on or off the site of the work not required by the contract documents to be permanently altered or removed but which has been damaged, disturbed or removed by the Company during the course of the work, shall be repaired, restored or replaced to its original condition as of the

start of the work, in accordance with standard practice of the owning Agency, at the Company's expense.

1.06.44. - Maintenance and Protection of Traffic.

The following provisions shall apply and shall be in addition to any other requirements specified under the contract for the maintenance and protection of traffic, unless otherwise provided:

(A) Compliance with Law and Ordinances

The Company shall observe the law and all ordinances of the City in relation to obstruction of the streets, keeping open passageways and protecting the same where they are exposed and potentially dangerous to the public travel, such passageways shall, as may be required, be planked or bridged by the Company and the cost thereof, except as otherwise provided, shall be deemed to be included in all items for which there are contract prices.

(B) Meeting with Office of Construction Mitigation and Coordination (O.C.M.C.)

To permit finalization of traffic control measures, the Company, twenty (20) days before beginning operations, shall arrange for an on-site field meeting with the Office of Construction Mitigation and Coordination (O.C.M.C.).

The Company shall submit a schedule of operations to the office of O.C.M.C., 40 Worth Street, New York, N.Y. 10013, prior to the start of work.

(C) Maintain Traffic

Where streets, now in use, are included within or connect with the work under this contract, the Company shall keep the passageways of such streets open and provide safe and convenient means of access to buildings fronting thereon. Only so much of such streets, as may be directed shall be disturbed at one time.

(D) Maintenance of Way

Where streets or portions of streets, now in use, are included for paving or repaving work under this contract, the Company shall be responsible for the maintenance of such streets or portions of streets, prior to the performance of said paving or repaving work. The maintenance of such streets shall include any repairs, as directed, including the filling of potholes, that may be necessary due to usage of the streets by traffic, and shall start from the date of written notice to commence work or actual start of work, whichever is earlier.

(E) Barricades, Signs and Other Protective Devices

The Company shall furnish, erect and maintain at closures, intersections and at all other locations, where required, all necessary standard or approved barricades, suitable and sufficient lights, torches, approved reflectors, danger signals, warning and closure signs, directional detour signs and whatever additional measures the Commissioner may deem necessary for proper

control of traffic and for the safety of all concerned, all in accordance with the rules and regulations of the Division of Traffic Operations. It shall indicate by day and by night the impassable and dangerous conditions existing on or adjacent to the site of the work. It shall provide a sufficient number of watchmen and take all necessary and legal precautions for the protection of the work and for the safety of the public, as required by the contract. All barricades, danger signals, warning signs and obstructions shall be illuminated at night and all lights shall be kept burning from sunset until sunrise.

Barricades shall be placed parallel to, adjacent to and on both sides of excavations for curbs and sidewalks. Each line shall have a clear space of not more than 25 ft. between barricades. Barricades shall be Class 11, single rail, hinged type, complying with the REGULATION MANUAL ON TEMPORARY TRAFFIC CONTROL BY STREET BARRICADES AND CHANELIZATION issued by the Bureau of Traffic Operations. Each barricade shall have at least one (1) battery-operated, flashlight warning device of approved manufacture affixed thereon, as directed by the Commissioner.

Steel plates shall be provided over all excavations in front of driveways and excavations over which pedestrian or vehicular traffic is to be maintained. Plates shall be of a thickness sufficient for the loads to be carried and shall have not less than 2 feet of bearing on either side of an excavation. Width of plates for vehicular traffic shall not be less than 10 ft. and for pedestrian traffic not less than 4 ft.. Plates for pedestrian traffic shall be equipped with approved, dismountable hand rails on both sides, for the full lengths of plates. The Company shall be responsible for the adequacy of all plates.

(F) Temporary Walks and Bridges

Where required, the Company shall construct and maintain as directed, suitable temporary walks and bridges for pedestrians and vehicles. Temporary structures shall be designed in accordance with the requirements in Book 2 – Engineering Requirements, Exhibit B – Technical Specifications.

(G) Work Site Patrol

Pursuant to Article 7 of the Agreement and the requirements stipulated hereinabove, the Company shall provide personnel to patrol the work site, as necessary, to ensure that conditions on the site are adequate for public safety and convenience at all times. If the Company should fail, within twenty-four (24) hours after written notice thereof from the Commissioner, to correct any deficiency in the matter of providing facilities for vehicular and pedestrian traffic, including personnel to patrol the work site, the Commissioner, pursuant to Article 49 of the Agreement, shall have the right to declare the Company in partial default and may then have such deficiency corrected by others and the cost thereof charged to the Company.

(H) Use of Roadways Before Final Acceptance of the Work

The City shall have the right before the final acceptance of all work under this contract, to open to vehicular traffic those areas adjacent to the structures upon which work has been completed,

and the Company shall carry on its work so as not to interfere with or endanger such vehicular traffic and shall make no claim for damages on account thereof.

(I) Damages for Failing to Provide Traffic Facilities

If the Company shall fail to comply, within twenty-four (24) hours after written notice from the Engineer, with the requirements of this contract in the matter of providing facilities for vehicular and pedestrian traffic, including personnel to patrol the work site, the Company shall pay the City of New York until such notice has been complied with or rescinded, the sum of TWO HUNDRED FIFTY DOLLARS ($250.00) per calendar day, as liquidated damages and not as a penalty, for such default. Any money due the City of New York under this provision will be deducted from the amounts due or to become due to the Company for work performed under this contract.

1.06.45. - Progress Photographs

Unless there is a scheduled item provided in the contract therefor, the Company shall provide a photographic record showing the conditions existing on the site prior to commencement of work, designated conditions during work operations, and conditions after the completion of the contract. Photographs shall be in color and shall be taken under the supervision and at the direction of the Engineer.

The Company shall furnish as many photographs as necessary of the construction work. A photograph set shall consist of one (1) CD-ROM and two (2) enlargement prints.

The images on the CD-ROM shall have permanent identification number inscribed thereon. At the conclusion of the work, they shall become the property of the City and shall be delivered to the Borough construction office designated by the Commissioner.

Two (2) 7-1/2" x 9-1/2" (image area) enlargements shall be made on 8" x 10" single weight, gloss paper, and shall be mounted in approved vinyl photo pages, pre-punched for post or 3-ring binders, as directed by the Engineer. In addition to the proper identification numbers, enlargements shall be further identified on the face by appropriate permanent markings consisting of the Contract No., the date when taken, and a description of the location. Enlargements shall be delivered to the designated construction office not later than three (3) days after a photograph is taken, unless otherwise specified.

1.06.46. - Project Signs.

Unless otherwise specified in the Special Provisions of the contract, the following shall apply:

(A) Bridge Projects

When specifically called for in the Special Provisions of the contract, the Company shall furnish, erect, maintain and remove project signs as herein provided and as directed by the Commissioner, in the number and with the overall dimensions specified. The project signs shall comply with the details shown on the Standard Drawing referred to in the Special Provisions.

Credits, names of officials, spacing between lines of letters, and heights of letters shall be as per the Standard Drawing. Spacing between letters and widths of letters shall be in proportion to the sign size. The project title and the names and titles of officials will be furnished by the Commissioner.

Signs shall be erected at such locations within or adjacent to the contract limits as the Commissioner shall direct, within twenty (20) working days after the Company has been ordered to commence work.

Prior to fabrication of signs, the Company, within ten (10) days from the date of contract award, shall submit to the Commissioner, for approval, a scale drawing of the signs, complete with lettering. The drawing shall include the details of the sign supports and bracing which the Company proposes to use. Fabrication of signs will not be permitted until the above Commissioner's approval has been obtained.

The Company shall be responsible for the sufficiency and adequacy of all supports and bracing and the above Commissioner's approval shall in no way relieve the Company of such responsibility.

Unless otherwise permitted, the Company shall protect and maintain signs, supports and bracing until the date of the issuance of the Final Completion Certificate for the contract. It shall alter or change credits or names of officials as directed by the Commissioner.

The Company shall protect signs, supports and bracing against injury or damage from any cause whatsoever. It shall make all repairs required as a result of such injury or damage, to the satisfaction of Commissioner.

The Company shall do all patching of lettering, supporting, re-supporting, bracing and re-bracing required to maintain signs, supports and bracing in first class condition and in proper position.

At the completion of the contract or at such time as the Commissioner shall direct, the Company shall dismantle, remove and dispose of project signs, supports and bracing away from the site of the work.

1.06.47. - Site to be Maintained in Neat and Orderly Condition.

(A) Piling of Materials Delivered to Work Site

Materials to be used in the work shall be compactly piled within limits to be designated by the Commissioner. Sand and coarse aggregate may be piled within the roadway area. All old and such new material as has been approved, except sand and coarse aggregate, shall be neatly piled by the Company on the front half of the sidewalk, on planks or plates, if the same be flagged or otherwise improved. No material shall be placed within 10 ft. of any fire hydrant and sufficient passageway shall be provided to permit free access from the roadway to each and every house on the line of the work. When no work is in progress, at least one half of the roadway must be left clear at all times.

(B) Delivered Materials Not to Obstruct Traffic

All materials delivered upon but not placed in the work shall be neatly piled so as not to obstruct public travel, or shall be removed from the line of the work, at the direction of the Commissioner. Unless the materials are so removed by the Company upon notice from the

Commissioner, the materials may be removed by the Commissioner and the expense thereof charged to the Company.

(C) Sweeping and Sprinkling

Sidewalk areas adjacent to piled materials shall be kept clean and be watered, if required. When materials piled on sidewalks are removed, the sidewalks shall be immediately swept clean. All excavated materials falling on roadways and sidewalks shall be promptly swept up and removed.

When public or local inconvenience is caused by dust occasioned by the sweeping and cleaning operations, the Company shall water the affected surfaces during the sweeping and cleaning operations.

(D) Removal of Rubbish

The Company shall be responsible for the removal of all rubbish and debris from the site of the project. It shall remove all piles of rubbish, debris, waste material and wood cratings as a result of its operations as they accumulate and when directed by the Commissioner, and it shall cart them away from the site. It shall employ and keep engaged for this purpose an adequate force of laborers.

(E) Disposal of Removed Materials

Except as may be otherwise specified herein, all materials which are permanently removed from the existing construction by the Company in accordance with the contract documents, shall become its property and shall be disposed of by it away from the site.

(F) Removal of Surplus Plant and Equipment

When ordered by the Commissioner, the Company shall be required to promptly move from any location within the contract area all such items of plant and equipment determined to be no longer necessary for the effective prosecution of the work at such point, to other locations to be designated by the Commissioner. If, in the opinion of the Commissioner, plant and equipment are no longer required on any portion of the work, they shall be removed from the site when so ordered.

(G) Illumination of Building Material and Equipment on Street

Pursuant to Section 19-122 of the Administrative Code of the City of New York, the Company's attention is directed to the following:

1. Whenever a permit is issued for any building material or equipment, the outer surface of such building material or equipment shall be clearly marked with high intensity fluorescent paint, reflectors, or other marking which is capable of producing a warning glow when struck by the headlamps of a vehicle or other source of illumination.

2. All building material and equipment shall have printed thereon the name, address and telephone number of the owner thereof.

3. Violations. Any person who shall violate any of the above provisions, upon conviction thereof, shall be punished by a fine of not less than fifty dollars ($50) nor more than one hundred dollars ($100) for each and every day that the violation exists, or by imprisonment for ten (10) days for each and every day that the violation exists, or by both such fine and imprisonment.

(H) Final Clearance of Site

Immediately after the completion of the contract and before final acceptance of the Work by the Bureau, the Company shall remove all surplus material, temporary structures and debris resulting from its operations. The entire area shall be cleared in a neat, presentable manner satisfactory to the Commissioner. If as a result of the Company's operations, obstructions have fallen into a navigable waterway, they must be removed and the waterway and channel cleared; and the Company must obtain a release from the United States Coast Guard.

1.06.48. - ADDITIONAL PROVISIONS

(A) (Not Used)

(B) Access Ramps

Where the City has obtained slope easements or the equivalent thereof from owners whose properties about the contract work and where it is necessary to cut or fill said abutting property in accordance with the contract requirements to effect entrance or exit to or from the property, the Company, when ordered by the Engineer, shall provide temporary access by ramping as indicated below or by other approved means.

Said access ramps shall have a maximum grade of one (1) vertical on three (3) horizontal and shall be hard surfaced with a minimum of 51 mm (2 in.) of asphaltic material or equivalent. The cost of installation (over and above the cost of normal sloping of cut or fill) of these access ramps will be included in the appropriate scheduled contract items.

(C) (Not Used)

(D) Remove Sign Posts and Trees

Unless otherwise provided in the contract, the Company shall remove, as required, all sign posts not in conformity with the work, and transport them to a location designated by the Commissioner or relocated and reset them as directed; and all trees over 102 mm (4 in.) in caliper together with their main root systems, and shall backfill holes caused by such removal.

(E) Remove Other Encumbrances

Trees, buildings, pipes, lumber and all other encumbrances or obstructions, above the ground surface, which may be upon the line of the work when it is begun, or may thereafter be placed there, shall, if and to the extent directed, be removed by the Company.

(F) Remove Surplus Materials, Rubbish, etc.

All surplus materials, earth, sand, rubbish and stones shall be removed from the site of the work, as rapidly as the work progresses. The Company shall remove all stains or deposits of cement or bitumen from the abutment parapet handrailings and any part of structures exposed to view. All material shall be swept into heaps and immediately removed from the line of the work. Unless this is done by the Company to the satisfaction of the Commissioner, within forty-eight (48) hours after being notified to do so by a written notice to be served upon the Company, either personally or by leaving it at its residence or with any of its agents on the work, or in the manner provided herein, the same will be removed by the Commissioner and the amount of the expense thereof will be deducted out of any moneys due or to become due to the Company under this contract. The work will not be accepted until the said materials are removed.

(G) Relocate City Structures

City water mains, hydrants and connections to be relocated, will be removed and reconstructed or relaid by the Bureau of Water Supply, except as otherwise provided.

Traffic signal posts, fire alarm posts, street lighting posts and other City structures required to be relocated, will be removed and relocated on new foundations and provided with new service connections or reconstructed by the City Agencies having jurisdiction there over, except as otherwise provided.

All signs, meters and other equipment, belonging to the Bureau of Traffic Operations and which have been taken down by the Company during the progress of the work, shall be carefully loaded by the Company and delivered by it to a City yard to be designated by the Bureau of Traffic Operations or stored on the site, re-used in the work and reset in locations designated by the Bureau of Traffic Operations as directed by the Commissioner.

(H) Relocate and Plant Trees

All work of removing and replanting existing trees, planting new trees, constructing walls and iron tree guards, and all work in connection therewith shall be done by the Company to the satisfaction of the Department of Parks and Recreation of The City of New York. A Certificate of Acceptance shall be obtained by the Company from the Department of Parks and Recreation and filed with the Commissioner before the final voucher is approved for payment.

Trees along the line of work shall be protected against injury or defacement by the Company. Any trees injured or defaced which do not require replacement shall be treated by the Company to insure its continued growth in accordance with the recommendations of the Department of Parks and Recreation, and at the expense of the Company.

Trees injured or defaced beyond treatment shall be replaced in accordance with the requirements for new trees, and at the expense of the Company.

(I) Sidewalk Openings for Trees

When new sidewalks are constructed and/or old sidewalks re-laid an opening of at least 20 square feet shall be left around existing trees, or the walk shall be constructed as directed by the Commissioner.

(J) Adjusting Manhole Heads, etc.

All existing manhole heads and other appurtenances of subsurface structures which:

1. Belong to The City shall, where required, be adjusted to the new work; be brought to the finished street surface with masonry of the same thickness as that of the existing structures; have broken iron heads or gratings replaced with heads or gratings which will be furnished to the Company on written order by the City at one of its yards:

2. Belong to public utility or other corporations will be adjusted to the new work by the corporations owning such appurtenances, under the supervision of the Company who shall be held responsible for the accuracy of such adjustments and who shall make such corrections, during the progress of the work or the maintenance thereof, as may be required.

(K) Adjusting Existing Pavements, Sidewalks, etc.
Existing pavements, sidewalks, curb, gutter, flagging, and crosswalks shall be properly adjusted to the work done under this contract, as may be directed.

(L) Resetting Existing Concrete Curb

Existing concrete curb which, in the opinion of the Commissioner, is of suitable quality and dimensions shall be reset as directed to the proper line and grade.

(M) Old Materials to be Removed

Designated old useful materials, necessary to be removed in the preparation for the work (excepting earth and rock excavation and materials designated by the Commissioner as useless), which cannot be utilized in accordance with the terms of this contract, shall remain the property of The City and shall be delivered by the Company to a designated City owned yard.

All old steel curb, basin and inlet castings designated to be scrapped, all other metallic scrap belonging to the City, and all useless materials shall become the property of the Company and shall be removed and disposed of, by it, away from the site.

Materials to be re-used in the work shall be marked in such a manner as may be required for future identification.

(N) Reuse of Material

Material which is especially suitable for use in the work shall be collected, piled and utilized as directed by the Engineer. All the work of removing old material as above shall be done at the expense of the Company.

1.06.49. - Company Performance Evaluation

The Company's performance will be evaluated by the City annually, and at the time of substantial completion. A copy of the evaluation will be sent to the Company not later than fifteen (15) calendar days after the occurrence of these events, and the Company may respond in writing to the performance report. Such responses shall be submitted to the Commissioner not later than fifteen (15) calendar days after a copy of the evaluation is sent to the Company. The response will be affixed to the evaluation. Failure to respond may result in review of the Company's performance when a bid is evaluated without the benefit of the Company's response to the report.

1.06.50. - Prices to Cover

No direct payment will be made for costs incurred in complying with the foregoing General Provisions, except as otherwise provided. Said costs will be deemed to have been included in the prices bid for all the scheduled items of the contract.

SECTION 1.07

LABOR LAW 220
LABOR LAW 230
NYC ADMINISTRATIVE CODE §6-109

NOTE: IF THE WORK AT ISSUE IS GOVERNED BY BOTH LABOR LAW 220 AND THE FEDERAL DAVIS-BACON ACT, THE COMPANY SHALL PAY THE HIGHER OF THE APPLICABLE WAGES IN THE EVENT OF A DISCREPANCY.

THE LAWS ARE INCLUDED IN THIS CONTRACT FOR THE COMPANY'S CONVENIENCE. IT IS THE COMPANY'S RESPONSIBILITY TO COMPLY WITH THE LATEST LAWS/EXECUTIVE ORDERS/ORDINANCES.

FOR INFORMATION TO PREVAILING WAGE SCHEDULES, THE COMPANY CAN ACCESS THE FOLLOWING:

http://www.comptroller.nyc.gov/bureaus/bll/2008_pdf_files/220PrevailingWageSchedule07-08.pdf

http://www.comptroller.nyc.gov/bureaus/bll/2008_pdf_files/230PrevailingWageSchedule07-08.pdf

http://www.comptroller.nyc.gov/bureaus/bll/2008_pdf_files/6-109PrevailingWageSchedule07-08.pdf

LABOR LAW §220 PREVAILING WAGE SCHEDULE

Pursuant to Labor Law §220 (3) the Comptroller of the City of New York has promulgated this schedule solely for Workers, Laborers and Mechanics engaged by private contractors on New York City public work contracts. Contracting agencies anticipating doing work which requires the employment of a trade or classification not included in this schedule must request the Comptroller to establish a proper classification for the work pursuant to Labor Law §220 (3-a) (a). The prevailing rate schedule as promulgated by the Comptroller, must, in compliance with law, be annexed to and form part of the contract.

The appropriate schedule of prevailing wages and benefits must be posted at all public work sites pursuant to Labor Law §220 (3-a) (a).

This schedule is applicable for work performed from July 1, 2007 through June 30, 2008, unless otherwise noted. You will be notified of any changes to this schedule by addenda published on our web site at www.comptroller.nyc.gov. The rate of wages and supplemental benefits to be paid or provided are those that prevail at the time the work is being performed. Preliminary schedules for future one-year periods are published annually in the City Record on or about June 1st of each succeeding year. Final schedules are published on or about July 1st in the City Record and on our web site at www.comptroller.nyc.gov.

The Comptroller's Office has attempted to include all overtime, shift and night differential, Holiday, Saturday, Sunday or other premium time work. However, this schedule does not set forth every prevailing practice with respect to such rates with which employers must comply. All such rates and practices are nevertheless part of the employer's prevailing wage obligation and contained in the collective bargaining agreements of the prevailing wage unions. These collective bargaining agreements are available for inspection by appointment. Requests for appointments may be made by calling (212) 669-4437, Monday through Friday between the hours of 9 a.m. and 5 p.m.

Answers to questions concerning the application of premium rates and or prevailing trade practices may be found in the collective bargaining agreements of the prevailing union or by requesting such information from the Bureau of Labor Law's Classification unit by calling (212) 669-4437.

All other inquiries concerning compliance with the Prevailing Wage Law, should be directed to; Bureau of Labor Law, ATT: Wasyl Kinach, P.E., Office of the Comptroller, 1 Centre Street, Room 1122, New York, N.Y. 10007; Fax (212) 669-4002.

Prevailing rates and ratios for apprentices are attached to this schedule as Appendix #1. Pursuant to Labor Law §220 (3-e), only apprentices who are individually registered in a bona fide program to which the employer contractor is a participant, registered with the New York State Department of Labor, may be employed on a public work project. Trainees, Assistants and Helpers who are not journey persons or not registered apprentices pursuant to Labor Law §220 (3-e) may not be substituted for apprentices and must be paid as journey persons.

Office of the Comptroller, City of New York

Workers, Laborers and Mechanics employed on a public work project must receive not less than the prevailing rate of wage and benefits for the classification of work performed by each upon such public work. Contractors are solely responsible for maintaining original payroll records which delineate, among other things, the hours each employee worked within a given classification. Contractors using rates and/or classifications not promulgated by the Comptroller do so at their own risk. Additionally, prior to bid, Agency Chief Contracting Officers must contact the Bureau of Labor Law when the need arises for a work classification not published in this schedule.

Prevailing Rate Schedule Information: The information below is intended to assist you in meeting your prevailing wage rate obligation.

Covered Workers: Any and all individuals who are engaged, employed or otherwise occupied as Workers, Laborers or Mechanics on the public work site.

Supplemental Benefits: Employers may meet supplemental benefits obligation by paying the hourly supplemental benefits rate to their employees in cash. Such cash payments are considered income to the employee. Employers who elect to provide bona fide supplemental benefits to their employees will be given hourly cash credit for such benefits up to the hourly benefits rate set forth in the applicable schedule for the relevant trade or occupation at issue.

Particular attention should be given to the supplemental benefits requirement. Although in most instances the payment or provision for supplemental benefits is for each hour worked, some classifications require the payment or provision of supplemental benefits for each hour paid. Consequently, some prevailing practices require benefits to be purchased at the overtime, shift differential, Holiday, Saturday, Sunday or other premium time rate.

Contractors are advised to review the applicable Collective Bargaining Agreements and the Comptroller's Prevailing Wage Schedule before bidding on Public Work. If there are any questions concerning prevailing wages, benefits, overtime, Holiday pay, shift differentials or any prevailing practice, please contact this office.

Any error as to compensation under the prevailing wage law or other information as to trade classification, made by the contracting agency in the contract documents or in any other communication will not preclude a finding against the contractor of prevailing wage violation.

Wasyl Kinach, P.E.
Director of Classifications
Bureau of Labor Law

HOLIDAY LEGEND

The Holidays as listed below are to be paid at the wage rates at which the employee is normally classified.

(1) None
(2) New Years Day
(3) Martin Luther King Jr. Day
(4) Lincoln's Birthday
(5) Washington's Birthday
(6) President's Day
(7) Good Friday
(8) Memorial Day
(9) Independence Day
(10) Labor Day
(11) Columbus Day
(12) Election Day
(13) Presidential Election Day
(14) 1/2 day on Presidential Election Day
(15) Veteran's Day
(16) Thanksgiving Day
(17) Day after Thanksgiving
(18) Day before Christmas
(19) 1/2 day before Christmas Day
(20) Christmas Day
(21) Day before New Year's Day
(22) 1/2 day before New Year's Day
(23) Personal day
(24) Easter

OVERTIME LEGEND

Additional requirements may also be listed in the OVERTIME section
(1) Time and one half the regular rate after a 7 hour day.
(2) Time and one half the regular rate after an 8 hour day.
(3) Double time the regular rate after a 7 hour day.
(4) Double time the regular rate after an 8 hour day.
(5) Time and one half the regular rate for Saturday.
(6) Double time the regular time rate for Saturday.
(7) Time and one half the regular rate for Sunday.
(8) Double time the regular rate for Sunday.
(9) Saturday may be used as a make-up day at straight time when a day is lost during that week to inclement weather.
(10) Saturday and Sunday may be used as a make-up day at straight time when a day is lost that week due to inclement weather.
(11) Regular straight time rate for work on a holiday.
(12) Time and one half the regular rate for work on a holiday.
(13) Double time the regular rate for work on a holiday.
(14) Triple time the regular rate for work on a holiday.

NOTE: **Benefits are paid for *EACH HOUR WORKED* unless otherwise noted.**

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CLASSIFICATION: ASBESTOS HANDLER (HAZARDOUS MATERIAL)
(Disturbs, removes, encapsulates, repairs, or encloses friable asbestos material)

WAGE RATE PER HOUR: $27.00

SUPPLEMENTAL BENEFIT RATE PER HOUR: $9.95

OVERTIME: Overtime is paid for all hours worked in excess of eight hours per day or forty (40) hours per week at time and one half the wage rate per hour and straight time for supplemental benefits. (12 when any of the following holidays are worked – 2, 8, 9, 10, 16, 20 & 24). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: None

(Mason Tenders District Council - Local 78)

***CLASSIFICATION*: BLASTER**

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Blaster	$36.79	$25.99
Blaster (Hydraulic)	$37.37	$25.99
Trac Drill Hydraulic	$33.48	$25.99
Wagon: Air Trac: Quarry Bar Drillrunners	$32.91	$25.99
Operators of Jack Hammers: Chippers: Spaders: Concrete Breakers: and all other pneumatic tools of like usage: Walk Behind Self Propelled Hydraulic Asphalt and Concrete Breakers: Hydro (Water) Demolition	$32.18	$25.99
Powder Carriers	$29.41	$25.99

Continued on following page

Hydraulic Trac Drill Chuck Tender	**$28.48**	**$25.99**
Chuck Tender & Nipper	**$27.96**	**$25.99**
Magazine Keepers: (Watch Person)	**$18.12**	**$25.99**

OVERTIME: (4, 5, 8 and 13 when any of the following holidays are worked – 2, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend

SHIFT RATES: A single shift shall be a continuous nine (9) hours, starting at 8:00 A.M. When two (2) shifts are employed, the work period for each shift shall be a continuous eight (8) hours. When three (3) shifts are employed, each shift will work seven and one-half (7 ½) hours, but will be paid for eight (8) hours, since only one-half (½) hour is allowed for mealtime. When two (2) or more shifts are employed, single time will be paid for each shift. The first eight (8) hours of any and all work performed Monday through Friday inclusive of any off-shift shall be at the single time rate.

(Local #29)

***CLASSIFICATION*: BOILERMAKER**

WAGE RATE PER HOUR: $44.09
Effective January 1, 2008 $44.98

SUPPLEMENTAL BENEFIT RATE PER HOUR: $28.77 repair or maintenance
$30.77 new construction (straight time only)
$28.77 new construction (overtime rate)

Effective January 1, 2008 $29.20 repair or maintenance
$31.20 new construction (straight time only)
$29.20 new construction (overtime rate)

OVERTIME: (2, 5, 8 and 13(see below) for Repair or Maintenance work; 4, 6, 8 and 13(see below) for New Construction work; and 13 for all work when any of the following holidays are worked – 2, 6, 8, 9, 11, 12, 15, 16 & 20). See Overtime and Holiday Legends. Anyone working Labor Day receives quadruple time pay. See Overtime and Holiday Legends.

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PAID HOLIDAYS: (7, 17, 18, 21) See Holiday Legend

SHIFT RATES:
For New Construction Work requiring two (2) shifts, the first shift shall be paid straight time for the first six (6) hours worked and double time for additional hours worked. The second shift shall be paid straight time for the first six (6) hours worked and double time for additional hours worked. All hours worked on the second shift shall receive a 10% wage rate differential.
For Repair and Maintenance Work, when shifts are required the first shift shall work eight (8) hours at the regular straight-time rate. The second shift shall work seven and one-half (7 ½) hours and receive eight (8) times the regular straight time hourly rate plus twenty-five ($.25) cents. The third shift shall work seven (7) hours and receive eight (8) times the regular straight time hourly rate plus fifty ($.50) cents. A thirty (30) minute lunch period shall not be considered as time worked.

(Local #5)

***CLASSIFICATION*:** **BRICKLAYER**

WAGE RATE PER HOUR: $40.34

SUPPLEMENTAL BENEFIT RATE PER HOUR: $22.71

OVERTIME: (1, 5, 8, 9 and 13 when any of the following holidays are worked 2, 6, 8, 9, 10, 16 & 20) See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Overtime rates to be paid outside the regular 8:00 A.M. to 4:00 P.M. work day.

(Bricklayer District Council)

CLASSIFICATION: CARPENTER - BUILDING COMMERCIAL

WAGE RATE PER HOUR: $41.23

SUPPLEMENTAL BENEFIT RATE PER HOUR: $32.21

OVERTIME: (2, 5, 8, 9 and 13 when any of the following holidays are worked– 2, 5, 8, 9, 10, 11, 13, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: The second shift will receive one hour at the double time rate of pay for the last hour of the shift; eight hours pay for seven hours of work, nine hours pay for eight hours of work. There must be a first shift in order to work a second shift.

(Carpenters District Council)

CLASSIFICATION: CARPENTER - HEAVY CONSTRUCTION WORK

(Construction of Engineering Structures and Building Foundations).

WAGE RATE PER HOUR: $41.39*

SUPPLEMENTAL BENEFIT RATE PER HOUR: $32.96*

*** Effective July 1, 2007 - $3.72 to be allocated between the hourly wage and supplemental benefit.**

OVERTIME: (2, 5, 8, 9 and 13 when any of the following holidays are worked 2, 6, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Off shift work, commencing between 5:00 P.M. and 10:00 P.M. shall work eight and one half hours allowing for one half hour for lunch, but will be paid for 9 hours including benefits at the straight time rate for 8 hours.

(Carpenters District Council)

CLASSIFICATION: CEMENT AND CONCRETE WORKER

WAGE RATE PER HOUR: $33.00

SUPPLEMENTAL BENEFIT RATE PER HOUR: $23.48

SUPPLEMENTAL OVERTIME RATE FOR SATURDAYS: $26.23

SUPPLEMENTAL OVERTIME RATE FOR SUNDAYS & HOLIDAYS: $28.98

OVERTIME: (1 & 2 for working with Dockbuilders on pile cap forms and for work below street level to the top of the foundation wall, not to exceed 2 feet or 3 feet above the sidewalk (brick shelf), when working on the foundation and structure. 5, 8 and 13 when any of the following holidays are worked –2, 6, 7, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (19 & 22) See Holiday Legend.

SHIFT RATES: On shift work extending over a twenty-four hour period, all shifts are paid at straight time.

(CEMENT CONCRETE WORKERS DISTRICT COUNCIL)

CLASSIFICATION: CEMENT MASON

WAGE RATE PER HOUR: $36.25*

SUPPLEMENTAL BENEFIT RATE PER HOUR: $30.96*

OVERTIME SUPPLEMENTAL BENEFIT RATE PER HOUR: $45.96

*** Effective July 1, 2007 - $3.40 to be allocated between hourly wage and supplemental benefit.**

The Vacation and Annuity are paid at double the regular hourly rate when overtime hours are worked. All other benefits are paid at the straight time rate.

OVERTIME: (4, 6, 8 and 13 when any of the following holidays are worked – 2, 6, 7, 8, 9, 10, 11, 13, 16 & 20) See Overtime and Holiday Legends.

Continued on following page

PAID HOLIDAYS: Any Cement Mason who reports to work on Christmas Eve or New Year's Eve pursuant to his employer's instruction shall be entitled to three (3) hours afternoon pay without working.

SHIFT RATES: For an off shift day, (work at times other than the regular 8:00 A.M. to 3:30 P.M. work day) a cement mason shall be paid at the regular hourly rate plus a 25% per hour differential.

(Local #780)

CLASSIFICATION: CORE DRILLER

CORE DRILLER

WAGE RATE PER HOUR:	**$30.04**

CORE DRILLER HELPER

WAGE RATE PER HOUR:	**$24.55**
Third year in the industry -	**$22.10**
Second year in the industry -	**$19.64**
First year in the industry -	**$17.19**

SUPPLEMENTAL BENEFIT RATE PER HOUR: $ 14.10 (for both drillers and helpers)

OVERTIME: (2, 5, 8 and 12 plus Holiday pay when worked.) See Overtime Legend.

PAID HOLIDAYS: (2, 8, 9, 10, 16 & 20) See Holiday Legend.

SHIFT RATES: The shift day shall be the continuous eight and one-half (8½) hours from 6:00 A.M. to 2:30 P.M. and from 2:30 P.M. to 11:00 P.M., including one-half (½) hour of employees regular rate of pay for lunch. When two (2) or more shifts are employed, single time shall be paid for each shift, but those employees employed on a shift other than from 8:00 A.M. to 5:00 P.M. shall, in addition, receive seventy-five ($.75) cents per hour differential for each hour worked. When three (3) shifts are needed, each shift shall work seven and one-half (7 ½) hours paid for eight (8) hours of labor and be permitted one-half (½) hour for mealtime.

(Carpenters District Council)

CLASSIFICATION: DERRICKPERSON AND RIGGER

WAGE RATE PER HOUR: $38.36

SUPPLEMENTAL BENEFIT RATE PER HOUR:
$35.10 - For work performed in Manhattan, Bronx, Brooklyn and Queens.
$36.52 - For work performed in Staten Island.

NOTE!- The first two hours of overtime on weekdays and the first seven hours of work on Saturdays are paid at time and one half for wages and supplemental benefits. All additional overtimes is paid at double time for wages and supplemental benefits. Deduct $1.42 from the Staten Island hourly benefits rate before computing overtime.

OVERTIME: (8 and 13 when any of the following holidays are worked – 2, 5, 7, 8, 9, 10, 16 & 20. See Overtime and Holiday Legends.

PAID HOLIDAYS: (19 if work is performed in the A.M.) See Holiday Legend.

(Local #197)

CLASSIFICATION: DIVER

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Diver (Marine)	$51.41	$32.96
Diver Tender (Marine)	$37.36	$32.96

OVERTIME: (2, 5, 8, 9 and 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: When three shifts are utilized each shift shall work seven and one half-hours and paid for 8 hours, allowing for one half hour for lunch.

(Carpenters District Council)

CLASSIFICATION: DOCKBUILDER - PILE DRIVER

WAGE RATE PER HOUR: $41.39*

SUPPLEMENTAL BENEFIT RATE PER HOUR: $32.96*

*** Effective July 1, 2007 - $3.72 to be allocated between the hourly wage and supplemental benefit.**

OVERTIME: (2, 5, 8, 9, and 13 when any of the following holidays are worked 2, 6, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Off shift work, commencing between 5:00 P.M. and 10:00 P.M. shall work eight and one half hours allowing for one half hour for lunch, but will be paid for 9 hours including benefits at the straight time rate for 8 hours.

(Carpenters District Council)

CLASSIFICATION: ELECTRICIAN

(Including all low voltage cabling carrying voice, data, video or any combination thereof.)

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Electrician "A" (Regular Day)	$46.00	$36.66
Effective May 8, 2008	$47.00	$39.24
Electrician "A" (Regular Day Overtime)	$69.00	$42.53
Effective May 8, 2008	$70.50	$45.24
*Electrician "A" (First Shift – 8:00 a.m. to 4:30 p.m.)	$46.00	$36.66
Effective May 8, 2008	$47.00	$39.24
*Electrician "A" (First Shift Overtime After 8 hours)	$69.00	$42.53
Effective May 8, 2008	$70.50	$45.24

Continued on following page

***Electrician "A"**		
(Swing Shift – 4:30 p.m. to 12:30 a.m.)	**$53.97**	**$39.36**
Effective May 8, 2008	**$55.14**	**$42.12**
***Electrician "A"**		
(Swing Shift Overtime After 7.5 hours)	**$80.95**	**$45.58**
Effective May 8, 2008	**$82.71**	**$48.36**
***Electrician "A"**		
(Graveyard Shift – 12:30 a.m. to 8:00 a.m.)	**$60.45**	**$41.78**
Effective May 8, 2008	**$61.77**	**$44.73**
***Electrician "A"**		
(Graveyard Shift – Overtime After 7 hours)	**$90.67**	**$48.07**
Effective May 8, 2008	**$92.65**	**$50.90**

*** The starting time of a shift may begin one hour earlier or one hour later than the above times; otherwise the entire shift shall be paid at the higher shift rate.**

****Electrician "M" (First 8 hours)**	**$25.30**	**$15.13**
Effective May 8, 2008	**$25.30**	**$15.64**
****Electrician "M" Overtime -(After first 8 hours)**	**$37.95**	**$16.72**
Effective May 8, 2008	**$37.95**	**$17.22**

****"M" rated work shall be defined as jobbing.**

****Jobbing is defined as, "Electrical work of limited duration and scope, performed by an electrician who travels to various locations during the course of the workday, (may include 2 electricians for a maximum of 2 days) consisting of repairs and/or replacement of electrical equipment."**

Benefits include supplemental workers compensation and supplemental disability, which are paid to a worker in excess of statutory workers compensation and disability benefits. How these benefits are calculated and eligibility for these benefits is on file in the Bureau of Labor Law Determinations and Classifications Unit and will be made available to you for review upon request.

OVERTIME:
Electrician "A" - (1, 5, 7 & 12). See Overtime Legend.
Electrician "M" - (2, 5, 7 & 12). See Overtime Legend.

PAID HOLIDAYS: (NONE)

(Local #3)

CLASSIFICATION: ELECTRICIAN-STREET LIGHTING WORKER

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Electro Pole Maintainer	$29.88	$26.50
Effective May 15, 2008	$30.53	$28.32
Electro Pole Foundation Installer	$34.89	$29.92
Effective May 15, 2008	$35.65	$31.91

OVERTIME: (1, time and one half the regular hourly for work performed after the fifth consecutive day worked, 9, 12 when any of the following holidays are worked – 2, 3, 5, 8, 9, 10, 11, 12, 16, 17 & 20) See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

(Local #3)

CLASSIFICATION: ELEVATOR CONSTRUCTOR

Construction	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Elevator Constructor	$45.98	$25.02
Effective March 17, 2008	$48.19	$27.06

OVERTIME: For New Construction: (3 or 4, 6, 8 & 13) all work performed between the hours of 4:30 P.M. and 7:00 A.M. shall be paid at the double time rate. See Overtime Legend.

OVERTIME: For work in Existing Buildings: (2, 5, 7 & 13). All work performed after the regular workday and/or between the hours of 5:30 P.M. and 7:00 A.M. shall be paid at time and one-half. See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 7, 8, 9, 10, 11, 15, 16, 17 & 20) See Holiday Legend.

***VACATION: Employer contributes 8% of regular basic hourly rate as vacation pay for employees with more than 15 years of service, and 6% for employees with 5 to 15 years of service, and 4% for employees with less than 5 years of service.**

(Local #1)

CLASSIFICATION: ELEVATOR REPAIR/MAINTENANCE

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
"A" Elev. Repair/Mod. Mechanic	$33.74	$19.21
Effective 2/25/08	$34.75	$20.86
Elev. Machinist Mechanic	$32.26	$18.63
Effective 2/25/08	$33.23	$20.23
“A" Elev. Winder	$32.26	$18.63
Effective 2/25/08	$33.23	$20.23
"B" Elev. Repair/Mod. Mechanic	$30.51	$17.95
Effective 2/25/08	$31.43	$19.49
"A" Elev. Main. Mechanic	$32.26	$18.63
Effective 2/25/08	$33.23	$20.23
"A" Elev. Machinist	$30.51	$14.95
Effective 2/25/08	$31.43	$16.24
"B" Elev. Main. Mechanic	$29.74	$17.65
Effective 2/25/08	$30.63	$19.16
"B" Elev. Machinist	$26.49	$13.37
Effective 2/25/08	$27.29	$14.53
“A” Elevator Helper	$25.01	$12.79
Effective 2/25/08	$25.76	$13.89

OVERTIME: (2, 5, 7 and 12 if holiday is worked. For Repair Jobs (not call-backs) (2, 5, 8 and 13 if holiday is worked.) See Overtime Legend.

PAID HOLIDAYS: (2, 3, 5, 8, 9, 10, 11, 12, 15, 16, 17 & 20). See Holiday Legend.

SHIFT WAGE RATE: For Modernization Work - regular hourly rate plus a fifteen (15%) per cent differential.

(Local #3 Elevator Division)

***CLASSIFICATION*: ENGINEER - HEAVY CONSTRUCTION**

Title

Operating Engineers

Cherrypickers 20 tons and over and Loaders (rubber tired and/or tractor type with a manufacturer's minimum rated capacity of six cubic yards and over).

WAGE RATE PER HOUR: $49.21

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13). See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: $78.74

Title

Operating Engineers

Backhoes, Basin Machines, Groover, Mechanical Sweepers, Bobcat, Boom Truck, Barrier Transport (Barrier Mover) & machines of similar nature. Operation of Churn Drills and machines of a similar nature, Stetco Silent Hoist and machines of similar nature, Vac-Alls, Meyers Machines, John Beam and machines of a similar nature, Ross Carriers and Travel Lifts and machines of a similar nature, Bulldozers, Scrapers and Turn-a-Pulls: Tugger Hoists (Used exclusively for handling excavated material); Tractors with attachments, Hyster and Roustabout Cranes, Cherrypickers. Austin Western, Grove and machines of a similar nature, Scoopmobiles, Monorails, Conveyors, Trenchers: Loaders-Rubber Tired and Tractor:Barber Greene and Eimco Loaders and Eimco Backhoes; Mighty Midget and similar breakers and Tampers, Curb and Gutter Pavers and Motor Patrol, Motor Graders and all machines of a similar nature.

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Locomotives 10 Tons or under. Mini-Max, Break-Tech and machines of a similar nature; Milling machines, robotic and demolition machines and machines of a similar nature, shot blaster, skid steer machines and machines of a similar nature including bobcat, pile rig rubber-tired excavator (37,000 lbs. and under), 2 man auger.

WAGE RATE PER HOUR: $47.78

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13). See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: $76.45

***CLASSIFICATION*:** **ENGINEER - HEAVY CONSTRUCTION**

Title

Maintenance Engineers

Installing, Repairing, Maintaining, Dismantling and Manning of all equipment including Steel Cutting, Bending and Heat Sealing Machines, Mechanical Heaters, Grout Pumps, Bentonite Pumps & Plants, Screening Machines, Fusion Coupling Machines, Tunnel Boring Machines Moles and Machines of a similar nature, Power Packs, Mechanical Hydraulic Jacks; all drill rigs including but not limited to Churn, Rotary Caisson, Raised Bore & Drills of a similar nature; Personnel, Inspection & Safety Boats or any boats used to perform functions of same, Mine Hoists, Whirlies, all Climbing Cranes, all Tower Cranes, including but not limited to Truck Mounted and Crawler Type and machines of similar nature; Maintaining Hydraulic Drills and machines of a similar nature; Well Point System-Installation and dismantling (Foreman plus crew of four men). After system has been installed operation on day shift only; Where ejector or recharge system is used with separate piece of equipment in conjunction with Well Point System, an additional Maintenance Engineer shall be employed on all shifts; Burning, Welding, all Pumps regardless of size and/or motor power, except River Cofferdam Pumps and Wells Point Pumps; When two or more Air Pumps are used, a Maintenance Engineer shall be employed; Operation of Accumulator for Shield-Driven Tunnels, Handling Installation, Jointing; Coupling of all permanent cast iron, steel and plastic piping; and all temporary Pipe Fitting and such other work as by custom has been performed by the Maintenance Engineer; Motorized Buggies (three or more); equipment used in the cleaning and televising of sewers, but not limited to jet-rodder/vacuum truck, vacall/vactor, closed circuit television inspection equipment; high powered water pumps, jet pumps; screed machines and concrete finishing machines of a similar nature; vermeers.

Continued on following page

A Maintenance Engineer shall also be assigned to work on Overtime, Saturdays, Sundays and Holidays when necessary. A Maintenance Engineer shall be employed on Autograde (C.M.I.), On-site Crushing Plants, On-Site Concrete Plants, Vermeers and machines of a similar nature. A Working Maintenance Foreman shall be employed on all jobs when required and any job where a Master Mechanic is employed. He shall also be employed and act as Assistant Master Mechanic on the second and third shifts.

WAGE RATE PER HOUR: $47.57

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) see Overtime Legend

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: $76.11

Title
Maintenance Engineer
On Base Mounted Tower Cranes

WAGE RATE PER HOUR: $62.00

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) see Overtime Legend

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: $99.20

CLASSIFICATION: ENGINEER - HEAVY CONSTRUCTION

Title
Maintenance Engineers
On Generators, Power Pack Light Towers

WAGE RATE PER HOUR: **$31.94**

SUPPLEMENTAL BENEFIT RATE PER HOUR: **$24.02**
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13). See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: **$51.10**

Title
Maintenance Engineer
On Pumps and Mixers including mudsucking

WAGE RATE PER HOUR: **$32.71**

SUPPLEMENTAL BENEFIT RATE PER HOUR: **$24.02**
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: **$52.34**

CLASSIFICATION: ENGINEER - HEAVY CONSTRUCTION

Title

Operating Engineer

Minor Equipment such as Tractors, Post Hole Diggers, Ditch Witch (Walk Behind), Road Finishing Machines, Rollers five tons and under, Tugger Hoists, Dual Purpose Trucks, Fork Lifts, and Dempster Dumpers.

WAGE RATE PER HOUR: $45.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13). See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: $72.67

Title

Fireperson

Steam operated Water Rigs, Steam Shovels and Cranes; Power Boilers; Pile Drivers; Derrick Boats: Plus one hour at Overtime Rate for Steam equipment. When one generator and console for Vibratory Hammer are mounted on Pile Driving Rig, one additional hour shall be paid to crew at the premium time rate.
If Generator or Console for Vibratory Hammer is off machine and placed on the ground an additional crew of Local 14 and 15 shall be employed. If one compressor is used along with auxiliary equipment, Jet Pipe and Auger, the crew shall receive one additional hour at the premium time rate for mounting of such equipment. When two or more compressors are used along with auxiliary equipment, an additional two hours at the premium time rate will be paid.

WAGE RATE PER HOUR: $45.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) see Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: $72.67

Title

Oilers

Gradalls, Cold Planer Grader, Concrete Pumps, and their duties shall be to assist the Engineers in Oiling, Greasing and Repairing of all machines, giving signals when necessary, Chaining Buckets and Scale Boxes, Driving Truck Cranes, Driving and Operating Fuel and Grease Trucks. Plus one-half hour at Overtime rate when ordered by Employer at starting time. When three to seven Compressors are utilized in Battery it requires an Oiler. When eight to 12 Compressors are utilized in Battery it requires two Oilers.

WAGE RATE PER HOUR: $43.04

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: $68.86

***CLASSIFICATION*:** **ENGINEER - HEAVY CONSTRUCTION**

Title

Oilers

All gasoline, electric, diesel or air operated Shovels, Draglines, Backhoes, Keystones, Pavers, Gunite Machines, Battery of Compressors, Crawler Cranes, two-person Trenching Machines**.**

WAGE RATE PER HOUR: $30.25

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13). See Overtime Legend

PAID HOLIDAYS: Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). See Holiday Legend.

SHIFT WAGE RATE: $48.40

CLASSIFICATION: ENGINEER - STEEL ERECTION

Title

Maintenance Engineers

Derrick, Travelers, Tower, Crawler Tower and Climbing Cranes

WAGE RATE PER HOUR: **$49.45**

SUPPLEMENTAL BENEFIT RATE PER HOUR: **$24.02**
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: **$79.12**

Title	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Oiler		
On a Truck Crane	**$46.47**	**$24.02** **$42.89 on overtime**

OVERTIME: (4, 6, 8 & 13). See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: **$74.35**

Title	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Oiler		
On a Crawler Crane	**$36.08**	**$24.02** **$42.89 on overtime**

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATES: **$57.73**

***CLASSIFICATION*:** **ENGINEER - BUILDING WORK**

Title

Maintenance Engineers

Installing, repairing, maintaining, dismantling (of all equipment including: Steel Cutting and Bending Machines, Mechanical Heaters, Mine Hoists, Climbing Cranes, Tower Cranes, Linden Peine, Lorain, Liebherr, Mannes, or machines of a similar nature, Well Point Systems, Deep Well Pumps, Concrete Mixers with loading Device, Concrete Plants, Motor Generators when used for temporary power and lights)-driving maintenance trucks and truck-mounted welding machines-all pumps (regardless of size and motor power except River Cofferdam Pumps and Well Point Pumps)-when three or more motorized concrete buggies (ride type) are utilized on the Job sites they shall be serviced, maintained and repaired by the Maintenance Engineer, skid steer machines of a similar nature including bobcat.

WAGE RATE PER HOUR: $47.24

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: Off Shift: double time the regular hourly rate

***CLASSIFICATION*:** **ENGINEER - BUILDING WORK**

Title

Maintenance Engineers

Maintenance Engineers on Pumps, Generators, Mixers and Heaters

WAGE RATE PER HOUR: $37.37

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: Off Shift: double time the regular hourly rate.

Title

Oilers

All gasoline, electric, diesel or air operated Gradealls: Concrete Pumps, Overhead Cranes in Power Houses: Their duties shall be to assist the Engineer in oiling, greasing and repairing of all machines; Driving Truck Cranes: Driving and Operating Fuel and Grease Trucks, Cherrypickers (hydraulic cranes) over 70,000 GVW, and machines of a similar nature.

WAGE RATE PER HOUR: $45.05

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: Off Shift: double time the regular hourly rate.

***CLASSIFICATION*: ENGINEER - BUILDING WORK**

Title

Oilers

Oilers on Crawler Cranes, Backhoes, Trenching Machines, Gunite Machines, Compressors (three or more in Battery).

WAGE RATE PER HOUR: $34.21

SUPPLEMENTAL BENEFIT RATE PER HOUR: $24.02
$42.89 on overtime

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT WAGE RATE: Off Shift: double time the regular hourly rate.

(LOCAL #15)

CLASSIFICATION: FIELD ENGINEER –BUILDING CONSTRUCTION

(Construction of Building Projects, Concrete Superstructures, etc.)

Title	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Party Chief	$50.26	$22.53
Instrument Person	$39.70	$22.53
Rodperson	$26.66	$22.53

Overtime Benefit Rate - $31.22 per hour (time & one half) $39.91 per hour (double time).

OVERTIME: (1, 5 for the first seven hours worked, 6 for work performed in excess of seven hours, 8 and 13) See Overtime Legend.

PAID HOLIDAYS: (2, 6, 7, 8, 9, 10, 11, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

(LOCAL #15-D)

CLASSIFICATION: CITY SURVEYOR AND CONSULTANT ENGINEER

Title	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Party Chief	$31.29	$13.35
Instrument Person	$26.14	$13.35
Rodperson	$22.88	$13.35

Overtime Benefit Rate - $23.05 per hour (double time).

OVERTIME: (3, 6, 8 & 13). See Overtime Legend.

Continued on following page

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

(LOCAL #15-D)

CLASSIFICATION: FIELD ENGINEER - HEAVY CONSTRUCTION (Construction of Roads, Tunnels, Bridges, Sewers, Building Foundations, Engineering Structures etc.)

	Wage Rate	Supplemental Benefit Rate
Party Chief	$50.84	$22.53
Instrument Person	$36.99	$22.53
Rodperson	$31.96	$22.53

Overtime benefit rate - $31.22 per hour (time & one half), $39.91 per hour (double time).

OVERTIME: (2, 5 for the first eight hours worked, 6 for work performed in excess of eight hours, 8 and 13). See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 15, 16 and 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday legend.

(Local #15-D)

CLASSIFICATION: FIELD ENGINEER - STEEL ERECTION

Title	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Party Chief	$51.03	$22.53
Instrument Person	$40.30	$22.53
Rodperson	$27.86	$22.53

Continued on following page

Overtime benefit rate - $31.22 per hour (time & one half), $39.91 per hour (double time).

OVERTIME: (2, 5 for the first eight hours worked, 6 for work performed in excess of eight hours, 8 and 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 15, 16 & 20) Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

(Local #15-D)

CLASSIFICATION: OPERATING ENGINEER - ROAD AND HEAVY CONSTRUCTION

Equipment Being Used

Back Filling Machines, Cranes (Including but not limited to those utilizing scale boxes and mucking buckets), Mucking Machines, Dual Drum Paver.
WAGE RATE PER HOUR: $51.04 OFF SHIFT WAGE RATE: $81.66

Backhoes, Power Shovels, Hydraulic Clam Shells, Steel Erection, Moles and machines of a similar nature.
WAGE RATE PER HOUR: $52.94 OFF SHIFT WAGE RATE: $84.70

Mine Hoists, Cranes, etc. (Used as Mine Hoists)
WAGE RATE PER HOUR: $54.68 OFF SHIFT WAGE RATE: $87.49

Gradealls, Keystones, Cranes on land or water (with digging buckets), Bridge Cranes, Vermeer Cutter and machines of a similar nature, Trenching Machines.
WAGE RATE PER HOUR: $53.35 OFF SHIFT WAGE RATE: $85.36

Pile Drivers & Rigs (employing Dock Builder foreperson): Derrick Boats, Tunnel Shovels.
WAGE RATE PER HOUR: $52.25 OFF SHIFT WAGE RATE: $83.60

Mixers (Concrete with loading attachment), Concrete Pavers, Cableways, Land Derricks, Power Houses (Low Air Pressure Units).
WAGE RATE PER HOUR: $49.52 OFF SHIFT WAGE RATE: $79.23

Barrier Movers , Barrier Transport and Machines of a Similar Nature.
WAGE RATE PER HOUR: $39.54 OFF SHIFT WAGE RATE: $63.26

Continued on following page

Utility Compressors
WAGE RATE PER HOUR: $30.18 OFF SHIFT WAGE RATE: $38.65

Horizontal Boring Rig
WAGE RATE PER HOUR: $46.97 OFF SHIFT WAGE RATE: $75.15

Elevators (manually operated as personnel hoist).
WAGE RATE PER HOUR: $43.00 OFF SHIFT WAGE RATE: $68.80

Compressors (Portable 3 or more in battery), Driving of Truck Mounted Compressors, Well-point Pumps, Tugger Machines Well Point Pumps, Churn Drill.
WAGE RATE PER HOUR: $32.89 OFF SHIFT WAGE RATE: $52.62

All Drills, and Machines of a similar nature.
WAGE RATE PER HOUR: $50.07 OFF SHIFT WAGE RATE: $80.11

Concrete Pumps, Concrete Plant, Well Drilling Machines, Stone Crushers, Double Drum Hoist, Power Houses (other than above).
WAGE RATE PER HOUR: $48.40 OFF SHIFT WAGE RATE: $77.44

Concrete Mixer
WAGE RATE PER HOUR: $46.21 OFF SHIFT WAGE RATE: $73.94

Boilers (High Pressure), Compressors (Portable Single or two in Battery, not over 100 feet apart, Pumps (River Cofferdam) and Welding Machines (except where Arc is operated by Members of Local #15), Push Button Machines, All Engines Irrespective of Power (Power-Pac) used to drive auxiliary equipment, Air, Hydraulic, etc.
WAGE RATE PER HOUR: $30.38 OFF SHIFT WAGE RATE: $48.61

Concrete Breaking Machines, Single Drum Hoists, Locomotives (over ten tons) and Dinkies over ten tons, Hydraulic Crane-Second Engineer.
WAGE RATE PER HOUR: $43.98 OFF SHIFT WAGE RATE: $70.37

On-Site concrete plant engineer, On-site Asphalt Plant Engineer, and Vibratory console.
WAGE RATE PER HOUR: $44.37 OFF SHIFT WAGE RATE: $70.99

Tower Crane
WAGE RATE PER HOUR: $64.68 OFF SHIFT WAGE RATE: $103.49

SUPPLEMENTAL BENEFITS PER HOUR: $24.75 straight time hours
$44.80 overtime hours

***CLASSIFICATION*: OPERATING ENGINEER - PAVING**

Equipment Being Used

Asphalt Spreaders, Autograde (C.M.I.), Roto/Mil
WAGE RATE PER HOUR: $49.52 OFF SHIFT WAGE RATE: $79.23

Asphalt Roller
WAGE RATE PER HOUR: $48.16 OFF SHIFT WAGE RATE: $77.06

Asphalt Plants
WAGE RATE PER HOUR: $40.39 OFF SHIFT WAGE RATE: $64.62

SUPPLEMENTAL BENEFITS PER HOUR: $24.75 straight time hours
$44.80 overtime hours

***CLASSIFICATION*: OPERATING ENGINEER - CONCRETE**

Equipment Being Used

Cranes
WAGE RATE PER HOUR: $49.27

Compressors
WAGE RATE PER HOUR: $28.95

Micro-traps (Negative Air Machines), Vac-All Remediation System.
WAGE RATE PER HOUR: $41.96

SUPPLEMENTAL BENEFITS PER HOUR: $24.75 straight time hours
$44.80 overtime hours

***CLASSIFICATION*: OPERATING ENGINEER - STEEL ERECTION**

Equipment Being Used
Three Drum Derricks
WAGE RATE PER HOUR: $59.49 OFF SHIFT WAGE RATE: $95.18

Cranes, 2 Drum Derricks, Hydraulic Cranes and Fork Lifts.
WAGE RATE PER HOUR: $57.10 OFF SHIFT WAGE RATE: $91.36

Compressors, Welding Machines.
WAGE RATE PER HOUR: $33.46 OFF SHIFT WAGE RATE: $53.54

Compressors - Public Works Only (Not Combined with Welding Machine).
WAGE RATE PER HOUR: $31.83 OFF SHIFT WAGE RATE: $50.93

SUPPLEMENTAL BENEFITS PER HOUR: $24.75 straight time hours
$44.80 overtime hours

***CLASSIFICATION*: OPERATING ENGINEER - BUILDING WORK**

Equipment Being Used
Forklifts, House Cars, Rack a Pinion, Plaster (Platform machine), Plaster Bucket, Concrete Pump and all other equipment used for hoisting material.
WAGE RATE PER HOUR: $46.94

Compressors, Welding Machines (Cutting Concrete-Tank Work), Paint Spraying, Sandblasting, Pumps (with the exclusion of Concrete Pumps), House Car (settlement basis only), All Engines irrespective of Power (Power-Pac) used to drive Auxiliary Equipment, Air, Hydraulic, etc. Boilers.
WAGE RATE PER HOUR: $34.89

Double Drum
WAGE RATE PER HOUR: $53.57

Stone Derrick, Cranes, Hydraulic Cranes Boom Trucks.
WAGE RATE PER HOUR: $56.79

Dismantling and Erection of Cranes, Relief Engineer.
WAGE RATE PER HOUR: $52.27

4 Pole Hoist, Single Drum Hoists.
WAGE RATE PER HOUR: $51.71

SUPPLEMENTAL BENEFITS PER HOUR: $24.75 straight time hours
$44.80 overtime hours

Continued on following page

FOR ALL OPERATING ENGINEERS

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 4, 6, 8, 9, 10, 11, 15, 16, 17 & 20). Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

SHIFT RATES: Shifts may be worked at the single time rate at other than the regular working hours (8:00 A.M. to 4:30 P.M.) on the following work ONLY: Heavy construction jobs on work below the street level, over railroad tracks and on building jobs.

(Local #14)

***CLASSIFICATION*: FLOOR COVERER**

(Interior vinyl composition tile, sheath vinyl linoleum and wood parquet tile including site preparation and synthetic turf not including site preparation)

WAGE RATE PER HOUR: $41.23

SUPPLEMENTAL BENEFIT RATE PER HOUR: $32.21

OVERTIME: (2, 5, 8, 9 and 13 when any of the following holidays are worked –2, 6, 8, 9, 10, 11, 13, 16, 17 & 20) See Overtime and Holiday legends.

PAID HOLIDAYS: (19, 22 if a half day is worked on either day). See Holiday Legend.

SHIFT RATES: Two shifts may be utilized with the first shift working 8:00 A.M. to the end of the shift at the straight time of pay. The second shift will receive one hour at double time rate for the last hour of the shift. (eight for seven, nine for eight).

(Carpenters District Council)

CLASSIFICATION: GLAZIER

(New Construction, Remodeling, and Alteration)

WAGE RATE PER HOUR: $36.40

SUPPLEMENTAL BENEFIT RATE PER HOUR: $28.04

Supplemental Benefit Overtime Rate: $34.39

OVERTIME: (3, 6, 8, An optional 8th hour can be worked at straight time rate. If 9th hour is worked, then both hours or more (8th & 9th or more) will be at the double time rate of pay. 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAY: (1). See Holiday Legend.

SHIFT RATES: Shifts shall be any 7 hours beyond 4:00 P.M. for which the glazier shall receive 8 hours pay for 7 hours worked.

(Local #1281)

CLASSIFICATION: GLAZIER - REPAIR & MAINTENANCE

(For the Installation of Glass - All repair and maintenance work on a particular building, whenever performed, where the total cumulative contract value is under $100,000. Except where enumerated (i.e. plate glass windows) does not apply to non-residential buildings.)

Craft Jurisdiction for repair, maintenance and fabrication:

Plate glass replacement, Residential glass replacement, Residential mirrors and shower doors, Storm windows and storm doors, Residential replacement windows, Herculite door repairs, Door closer repairs, Retrofit apartment house (non commercial buildings), Glass tinting.

WAGE RATE PER HOUR: $22.80

SUPPLEMENTAL BENEFIT RATE PER HOUR: $14.79

OVERTIME: (2, 5, 8, and 12 in addition to a day's pay at the regular straight time rate) See Overtime Legend.

PAID HOLIDAY: (2, 6, 8, 9, 10, 16, 17 & 20). See Holiday Legend.

(Local #1281)

CLASSIFICATION: HEAT AND FROST INSULATOR

WAGE RATE PER HOUR: $44.41*#

SUPPLEMENTAL BENEFIT RATE PER HOUR: $25.67*#

*** Effective 7/2/07 - $1.50 to be allocated between the hourly wage and supplemental benefit.**
 # Effective 12/31/07 - $1.75 to be allocated between the hourly wage and supplemental benefit

Note: double time shall be paid for supplemental benefits during overtime work.

OVERTIME: (8th hour paid at time and one half, 4, 6, 8 and 13 when any of the following holidays are worked - 2, 3, 6, 8, 9, 10, 11, 15, 16, 17 & 20 - triple time the regular hourly rate if Labor Day is worked). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: The first shift shall work seven hours at the regular straight time rate. The second and third shift shall work seven hours and receive seven times the regular straight time hourly rate plus fourteen percent wage and benefit premium.
Off hour work in occupied or retail buildings may be worked on weekdays with an increment of $1.00 per hour and eight hours pay for seven (7) hours worked. Double time will apply for over seven (7) hours on weekdays and on weekends or holidays.

(Local #12)

CLASSIFICATION: HOUSE WRECKER

WAGE RATE PER HOUR:
Tier A# - $29.61
Tier B# - $19.31

SUPPLEMENTAL BENEFIT RATE PER HOUR:
Tier A# - $16.73
Tier B# - $10.54

Continued on following page

OVERTIME: (2, 5, 8 and 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

#On all work sites the first, second, eleventh and every third House Wrecker thereafter shall be Tier A House Wreckers (i.e. 1st, 2nd, 11th, 14th, 17th etc). Other House Wreckers shall be Tier B House Wreckers.

(Mason Tender District Council)

CLASSIFICATION: IRON WORKER - ORNAMENTAL

WAGE RATE PER HOUR $38.85#

SUPPLEMENTAL BENEFIT RATE PER HOUR: $37.05#

 # Effective 1/1/08 - $1.25 to be allocated between the hourly wage and supplemental benefit

Supplemental benefits are to be paid at the a*pplicable* overtime rate when overtime is in effect.

OVERTIME: (1 – for a maximum of two hours on any regular work day (the 8th and 9th hour) and double time shall be paid for all work on a regular work day thereafter, 5 – for the first seven hours of work and double time shall be paid for all work on a Saturday thereafter, 8 and 13 when work is performed on any of the following holidays – 2, 7, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: for off shift work - 8 hours pay for 7 hours of work. When two or three shifts are employed on a job, Monday through Friday, the workday for each shift shall be seven hours and paid for ten and one-half hours at the single time rate. When two or three shifts are worked on Saturday, Sunday or holidays, each shift shall be seven hours and paid fifteen and three-quarters hours.

(Local #580)

CLASSIFICATION: IRON WORKER - STRUCTURAL

WAGE RATE PER HOUR: $37.90

SUPPLEMENTAL BENEFIT RATE PER HOUR: $45.63

SUPPLEMENTAL BENEFIT RATE PER HOUR: $46.01 (Staten Island)

Supplemental benefits are to be paid at the applicable overtime rate when overtime is in effect.

OVERTIME: (2, 5, 8 and 13 when work is performed on any of the following holidays – 2, 7, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (19 and 22 if a half day is worked on these days). See Holiday Legend.

SHIFT RATES: Monday through Friday – First Shift: First eight hours are paid at straight time, double time paid thereafter. Second and third Shifts: First eight hours are paid at time and one-half, double time thereafter. Saturdays: All shifts, first eight hours paid at time and one-half, double time thereafter

(Local #40 & #361)

CLASSIFICATION: LABORER (FOUNDATION, CONCRETE, EXCAVATING, STREET PIPE LAYER AND COMMON)

Excavation and foundation work for buildings, landscaping in connection with building projects (original installation and re-construction), heavy construction and engineering work, landscaping in connection with heavy construction and engineering work (work performed on projects other than building foundations including but not limited to pollution plants, sewers, parks, subways, bridges, highways, etc. (Original installation and re-construction))

WAGE RATE PER HOUR: $34.89

SUPPLEMENTAL BENEFIT RATE PER HOUR: $22.71

Continued on following page

OVERTIME: (2, 5, 8 and 13 when work is performed on any of the following holidays – 2, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (10, 16) See Holiday Legend.

SHIFT RATES: when two shifts are employed, single time rate shall be paid for each shift. When three shifts are found necessary, each shift shall work seven and one half hours (7 ½), but shall be paid for eight (8) hours of labor, and be permitted one half hour for lunch.

(Local #731)

CLASSIFICATION: LANDSCAPER

(Gardening in connection with the planting of street trees and the planting of trees in Parks but not as part of or in connection with other construction or reconstruction projects.)

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Gardener (Above 6 years experience)	$ 20.00	$ 6.25
(Effective April 1, 2008)	$ 21.00	$ 6.75
Gardener (3 - 6 years experience)	$ 19.00	$ 6.25
(Effective April 1, 2008)	$ 20.00	$ 6.75
Gardener (1-3 years experience)	$ 16.50	$ 6.25
(Effective April 1, 2008)	$ 17.50	$ 6.75

OVERTIME: (2, 5 & 8) See Overtime Legend. Supplemental Benefits shall include an additional Seventy Five ($0.75) cents per hour for all overtime work performed.

PAID HOLIDAYS: (2, 8, 9, 10, 16 & 20). In the event that any employee is called to work on any of the above mentioned holidays, the employee shall receive, in addition to a full day's pay, pay at time and one-half (1 ½ times) for all work performed on that day.

SHIFT RATES: Work performed on a 4pm to 12am shift has a 15% differential. Work performed on a 12am to 8am shift has a 20% differential.

(Local 175)

CLASSIFICATION: MARBLE MECHANIC

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Marble Setter	**$42.58**	**$27.60**
(Effective January 1, 2008)	**$43.48**	**$28.20**
Marble Finisher	**$34.84**	**$26.93**
(Effective January 1, 2008)	**$35.39**	**$27.53**
Marble Polisher	**$32.51***	**$21.00***

*** Effective July 1, 2007 - $1.50 to be allocated between the hourly wage and supplemental benefit.**

NOTE: Supplemental Benefit contributions are to be made at the applicable overtime rates.

OVERTIME: (1 or 2 - chosen by Employer at the start of the project and then would last for the full duration of the project, 5, 8 and 13 when work is performed on any of the following holidays–2, 6, 7, 8, 9, 10, 11, 15, 16, 17 & 20) See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

(Local #7)

CLASSIFICATION: MASON TENDER

WAGE RATE PER HOUR: $29.85

SUPPLEMENTAL BENEFIT RATE PER HOUR: $18.99

OVERTIME: (2, 5, 8, and 9; 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: The Employer may work two (2) shifts with the first shift at the straight time wage rate and the second shift receiving eight (8) hours paid for Seven (7) hours work at the straight time wage rate or nine (9) hours paid for eight (8) hours' work, at the straight time wage rate. In addition, members of the second shift shall be allowed one-half (½) hour to eat, with this time being included in the seven (7) or eight (8) hours of work. In order to work the second shift, there must be a first shift, and shift work must be for a minimum of three (3) contiguous weekdays duration.

(Mason Tenders District Council – Local #79)

***CLASSIFICATION*: MASON TENDER (INTERIOR DEMOLITION WORKER)**

Interior demolition work, shall include but not be limited to: The erection, building, moving, servicing and dismantling of all enclosures, scaffolding, barricades, protection and site safety structures etc. , on Interior Demolition jobs; the operation and servicing of all tools and equipment normally used in Interior Demolition work, including, without limitation, hand tools electric and pneumatic guns and drills; the demolition of walls, partitions, ceilings, suspension systems, floorings, concrete slabs with steel framing (where such slabs are removed in their entirety), storefronts, facades, roofing, parapets, sidewalks, curbs, and vaults (except for full depth saw cutting and core drilling of slabs); the dropping of duct work, electrical piping, plumbing piping, sprinkler piping, toilet fixtures, light fixtures, radiators and air conditioning equipment, where removals are in their entirety (i.e., a complete gut) and after (but not including) proper disconnection's and capping are performed by others; the carting of all such demolished and/or dropped walls, partitions, ceilings, suspension systems, flooring, concrete slabs with steel framing, storefronts, facades, roofing, parapets, sidewalks, curbs, vaults, duct work, electrical piping, plumbing piping, sprinkler piping, toilet fixtures, light fixtures, radiators and air conditioning equipment; the removal of non-hazardous fire proofing (such as required for beam pockets), window treatment (such as blinds, drapes and hardware), including related work performed by licensed burners and related fire watch duties; the removal of stairs, escalators, elevators, dumbwaiters, and conveyors; the sorting, salvaging, labeling, packaging and movement of such materials for disposal; the clean up of the work site and all other work and stand-by time incidental to the demolition, dropping, carting and removal of such materials; and the performance of hand excavation work and duties by flagmen on job sites where work is performed under this job specification.

WAGE RATE PER HOUR:

Tier A# - $29.35
Tier B# - $19.05

SUPPLEMENTAL BENEFIT RATE PER HOUR:

Tier A# - $16.39
Tier B# - $10.20

OVERTIME: (2, 7 and 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 16, 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: None

On Interior Demolition job sites 33 1/3 % of the employees shall be classified as Tier A Interior Demolition Workers and 66 2/3 % shall be classified as Tier B Interior Demolition Workers; provided that the employer may employ more than 33 1/3 % Tier A Interior Demolition Workers on the job site. Where the number of employees on a job site is not divisible by 3, the first additional employee (above the number of employees divisible by three) shall be a Tier B Interior Demolition Worker, and the second additional employee shall be a Tier A Interior Demolition Worker.

(Mason Tenders District Council)

CLASSIFICATION: METALLIC LATHER

WAGE RATE PER HOUR: $37.32

SUPPLEMENTAL BENEFIT RATE PER HOUR: $38.96

Supplemental benefits for overtime are paid at the appropriate overtime rate.

OVERTIME: (1, 5, 8 and 13 when any of the following holidays are worked – 2, 5, 7, 8, 9, 10, 11, 13, 16 & 20) See Overtime and Holiday Legends.

PAID HOLIDAYS: (19 and 22 if a half is worked on these days). See Holiday Legend.

SHIFT RATES: There shall be either two (2) or three (3) shifts, each shift shall be eight (8) hours with nine (9) hours pay, including one half (½) hour for lunch. Off-Hour Start shall commence after 3:30 P.M. and shall conclude by 6:00 A.M. The first consecutive seven (7) hours shall be at straight time with a differential of twelve ($12.00) dollars per hour. Fringes shall be paid at the straight time rate.

(Local #46)

CLASSIFICATION: MILLWRIGHT

WAGE RATE PER HOUR: $39.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $38.54

OVERTIME: (2, 5, 8, 9 and 13 when any of the following holidays are worked – 2, 6, 7, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (19 and 22 if a half day is worked on these days). See Holiday Legend.

SHIFT RATES: The first shift shall receive the straight time rate of pay. The second shift receives the straight time rate of pay plus fifteen (15%) per cent. Members of the second shift shall be allowed one-half (½) hour to eat, with this time being included in the hours of the workday established. There must be a first shift to work a second shift. All additional hours worked shall be paid at the time and one-half rate of pay plus fifteen (15%) per cent for weekday hours.

(Local #740)

***CLASSIFICATION*:** **MOSAIC MECHANIC**

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour*
Mosaic & Terrazzo Mechanic	$38.63	$29.59*
Mosaic & Terrazzo Finisher	$37.23	$29.59*
Machine Operator Grinder	$37.23	$29.59*

*** Supplemental benefits for overtime to be paid at the rate of $43.41 per hour.**

OVERTIME: (1, 5, 8 and 13 when any of the following holidays are worked - 2, 5, 7, 9, 10, 11, 15, 16, 17 & 20) See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

(Local #7)

***CLASSIFICATION*:** **PAINTER**

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour*
Brush & Roller	$34.50	$19.84*
Spray & Scaffold	$37.50	$19.84*
Decorative	$37.50	$19.84*
Sandblast	$37.50	$19.84*

*** Supplemental benefits are to be paid at the appropriate straight time and overtime (either time and one half or double time) rate.**

OVERTIME: (1, 5, 7 and 12 when any of the following holidays are worked – 2, 6, 8, 9, 10, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

(District Council of Painters)

CLASSIFICATION: PAPERHANGER

WAGE RATE PER HOUR: $36.04

SUPPLEMENTAL BENEFIT RATE PER HOUR: $23.95*

*** Supplemental benefits are to be paid at the appropriate straight time and overtime (either time and one half or double time) rate.**

OVERTIME: (1, 5, 7 and 12 when any of the following holidays are worked - 2, 6, 8, 9, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Evening shift - 4:30 P.M. to 12:00 Midnight (regular rate of pay); any work performed before 7:00 A.M. shall be at time and one half the regular base rate of pay.

(District Council of Painters)

CLASSIFICATION: PAINTER - STRIPERS

	WAGE RATE PER HOUR:
Senior Classifications –	
Striper (paint):	**$24.71**
***Striper (helper):**	**$22.32**
Linerperson (thermoplastic):	**$29.79**
Junior Classifications -	
***Striper (paint):**	**$17.87**
***Striper (helper):**	**$14.89**
***Linerperson (thermoplastic):**	**$20.85**

***These titles pending apprentice application to the New York State Department of Labor.**

SUPPLEMENTAL BENEFIT RATE PER HOUR: $8.72

Continued on following page

OVERTIME: (2, 12 as well as one day of holiday pay). See Overtime Legend. Work performed on an employee's 6th consecutive day of work day shall be paid at the rate of time and one-half. All work performed on an employee's 7th consecutive day shall be paid at a rate of double time. The first eight hours of work performed on a Saturday and/or Sunday as the result of a consistent and regular five-day work schedule shall not be compensated at the overtime rate. In the case of work on a Friday which does not constitute an employee's 6th or 7th consecutive day of work, such Friday shall be paid at an employee's regular rate of pay provided that a majority of the hours worked that day are worked on Friday and not on the following Saturday.

PAID HOLIDAYS: (8, 9, 10, 11, 15 & 16) See Holiday Legend.

SHIFT RATES: 10% night shift premium differential for all work performed after 9:00 P.M. and before 5:00 A.M.

VACATIONS:

A. ALL EMPLOYEES EMPLOYED FOR A PERIOD OF TWENTY SIX WEEKS OR MORE IN A CALENDAR YEAR SHALL RECEIVE TWO WEEKS VACATION WITH FULL PAY.

B. EACH EMPLOYEE EMPLOYED FOR A PERIOD OF LESS THAN TWENTY SIX WEEKS IN A CALENDAR YEAR SHALL RECEIVE VACATION PAY BASED ON SEVEN PERCENT OF HIS TOTAL BASE PAY.

C. EMPLOYEES WITH AT LEAST TEN YEARS OF SERVICE WITH THE EMPLOYER SHALL RECEIVE THREE WEEKS VACATION WITH FULL PAY IF EMPLOYED FOR TWENTY SIX WEEKS OR MORE IN A CALENDAR YEAR.

D. ALL EMPLOYEES WITH AT LEAST TWENTY YEARS OF SERVICE WITH THE EMPLOYER SHALL RECEIVE FOUR WEEKS OF VACATION WITH PAY IF EMPLOYED TWENTY SIX WEEKS OR MORE IN A CALENDAR YEAR.

(Local #8A-28A)

CLASSIFICATION: PAINTER - STRUCTURAL STEEL

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Painters on Structural Steel	**$43.00**	**$26.47**
Power Tool	**$49.00**	**$26.47**

OVERTIME: (1, 5, 7 and 13 when any of the following holidays are worked - 2, 8, 9, 10, 16 & 20) See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Regular hourly rates plus a ten per cent (10%) differential.

(Local #806)

CLASSIFICATION: SIGN PAINTER

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Designer	**$32.00**	**$ 9.66**
Journeyperson	**$29.75**	**$ 9.66**

OVERTIME: (2, 5, 7 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 6, 8, 9, 10, 11, 12, 16, 17 & 20) See Holiday Legend.

SHIFT RATES: all work performed outside the regular 8 hour work day (either 7:00 A.M to 3:30 P.M or 8:00 A.M. to 4:30 P.M) shall be paid at time and one half the regular hourly rate.

(Local 8A-28A)

CLASSIFICATION: PAVER AND ROADBUILDER – ASPHALT

Title	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Asphalt Raker	$39.20	$24.20
Tamper	$37.39	$24.20
Screenperson, Micro Paver	$39.63	$24.20

OVERTIME: (2, 5 & 8) if employees work on holiday #2, #6, and #20 they receive the single time the regular applicable hourly rate plus one days pay and no pay if the day is not worked. See Overtime and Holiday Legend.

PAID HOLIDAYS: (8, 9, 10, 11, 12, 15 & 16). See holiday legend.

SHIFT RATES: Night Work - the regular applicable hourly rate plus a 25% differential.

(Local #1018)

CLASSIFICATION: PAVER AND ROADBUILDER - CONCRETE

Title	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Form Setter	$37.74	$24.20
Laborer (Paving & Roadbuilding)	$34.23	$24.20

OVERTIME:(2, 5, 8, if employees work on holiday #2 and #20 they receive the single time rate plus 15%, otherwise no pay if the days are not worked) See Overtime Legend.

PAID HOLIDAYS: (8, 9, 10, 11, 12 & 16) See Holiday Legend.

SHIFTS: A single shift shall be a continuous nine (9) hours, starting at 8:00 A.M. The mealtime shall be one (1) hour, but it may be curtained by one-half (½) hour. When two (2) shifts are employed the work period for each shift shall be a continuous eight (8) hours. When three (3) shifts are employed, each shift will work seven and one-half (7 ½) hours but will be paid for eight (8) hours, since only one-half (½) is allowed for mealtime. When two (2) or more shifts are employed single time will be paid for each shift.
SHIFT RATES: Night Work - the regular applicable hourly rate plus a 15% differential.

(Local #1010)

CLASSIFICATION: **PLASTERER**

WAGE RATE PER HOUR: $34.03

SUPPLEMENTAL BENEFIT RATE PER HOUR: $21.69 for Manhattan, Bronx and Staten Island.

SUPPLEMENTAL BENEFIT RATE PER HOUR: $18.30 for Brooklyn and Queens.

OVERTIME: (1, 5, 8, 9 and 13 when any of the following holidays are worked – 2, 3, 6, 7, 8, 9, 10, 11, 13, 16 and 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: When it is not possible to conduct alteration work during regular work hours, in a building occupied by tenants, said work shall proceed on a shift basis: however work over seven (7) hours in any twenty four (24) hour period, the time after seven (7) hours shall be considered overtime.
The second shift shall start at a time between 3:30 p.m. and 7:00 p.m. and shall consist of seven (7) working hours and shall receive eight (8) hours of wages and benefits at the straight time rate. The workers on the second shift shall be allowed one-half (½) hour to eat with this time being included in the seven (7) hours of work.

(Local #530)

***CLASSIFICATION*:** **PLASTERER - TENDER**

WAGE RATE PER HOUR: $29.85

SUPPLEMENTAL BENEFIT RATE PER HOUR: $18.29

OVERTIME: (2, 5, 8, 9, and 13 when any of the following holidays are worked 2, 5, 8, 9, 10, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

Continued on following page

SHIFT RATES: When work commences outside regular work hours, workers receive an hour additional (differential) wage and supplement payment. Eight hours pay for seven hours work or nine hours pay for eight hours work.

(Mason Tender District Council)

CLASSIFICATION: POINTER - WATERPROOFER, CAULKER MECHANIC (EXTERIOR BUILDING RENOVATION)

WAGE RATE PER HOUR:	**$37.39**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$19.99**

***Residential Mechanic**

WAGE RATE PER HOUR:	**$26.21**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$7.95**

***RESIDENTIAL MECHANIC MAY BE UTILIZED ON APARTMENT HOUSES, INCLUDING COMMERCIAL SPACE ON THE GROUND FLOOR OR MEZZANINE.**

OVERTIME: (2, 5, 7, 9 and 12 when any of the following holidays are worked - 2, 3, 6, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: all work outside the regular work day (an eight hour workday between the hours of 6:00 A.M. and 4:30 P.M.) is to be paid at time and one half the regular rate.

(Bricklayer District Council)

***CLASSIFICATION*:** **PLUMBER**

WAGE RATE PER HOUR: $45.16

SUPPLEMENTAL BENEFIT RATE PER HOUR: $30.93

(Note: double time shall be paid for supplemental benefits during overtime work).

OVERTIME: (3 - except on Alteration jobs when other mechanical trades at the site are working an eighth hour at straight time then the plumber shall also work an eighth hour at straight time, 6, 8 and 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 11, 15, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: 30% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shifts Monday to Friday. 50% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shift work performed on weekends. For shift work on holidays, double time wages and fringe benefits shall be paid.

(Plumbers Local #1)

***CLASSIFICATION*:** **PLUMBER**
(RESIDENTIAL RATES FOR 1, 2 AND 3 FAMILY HOME CONSTRUCTION)

WAGE RATE PER HOUR: $32.07

SUPPLEMENTAL BENEFIT RATE PER HOUR: $21.36

OVERTIME: (4, 6, 8, and 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 11, 15, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: 30% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shifts Monday to Friday. 50% shift premium shall be paid for wages and fringe benefits for 4:00 pm and midnight shift work performed on weekends. For shift work on holidays, double time wages and fringe benefits shall be paid.

(Plumbers Local #1)

CLASSIFICATION: **PLUMBER**
***MECHNICAL EQUIPMENT AND SERVICE**

***(Mechanical Equipment and Service work shall include any repair and/or replacement of the present plumbing system.)**

WAGE RATE PER HOUR: $29.31
SUPPLEMENTAL BENEFIT RATE PER HOUR: $12.95

OVERTIME: (2, 5, 7, and 12 if any of the following holidays are worked: 2, 6, 8, 9, 16, 17 & 20). See Overtime and Holiday Legends.

NOTE: Regular scheduled days shall be Monday to Friday inclusive, with 8 hours of work on each day or 10 hours on 4 days with start times from 6AM to 10AM and ending no later than 6:30PM.

PAID HOLIDAYS: (1) See Holiday Legend.

(Plumbers Local # 1)

***CLASSIFICATION*:** **PLUMBER: PUMP & TANK**
(INSTALLATION and MAINTENANCE)

WAGE RATE PER HOUR: $42.90

SUPPLEMENTAL BENEFIT RATE PER HOUR: $25.06

OVERTIME: (2, 5, 7, and 12 when any of the following holidays are worked – 2, 6, 8, 9, 10, 11, 15, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: all work outside the regular workday (8:00 A.M. to 3:30 P.M.) is to be paid at time and one half the regular hourly rate.

(Plumbers Local #1)

***CLASSIFICATION*: ROOFER**

WAGE RATE PER HOUR: $33.83

SUPPLEMENTAL BENEFIT RATE PER HOUR: $23.45

OVERTIME: (2, 5, 7 and 12 when any of the following holidays are worked – 2, 6, 8, 9, 10, 13, 16 & 20) See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Second shift - Regular hourly rate plus a 10% differential. Third shift - Regular hourly rate plus a 15% differential.

(Local #8)

***CLASSIFICATION*: SANDBLASTER (EXTERIOR BUILDING RENOVATION)**

SANDBLASTER
WAGE RATE PER HOUR: $36.08

SUPPLEMENTAL BENEFIT RATE PER HOUR: $18.80

***RESIDENTIAL MECHANIC**
WAGE RATE PER HOUR: $26.21

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.95

***RESIDENTIAL MECHANIC MAY BE UTILIZED ON APARTMENT HOUSES, INCLUDING COMMERCIAL SPACE ON THE GROUND FLOOR OR MEZZANINE.**

OVERTIME: (2, 5, 7, 9 and 12 when any of the following holidays are worked - 2, 3, 6, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: all work outside the regular work day (an eight hour workday between the hours of 6:00 A.M. and 4:30 P.M.) is to be paid at time and one half the regular rate.

(Bricklayer District Council)

CLASSIFICATION: STEAMBLASTER (EXTERIOR BUILDING RENOVATION)

STEAMBLASTER
WAGE RATE PER HOUR: $36.08

SUPPLEMENTAL BENEFIT RATE PER HOUR: $18.80

***RESIDENTIAL MECHANIC**
WAGE RATE PER HOUR: $26.21

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.95

***RESIDENTIAL MECHANIC MAY BE UTILIZED ON APARTMENT HOUSES, INCLUDING COMMERCIAL SPACE ON THE GROUND FLOOR OR MEZZANINE.**

OVERTIME: (2, 5, 7, 9 and 12 when any of the following holidays are worked - 2, 3, 6, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: all work outside the regular work day (an eight hour workday between the hours of 6:00 A.M. and 4:30 P.M.) is to be paid at time and one half the regular rate.

(Bricklayer District Council)

CLASSIFICATION: SHEET METAL WORKER

WAGE RATE PER HOUR: $42.06*

SUPPLEMENTAL BENEFIT RATE PER HOUR: $33.34*

OVERTIME SUPPLEMENTAL BENEFIT RATE PER HOUR: $61.01*

*** Effective August 1, 2007 - $1.25 to be allocated between hourly wage and supplemental benefit.**

Continued on following page

OVERTIME: (3, 6, 8 and 13 when any of the following holidays are worked – 2, 3, 6, 8, 9, 10, 11, 15, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Work that can only be performed outside regular working hours (seven hours of work between 7:30 A.M. and 3:30 P.M.) - First shift (work between 3:30 P.M. and 11:30 P.M.) - 10% differential above the established hourly rate. Second Shift (work between 11:30 P.M. and 7:30 A.M.) - 15% differential above the established hourly rate.

(Local #28)

CLASSIFICATION: SHEET METAL SPECIALTY WORKER* (Decking & Siding)

***The first three workers to perform this work must be paid at the rate of the Sheet Metal Worker. The fourth worker shall be paid at this Specialty Worker Rate. One Specialty Worker for each Sheet Metal Worker can be utilized thereafter.**

WAGE RATE PER HOUR: $41.61

SUPPLEMENTAL BENEFIT RATE PER HOUR:
$18.30 for straight time hours worked.
$23.97 for overtime hours worked.

OVERTIME: (2, 5, 8 and 13 when any of the following holidays are worked – 2, 3, 6, 8, 9, 10, 11, 15, 16 & 20). See Overtime and Holiday legends.

PAID HOLIDAYS: (1) See Holiday Legend.

(Local #28)

***CLASSIFICATION*:** **SIGN ERECTOR**
(Sheet Metal, Plastic, Electric, and Neon)

WAGE RATE PER HOUR: $36.20

SUPPLEMENTAL BENEFIT RATE PER HOUR: $30.54

OVERTIME: (1, 5, 7 and 12 plus holiday pay when any of the following holidays are worked 2, 5, 8, 9, 10, 11, 12, 16, 17, & 20). See Overtime Legend.

PAID HOLIDAYS: (2, 5, 8, 9, 10, 11, 12, 16, 17 & 20) See Holiday Legend.

SHIFT RATE: time and one half the regular hourly rate is to be paid for all hours worked outside the regular workday either (7:00 A.M. through 2:30 P.M.) or (8:00 A.M. through 3:30 P.M.).

(Local #137)

***CLASSIFICATION*:** **STEAMFITTER**

WAGE RATE PER HOUR: $44.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $34.72
Overtime supplemental benefit rate: $69.12

OVERTIME: (3, 6, 8 and 13 when any of the following holidays are worked – 2, 6, 8, 9, 10, 11, 15, 16, 17 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: Work performed between 3:30P.M. and 7:00A.M. and on Saturdays, Sundays and Holidays shall be at double time the regular hourly rate and paid at the overtime supplemental benefit rate above.

FOR HEATING, VENTILATING, AIR CONDITIONER AND MECHANICAL PUBLIC WORKS CONTRACTS WITH A DOLLAR VALUE NOT TO EXCEED $15,000,000 AND FOR FIRE PROTECTION/SPRINKLER PUBLIC WORKS CONTRACTS NOT TO EXCEED $1,500,000.

OVERTIME: (4, 6, 8, and 13).

Continued on following page

SHIFT RATES: May be performed outside of the regular workday except Saturday, Sunday and Holidays. A shift shall consist of eight working hours. All work performed in excess of eight hours shall be paid at double time. No shift shall commence after 7:00 P.M. on Friday or 7:00 P.M. the day before holidays. All work performed after 12:01 A.M. Saturday or 12:01 A.M. the day before a Holiday will be paid at double time. When shift work is performed the wage rate for regular time worked is a thirty percent premium together with fringe benefits.

ON TRANSIT AUTHORITY PROJECTS, WHERE WORK IS PERFORMED IN THE VICINITY OF TRACKS ALL SHIFT WORK ON WEEKENDS AND HOLIDAYS MAY BE PERFORMED AT THE REGULAR SHIFT RATES.

(Local #638)

***CLASSIFICATION*: STONE MASON - SETTER**

WAGE RATE PER HOUR: $43.45

SUPPLEMENTAL BENEFIT RATE PER HOUR: $31.03

OVERTIME: (1, 5, 8 and 13 when any of the following holidays are worked – 2, 5, 7, 8, 9, 10, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (19 if a half day is worked). See Holiday Legend.

SHIFT RATES: for all work outside the regular workday (8:00 A.M. to 3:30 P.M. Monday through Friday), the pay shall be straight time plus a ten percent (10%) differential.

(Bricklayers District Council)

***CLASSIFICATION*:** **TAPERS**
(INCLUDING SKIMCOATING)

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Drywall Taper	**$38.32**	**$18.75**

OVERTIME: (1, 5, 7 and 12 when any of the following holidays are worked - 2, 5, 7, 8, 9, 11, 16 & 20) See Holiday and Overtime Legend.

PAID HOLIDAYS: Any Taper who reports to work on Christmas Eve or New Year's Eve pursuant to his employer's instruction shall be entitled to three (3) hours afternoon pay without working.

SHIFT RATES: time and one half the regular rate outside the regular work hours (8:00 A.M. through 3:30 P.M.).

(Local #1974)

***CLASSIFICATION*: TRUCK DRIVER – (TEAMSTER)**

Title	Wage Rage Per Hour	Supplemental Benefit Rate Per Hour
Automobile Chauffeur (Dump Truck Chauffeur)	$33.24	$28.30
Heavy Equipment Trailer Driver	$34.74	$28.30
Euclid & Turnapull Operator	$33.80	$28.30
Six Wheeler(3 Axle) Tractors & Trailers	$34.24	$28.30
Boom Truck Driver	$34.49	$28.30

OVERTIME: (2, 5 & 8), (13 for holidays 6, 11, 12 & 15), (14 for holidays 2, 8, 9, 10, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (2, 6, 8, 9, 10, 11, 12, 15, 16 & 20). Employees working two (2) days in the calendar week in which the holiday falls are to be paid for these holidays, provided they shape each remaining workday during that calendar week). See Holiday Legend.

(Local #282)

CLASSIFICATION: TRUCK DRIVER – (TEAMSTER)

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Redi-Mix Driver (Sand & Gravel)	$33.11	$25.95

OVERTIME: (2, 5 & 8), (13 for holidays 6, 11 & 15), (14 for holidays 2, 8, 9, 10, 16 & 20). See Overtime and Holiday Legend.

PAID HOLIDAYS: (2, 6, 8, 9, 10, 11, 12, 15, 16 & 20) (Employees working two (2) days in the calendar week in which the holiday falls are to paid for these holidays, provided they shape each remaining workday during that calendar week). See Holiday Legend.

(Local #282)

CLASSIFICATION: TELECOMMUNICATION WORKER
Telephone Installation Only

Telecommunication Worker: $31.69

SUPPLEMENTAL BENEFIT RATE PER HOUR :
(Manhattan, Bronx, Brooklyn, Queens): $ 13.19
(Staten Island Only): $ 12.64

VACATION:
- **After 6 months, one week.**
- **After 12 months, two weeks;**
- **After two or more but less than seven years, two weeks.**
- **After seven or more but less than 15 years, three weeks.**
- **After 15 years or more but less than 25 years, four weeks.**

OVERTIME: (1, 5, 7 and 12 plus a days pay for the holiday). See Overtime Legend.

PAID HOLIDAYS: (2, 4*, 5, 8, 9, 10, 11, 12, 15, 16 & 20)
***employees have the option of observing either Martin Luther King's Birthday or the day after Thanksgiving instead of Lincoln's Birthday. See Holiday Legend.**

SHIFT RATES: for any workday that starts before 8 A.M. or ends after 6:00 P.M. there are a 10% differential for the applicable telecommunication worker's hourly rate.

(C.W.A.)

CLASSIFICATION: TILE LAYER – SETTER

WAGE RATE PER HOUR:	**$40.44**
(Effective December 1, 2007)	**$41.64**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$25.28**
(Effective December 1, 2007)	**$25.78**

OVERTIME: (1, 6, 8 and 13 when any of the following holidays are worked – 2, 6, 7, 8, 9, 10, 11, 15, 16, 17, 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: off shift work day (work performed outside the regular 8:00 A.M. to 3:30 P.M. workday): shift differential of one and one quarter (1¼) times the regular straight time rate of pay for the seven hours of actual off-shift work.

(Local #7)

CLASSIFICATION: TILE FINISHER

WAGE RATE PER HOUR:	**$32.78**
(Effective December 1, 2007)	**$33.69**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$21.52**
(Effective December 1, 2007)	**$22.02**

OVERTIME: (1, 6, 8 and 13 when any of the following holidays are worked - 2, 6, 7, 8, 9, 10, 11, 15, 16, 17, 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: off shift work day (work performed outside the regular 8:00 A.M. to 3:30 P.M. workday): shift differential of one and one quarter (1¼) times the regular straight time rate of pay for the seven hours of actual off-shift work.

(Local #7)

CLASSIFICATION: TIMBERPERSON

WAGE RATE PER HOUR: $37.61*

SUPPLEMENTAL BENEFIT RATE PER HOUR: $32.96*

***Effective July 1, 2007 an increase of $3.53 will be allocated between the Wage and the Supplemental Benefit.**

OVERTIME: (2, 5, 8 and 13 when any of the following holidays are worked- 2, 6, 8, 9, 10, 11, 13, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (1) See Holiday Legend.

SHIFT RATES: off shift work, commencing between 5:00 P.M. and 10:00 P.M., shall work eight and one half hours but will be paid for 9 hours, allowing for one half hour for lunch.

(Local #1536)

CLASSIFICATION: TUNNEL WORKER

Compressed Air Rates

Title	Wage Rate Per Hour	Supplemental Benefits Per Hour
Blasters, Mucking Machine Operators	$39.02	$38.90
Tunnel Workers	$37.69	$37.62
Top Nipper	$37.02	$36.97
Outside Lock Tender, Outside Gauge Tender, Muck Lock Tender	$36.36	$36.28
Bottom Bell & Top Bell Signal Person: Shaft Person	$36.36	$36.28
Changehouse Attendant: Powder Watchperson	$31.46	$34.55

Continued on following page

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS : (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). See Holiday Legend.

***CLASSIFICATION*:** **TUNNEL WORKERS**

Free *Air Rates*

Title	Wage Rate Per Hour	Supplemental Benefits Per Hour
Blasters	$37.28	$37.17
Tunnel Workers	$35.71	$35.56
All Others	$33.07	$32.93

OVERTIME: (4, 6, 8 & 13) See Overtime Legend.

PAID HOLIDAYS : (2, 4, 6, 8, 9, 10, 11, 12, 15, 16 & 20). See Holiday Legend.

For Repair-Maintenance Work on Existing Equipment and Facilities - (2, 5, 7, 13). See Overtime Legend.

(Local #147)

***CLASSIFICATION*:** **WELDER**

TO BE PAID AT THE RATE OF THE JOURNEYPERSON IN THE TRADE PERFORMING THE WORK.

OFFICE OF THE COMPTROLLER

CITY OF NEW YORK

§220 PREVAILING APPRENTICESHIP RATES & RATIOS

APPENDIX # 1

JULY 1, 2007 – JUNE 30, 2008

OFFICE OF THE COMPTROLLER, CITY OF NEW YORK
§220 PREVAILING APPRENTICESHIP RATES & RATIOS
APPENDIX # 1

Asbestos Handler (Local 78)

Wage Rate Per Hour:

First 1000 Hours:	**78% of Journeyperson rate**
Second 1000 Hours:	**80% of Journeyperson rate**
Third 1000 Hours:	**83% of Journeyperson rate**
Fourth 1000 Hours:	**89% of Journeyperson rate**

Supplemental Benefit Rate Per Hour: **$9.95**

Ratio of Apprentice Journeyperson: **1 to 1, 1 to 3**

Boilermaker

First Year:	**65% of Journeyperson's rate**
Second Year:	
1st Six Months:	**70% of Journeyperson's rate**
2nd Six Months:	**75% of Journeyperson's rate**
Third Year:	
1st Six Months:	**80% of Journeyperson's rate**
2nd Six Months:	**85% of Journeyperson's rate**
Fourth Year:	
1st Six Months:	**90% of Journeyperson's rate**
2nd Six Months:	**95% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour:	**Repair & Maintenance**		**New Construction**	
Effective	**7/1/07**	**1/1/08**	**7/1/07**	**1/1/08**
First Year:	**$21.36**	**$21.64**	**$23.36**	**$23.64**
Second Year:				
1st Six Months	**$22.42**	**$22.72**	**$24.42**	**$24.72**
2nd Six Months:	**$23.48**	**$23.80**	**$25.48**	**$25.80**
Third Year:				
1st Six Months:	**$24.54**	**$24.88**	**$26.54**	**$26.88**
2nd Six Months:	**$25.59**	**$25.96**	**$27.59**	**$27.96**
Fourth Year:				
1st Six Months:	**$26.65**	**$27.04**	**$28.65**	**$29.04**
2nd Six Months:	**$27.71**	**$28.12**	**$29.71**	**$30.12**

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 4**

Bricklayer

Wage Rate Per Hour:

First 750 Hours:	**50% of Journeyperson's rate**
Second 750 Hours:	**60% of Journeyperson's rate**
Third 750 Hours:	**70% of Journeyperson's rate**
Fourth 750 Hours:	**80% of Journeyperson's rate**
Fifth 750 Hours:	**90% of Journeyperson's rate**
Six 750 Hours:	**95% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour: **$13.28**

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 4**

Carpenter

Wage Rate Per Hour:

First Year:	**40% of Journeyperson's rate**
Second Year:	**50% of Journeyperson's rate**
Third Year:	**65% of Journeyperson's rate**
Fourth Year:	**80% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour: **$22.17**

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 4**

Cement and Concrete Worker

First Year:	**0 - 1334 hours**	**50% of Journeyperson's rate**
Second Year:	**1335 - 2668 hours**	**65% of Journeyperson's rate**
Third Year:	**2669-3999 hours**	**80% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour:

First Year:	**$16.22**
Second Year:	**$21.56**
Third Year:	**$22.38**

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 3**

Cement Mason

Wage and Supplemental Benefit Rate Per Hour:

First Year:	**50% of Journeyperson's rate**
Second Year:	**60% of Journeyperson's rate**
Third Year:	**70% of Journeyperson's rate**

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 4**

Derrickperson & Rigger (stone)

First Year:	**50% of Journeyperson's rate**
Second Year:	
1st Six Months:	**70% of Journeyperson's rate**
2nd Six Months:	**80% of Journeyperson's rate**
Third Year:	**90% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour:

First Year:	**50% of Journeyperson's rate**
Second Year:	**75% of Journeyperson's rate**
Third Year:	**75% of Journeyperson's rate**

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 6**

Dockbuilder/Pile Driver

Wage Rate Per Hour:

First Year:	**40% of Journeyperson's rate**
Second Year:	**50% of Journeyperson's rate**
Third Year:	**65% of Journeyperson's rate**
Fourth Year:	**80% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour: $22.17

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 6**

Electrician

	Hired before 5/10/07	Hired on or after 5/10/07
Wage Rate Per Hour:		
First Year:	**$13.75**	**$11.00**
Second Year:	**$16.55**	**$13.00**
Third Year:	**$18.65**	**$15.00**
Fourth Year:	**$20.60**	**$17.00**
Fifth Year:	**$25.30**	**n/a**

Overtime Wage Rate Per Hour:
For "A" rated Apprentices (work in excess of 7 hours per day) and
For "M" rated Apprentices (work in excess of 8 hours per day):

First Year:	**$20.63**	**$16.50**
Second Year:	**$24.83**	**$19.50**
Third Year:	**$27.98**	**$22.50**
Fourth Year:	**$30.90**	**$25.50**
Fifth Year:	**$37.95**	**n/a**

Supplemental Benefit Rate Per Hour:

First Year:	$8.62	$7.36
Effective 5/8/08	$8.90	$7.58
Second Year:	$9.91	$8.28
Effective 5/8/08	$10.24	$8.54
Third Year:	$10.88	$9.20
Effective 5/8/08	$11.25	$9.50
Fourth Year:	$11.77	$10.12
Effective 5/8/08	$12.19	$10.46
Fifth Year:	$15.13	n/a
Effective 5/8/08	$15.64	n/a

Overtime Supplemental Benefit Rate Per Hour:
For "A" rated Apprentices (work in excess of 7 hours per day) and
For "M" rated Apprentices (work in excess of 8 hours per day):

First Year:	$9.49	$8.05
Effective 5/8/08	$9.76	$8.27
Second Year:	$10.95	$9.09
Effective 5/8/08	$11.28	$9.35
Third Year:	$12.05	$10.14
Effective 5/8/08	$12.42	$10.44
Fourth Year:	$13.07	$11.18
Effective 5/8/08	$13.48	$11.52
Fifth Year:	$16.72	n/a
Effective 5/8/08	$17.22	n/a

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 3

Elevator (Constructor)

Wage Rate Per Hour:

First Year:	50% of Journeyperson rate
Second Year:	55% of Journeyperson rate
Third Year:	65% of Journeyperson rate
Fourth Year:	75% of Journeyperson rate

Supplemental Benefit Rate Per Hour:	Effective 7/1/07	3/17/08
First Year:	$18.68	$20.21
Second Year:	$19.52	$21.11
Third Year:	$20.70	$22.39
Fourth Year:	$21.88	$23.67

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 2

Elevator Repair & Maintenance

First Year: 60% of "A" Helper rate
Second Year: 70% of "A" Helper rate
Third Year: 80% of "A" Helper rate
Fourth Year: 90% of "A" Helper rate

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 2

Floor Coverer

First Year: 40% of Journeyperson rate
Second Year: 50% of Journeyperson rate
Third Year: 65% of Journeyperson rate
Fourth Year: 80% of Journeyperson rate

Supplemental Benefit Rate Per Hour: $21.79

Ratio of Apprentice to Journeyperson: 1 to 1

Glazier

Wage Rate Per Hour:
First Year: 40% of Journeyperson rate
Second Year: 50% of Journeyperson rate
Third Year: 60% of Journeyperson rate
Fourth Year: 80% of Journeyperson rate

Supplemental Benefit Rate Per Hour:
First Year: $10.32
Second Year: $18.19
Third Year: $20.15
Fourth Year: $24.10
Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 3

Heat & Frost Insulator

Wage and Supplemental Benefit Rate Per Hour:
First Year: 40% of Journeyperson's rate
Second Year: 60% of Journeyperson's rate
Third Year: 70% of Journeyperson's rate
Fourth Year: 80% of Journeyperson's rate

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 4

Iron Worker (Ornamental)

Wage Rate Per Hour:

First Year:	
1st Four Months	60% of Journeyperson's rate
Next Six Months	65% of Journeyperson's rate
Second Year:	
1st Six Months	70% of Journeyperson's rate
2nd Six Months	80% of Journeyperson's rate
Third Year	
1st Six Months	85% of Journeyperson's rate
Last Eight Months	95% of Journeyperson's rate

Supplemental Benefit Rate Per Hour:

First Four months:	$29.46
Next Six Months	$30.29
Next Six Months	$31.11
Next Six Months	$32.76
Next Six Months	$33.59
Last Eight Months	$35.23

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 4

Iron Worker (Structural)

Wage Rate Per Hour:

1st Six Months	$20.03
7- 18 months	$20.63
19 - 36 months	$21.23

Supplemental Benefit Rate Per Hour: $32.20

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 6

Laborer (Building, Concrete, Excavating & Common)

Wage Rate Per Hour:

First 1000 Hours:	50% of Journeyperson's rate
Second 1000 Hours:	60% of Journeyperson's rate
Third 1000 Hours:	75% of Journeyperson's rate
Fourth 1000 Hours:	90% of Journeyperson's rate

Supplemental Benefit Rate Per Hour: $22.71

Ratio Apprentices to Journeyperson's: 1 to 1, 1 to 3

Laborer (Paver and Roadbuilder)

Wage Rate Per Hour:

First Year:	**$23.27**
(Minimum 1000 Hours)	
Second Year:	**$26.37**
(Minimum 1000 Hours)	
Third Year:	**$29.47**
(Minimum 1000 Hours)	
Supplemental Benefit Rate Per Hour:	**$9.90**
Ratio of Apprentice to Journeyperson:	**1 to 1, 1 to 3**

Marble Mechanics (Polisher, Finisher)

Wage and Supplemental Benefit Rate Per Hour:

First 750 Hours:	**50% of Journeyperson's rate**
Second 750 Hours:	**60% of Journeyperson's rate**
Third 750 Hours:	**75% of Journeyperson's rate**
Fourth 750 Hours:	**90% of Journeyperson's rate**

NO BENEFITS PAID DURING THE FIRST TWO MONTHS (PROBATIONARY PERIOD)

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 4

Marble Mechanics (Cutters & Setters)

Wage and Supplemental Benefit Rate Per Hour:

First 750 Hours:	**50% of Journeyperson rate**
Second 750 Hours:	**55% of Journeyperson rate**
Third 750 Hours:	**65% of Journeyperson rate**
Fourth 750 Hours:	**75% of Journeyperson rate**
Fifth 750 Hours:	**85% of Journeyperson rate**
Sixth 750 Hours:	**95% of Journeyperson rate**

NO BENEFITS PAID DURING THE FIRST TWO MONTHS (PROBATIONARY PERIOD)

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 4

Mason Tender (Local 79) House Wrecking

Wage Rate Per Hour:
First 500 Hours:

1st Year:	$17.76
2nd Year First1000 Hours:	$18.76
3rd Year First 2000 Hours:	$20.26
4th Year First 3000 Hours:	$22.76

Supplemental Benefit Rate Per Hour: $11.49

Ratio of Apprentices to Journeypersons: 1 to 1, 1 to 3

Metallic Lather

Wage Rate Per Hour:

First Year:	$26.65
Second Year:	$30.72
Third Year:	$35.25

Supplemental Benefit Rate Per Hour:

First Year:	$21.71
Second Year:	$23.26
Third Year:	$24.31

Ratio of Apprentices to Journeypersons: 1 to 1, 1 to 5

Millwright

Wage Rate Per Hour:

First Year:	55% of Journeyperson rate
Second Year:	65% of Journeyperson rate
Third Year:	75% of Journeyperson rate
Fourth Year:	95% of Journeyperson rate

Supplemental Benefit Rate Per Hour:

First Year:	$24.55
Second Year:	$27.20
Third Year:	$30.78
Fourth Year:	$35.15

Ratio of Apprentices to Journeyperson: 1 to 1, 1 to 4

Operating Engineer (Local 15 I.U.O.E.)

Wage Rate Per Hour:

First Year:	**$17.48**
Second Year:	**$21.85**
Third Year:	**$24.03**
Fourth Year:	**$26.21**
Supplemental Benefit Rate Per Hour:	**$13.20**
Ratio of Apprentices to Journeyperson:	**1 to 1, 1 to 5**

Operating Engineer (Local 14 I.U.O.E.)

Wage Rate Per Hour:

First Year:	**40% of Journeyperson rate**
Second Year:	**50% of Journeyperson rate**
Third Year:	**60% of Journeyperson rate**
Supplemental Benefit Rate Per Hour:	**$12.90**
Ratio of Apprentices to Journeyperson:	**1 to 1, 1 to 5**

Painters (brush & roller)

Wage Rate Per Hour:

First Year:	**$12.70**
Second Year:	**$17.25**
Third Year:	**$20.70**
Fourth Year:	**$27.60**

Supplemental Benefit Rate Per Hour:

First Year:	**$ 9.57**
Second Year:	**$11.68**
Third Year:	**$14.15**
Fourth Year:	**$18.62**
Ratio of Apprentice to Journeyperson:	**1 to 1, 1 to 3**

Painters - Structural Steel

Wage Rate Per Hour:

First Year:	**40% of Journeyperson's rate**
Second Year:	**60% of Journeyperson's rate**
Third Year:	**80% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour:

First Year:	**40% of Journeyperson's rate plus $5.00**
Second Year:	**60% of Journeyperson's rate plus $5.00**
Third Year:	**80% of Journeyperson's rate plus $5.00**

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 3

Plasterer (Manhattan, Bronx, S.I.)

Wage Rate Per Hour:

First Year:	
1st Six Months:	**40% of Journeyperson's rate**
2nd Six Months:	**45% of Journeyperson's rate**
Second Year:	
1st Six Months:	**55% of Journeyperson's rate**
2nd Six Months:	**60% of Journeyperson's rate**
Third Year:	
1st Six Months:	**70% of Journeyperson's rate**
2nd Six Months:	**75% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour:

First Year:	
1st Six Months:	**$ 9.55**
2nd Six Months:	**$10.58**
Second Year:	
1st Six Months:	**$12.58**
2nd Six Months:	**$13.59**
Third Year:	
1st Six Months:	**$15.61**
2nd Six Months:	**$16.64**

Ratio of Apprentice to journeyperson: 1 to 1, 1 to 3

Plasterer (Brooklyn & Queens)

Wage Rate Per Hour:

First Year:	
1st Six Months:	40% of Journeyperson's rate
2nd Six Months:	45% of Journeyperson's rate
Second Year:	
1st Six Months:	55% of Journeyperson's rate
2nd Six Months:	60% of Journeyperson's rate
Third Year:	
1st Six Months:	70% of Journeyperson's rate
2nd Six Months:	75% of Journeyperson's rate

Supplemental Benefit Rate Per Hour:

First Year:	
1st Six Months:	$8.35
2nd Six Months:	$9.22
Second Year:	
1st Six Months:	$10.92
2nd Six Months:	$11.79
Third Year:	
1st Six Months:	$13.51
2nd Six Months:	$14.38

Ratio of Apprentices to Journeyperson's: 1 to 1, 1 to 3

Pointer/Cleaner/Caulker (mason)

Wage Rate Per Hour:

First Year:	$19.41
Second Year:	$22.72
Third Year:	$27.95
Fourth Year:	$34.38

Supplemental Benefit Rate Per Hour:

First Year:	$2.95
Second Year:	$6.85
Third Year:	$9.35
Fourth Year:	$9.35

Ratio of Apprentices to Journeyperson's: 1 to 1, 1 to 4

Plumber

Wage Rate Per Hour:

First Year:	
1st Six Months:	**$10.78**
2nd Six Months:	**$10.78**
Second Year:	**$14.66**
Third Year:	**$16.76**
Fourth Year:	**$19.61**
Fifth Year:	
1st Six Months:	**$21.01**
2nd Six Months:	**$33.08**

Supplemental Benefit Rate Per Hour:

First Year:	
1st Six Months:	**$ 0.66**
2nd Six Months:	**$ 2.91**
Second Year:	**$13.12**
Third Year:	**$13.12**
Fourth Year:	**$13.12**
Fifth Year:	**$13.12**

Ratio of Apprentices to Journeyperson's: 1 to 1, 1 to 3

Roofer

Wage and Supplemental Benefit Rate Per Hour:

First Year:	**35% of Journeyperson's rate**
Second Year:	**50% of Journeyperson's rate**
Third Year:	**60% of Journeyperson's rate**
Fouth Year	**75% of Journeyperson's rate**

Ratio of Apprentices to Journeyperson's: 1 to 1, 1 to 2

Sheet Metal Worker

Wage Rate Per Hour:
First Year:
- **1st Six Months: 30% of Journeyperson's rate**
- **2nd Six Months: 35% of Journeyperson's rate**

Second Year:
- **1st Six Months: 40% of Journeyperson's rate**
- **2nd Six Months: 45% of Journeyperson's rate**

Third Year:
- **1st Six Months: 50% of Journeyperson's rate**
- **2nd Six Months: 55% of Journeyperson's rate**

Fourth Year:
- **1st Six Months: 60% of Journeyperson's rate**
- **2nd Six Months: 70% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour:
First Year:
- **1st Six Months: $13.16**
- **2nd Six Months: $14.84**

Second Year:
- **1st Six Months: $16.33**
- **2nd Six Months: $17.90**

Third Year:
- **1st Six Months: $19.43**
- **2nd Six Months: $20.87**

Fourth Year:
- **1st Six Months: $22.77**
- **2nd Six Months: $26.47**

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 3

Sign Erector

Wage Rate Per Hour:

First Year:	
1st Six Months:	**35% of Journeyperson's rate**
2nd Six Months:	**40% of Journeyperson's rate**
Second Year:	
1st Six Months:	**45% of Journeyperson's rate**
2nd Six Months:	**50% of Journeyperson's rate**
Third Year:	
1st Six Months:	**55% of Journeyperson's rate**
2nd Six Months:	**60% of Journeyperson's rate**
Fourth Year:	
1st Six Months:	**65% of Journeyperson's rate**
2nd Six Months:	**70% of Journeyperson's rate**
Fifth Year:	**75% of Journeyperson's rate**
Sixth Year:	**80% of Journeyperson's rate**

Supplemental Benefit Rate Per Hour:

First Year:	
1st Six Months:	**$5.96**
2nd Six Months:	**$6.75**
Second Year:	
1st Six Months:	**$7.55**
2nd Six Months:	**$8.34**
Third Year:	
1st Six Months:	**$9.13**
2nd Six Months:	**$9.92**
Fourth Year:	
1st Six Months:	**$10.72**
2nd Six Months:	**$11.51**
Fifth Year:	
1st Six Months:	**$12.30**
2nd Six Months:	**$13.09**

Ratio of Apprentices to Journeyperson's: **1 to 1, 1 to 4**

Steamfitter

Wage Rate Per Hour:

First Year:	**40% of Journeyperson rate**
Second Year:	**50% of Journeyperson rate**
Third Year:	**65% of Journeyperson rate**
Fourth Year:	**80% of Journeyperson rate**
Fifth Year:	**85% of Journeyperson rate**

Supplemental Benefit Rate Per Hour:

First Year:	**$14.08**
Second Year:	**$17.54**
Third Year:	**$22.69**
Fourth Year:	**$27.84**
Fifth Year:	**$29.57**

Ratio of Apprentice to Journeyperson: **1 to 1, 1 to 3**

Stone Mason/Setter

Wage Rate Per Hour:

First 750 Hours:	50% of Journeyperson rate
Second 750 Hours:	60% of Journeyperson rate
Third 750 Hours:	70% of Journeyperson rate
Fourth 750 Hours:	80% of Journeyperson rate
Fifth 750 Hours:	90% of Journeyperson rate
Sixth 750 Hours:	100% of Journeyperson rate

Supplemental Benefit Rate Per Hour: 50% of Journeyperson rate

Ratio Apprentices of Journeyperson: 1 to 1, 1 to 2

Taper (Drywall)

Wage and Supplemental Benefit Rate Per Hour:

First Year:	40% of Journeyperson rate
Second Year:	60% of Journeyperson rate
Third Year:	80% of Journeyperson rate

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 4

Tile Layer (Setter)

Wage and Supplemental Benefit Rate Per Hour:

First 750 Hours:	50% of Journeyperson rate
Second 750 Hours:	55% of Journeyperson rate
Third 750 Hours:	65% of Journeyperson rate
Fourth 750 Hours:	75% of Journeyperson rate
Fifth 750 Hours:	85% of Journeyperson rate
Sixth 750 Hours:	95% of Journeyperson rate

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 4

Timberperson

Wage Rate Per Hour:

First Year:	40% of Journeyperson rate
Second Year:	50% of Journeyperson rate
Third Year:	65% of Journeyperson rate
Fourth Year:	80% of Journeyperson rate

Supplemental Benefit Rate Per Hour: $22.17

Ratio of Apprentice to Journeyperson: 1 to 1, 1 to 6

This schedule of prevailing wages and supplemental fringe benefits must be posted at the public work site as required by New York State Labor Law § 231 (6).

LABOR LAW § 230 BUILDING SERVICE EMPLOYEES

In accordance with Labor Law §230 et seq. the Comptroller of the City of New York has promulgated this schedule of prevailing wages and supplemental benefits for building service employees engaged on building service contracts in excess of $1,500.00. Prevailing rates are required to be annexed to and form part of the contract pursuant to §231 (4); however, only rates for trades anticipated by the contracting agency to be required on the work need be annexed to the contract.

Pursuant to §231 (4) contracting agencies that anticipate doing work that may require building service trades or classifications not included in this schedule, must request the Comptroller to establish a proper classification and wage determination for the work. Contractors using trades and/or classifications for which the Comptroller has not promulgated wages and benefits do so at their own risk.

Labor Law § 231 (6) requires contractors to post on the site of the work a current copy of this schedule of wages and supplements.

This schedule is applicable to work performed from July 1, 2007 through June 30, 2008, unless otherwise noted. Changes to this schedule are published on our web site www.comptroller.nyc.gov. Contractors must pay the wages and supplements in effect when the building service employee performs the work. Preliminary schedules for future one-year periods appear in the City Record on or about June 1 each succeeding year. Final schedules appear on or about July 1 in the City Record and on our web site www.comptroller.nyc.gov.

Building service employees on public contracts must receive not less than the prevailing rate of wage and supplements for the classification of work preformed. Contractors are solely responsible for maintaining original payroll records delineating, among other things, the hours worked by each employee within a given classification.

Employers may pay cash supplements; however, cash payments made in lieu of providing bona fide benefits is considered income to the employee. Employers providing bona fide benefits are credited for the cost of such benefits up to the hourly rate for benefits in the schedule for the trade or occupation at issue. Employers may combine cash supplements with in-kind supplements to meet the prevailing rate minimum.

Particular attention should be given to the supplemental benefits requirement. Although in most instances the payment or provision for supplemental benefits is tied to hours worked, some classifications require the payment or provision of supplemental benefits at overtime or premium time rates. Contractors are advised to review the applicable collective bargaining agreements and the Comptroller's Prevailing Wage Schedule before bidding on public work. Any Prevailing Wage Rate error made by the Contracting Agency, whether in a contract document or other communication, will not preclude a finding against the contractor of prevailing-wage violation.

Because this schedule may not list each prevailing wage practice, contractors should familiarize themselves with the prevailing collective bargaining agreements. Please make appointments to inspect such agreements by calling (212) 669-4437, Monday through Friday between the hours of 9:00 A.M. and 5:00 P.M.

Answers to questions concerning premium rates and or prevailing trade practices may also be obtained from the Classification and Determination Unit by calling (212) 669-4437. Please direct all other compliance issues to; Bureau of Labor Law, Attn: Wasyl Kinach, P.E., Office of the Comptroller, 1 Centre Street, Room 1122, New York, N.Y. 10007; Fax (212) 669-4002.

Wasyl Kinach, P.E.
Director of Classifications
Bureau of Labor Law

HOLIDAY LEGEND

The Holidays listed below are to be paid at the prevailing rate the worker is classified.

(1) None
(2) New Years Day
(3) Martin Luther King Jr. Day
(4) Lincoln's Birthday
(5) Washington's Birthday
(6) President's Day
(7) Good Friday
(8) Memorial Day
(9) Independence Day
(10) Labor Day
(11) Columbus Day
(12) Election Day
(13) Presidential Election Day
(14) 1/2 day on Presidential Election Day
(15) Veteran's Day
(16) Thanksgiving Day
(17) Day after Thanksgiving
(18) Day Before Christmas
(19) 1/2 day before Christmas Day
(20) Christmas Day
(21) Day before New Year's Day
(22) 1/2 day before New Year's Day
(23) Employees' Birthday

OVERTIME LEGEND

The following is an explanation of the code(s) listed in the OVERTIME section of each classification contained in this prevailing rate schedule. Additional requirements may also be listed in the OVERTIME section.

(1) Time and one half the regular rate after a 7 hour day.
(2) Time and one half the regular rate after an 8 hour day.
(3) Double time the regular rate after a 7 hour day.
(4) Double time the regular rate after an 8 hour day.
(5) Time and one half the regular rate for Saturday.
(6) Double time the regular time rate for Saturday.
(7) Time and one half the regular rate for Sunday.
(8) Double time the regular rate for Sunday.
(9) Saturday may be used as a make-up day at straight time when a day is lost during that week to inclement weather.
(10) Saturday and Sunday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather.
(11) Regular straight time rate for work on a holiday.
(12) Time and one half the regular rate for work on a holiday.
(13) Double time the regular rate for work on a holiday.
(14) Triple time the regular rate for work on a holiday.
(15) Double time and one half the regular rate for work on a holiday.

NOTE: **Benefits are paid for *EACH HOUR WORKED* unless otherwise noted.**

SECTION 230 PREVAILING WAGE INDEX
JULY 1, 2007 – JUNE 30, 2008

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CLASSIFICATION: ALARM TECHNICIAN (REPAIR AND MAINTENANCE)

(Scope of Work - Inspect, test, repair, and replace defective, malfunctioning, or broken devices, components and controls of Fire, Burglar and Security Systems)

WAGE RATE PER HOUR: $26.34
Effective 7/10/07: $27.00

SUPPLEMENTAL BENEFIT RATE PER HOUR: $11.12
Effective 7/10/07: $11.95

OVERTIME: (2, 5, 8 & 13) See Overtime Legend.

PAID HOLIDAYS: (2, 3, 6, 8, 9, 10, 11, 12, 16, 17, 20, plus one personal day per year). See Holiday Legend.

NIGHT DIFFERENTIAL is based upon a 10% differential between the hours of 4:00 P.M. and 12:30 A.M. and a 15% differential for the hours 12:00 A.M. to 8:00 A.M.

VACATION:
At least one year of employment - 2 weeks vacation
Five years or more of employment - 3 weeks vacation
Ten Years of employment - 4 weeks vacation

SICK DAYS: One day per year.

(Local #3)

CLASSIFICATION: BOILER SERVICEPERSON/TANK CLEANER MECHANIC (LOW PRESSURE)

WAGE RATE PER HOUR: $11.00

SUPPLEMENTAL BENEFIT RATE PER HOUR: $4.06

OVERTIME: (2, 5, 8, and 13). See Overtime Legend.

PAID HOLIDAYS: (2, 3, 5, 8, 9, 10, 11, 12, 15, 16, 20, plus employees birthday). See Holiday Legend.

Continued on following page

VACATION:
Six months of service - three days.
Eight months of service – four days
Ten months of service – five days
Two years of service - two weeks.
Seven years of service with the same employer - three weeks.

SICK LEAVE:
6 sick days in each calendar year for employees who have been employed for at least one year, but less than two years; 8 sick days in each calendar year for employees who have been employed between two and three years; 10 sick days in each calendar year for employees who have been employed for more than three years.

(Local #32 B/J)

CLASSIFICATION: CLEANER (LOFT)

LOFT BUILDING CLASS "A": (Over 280,000 square feet gross area)

Title	Wage Rate per Hour
Handyperson	$21.37
Foreperson	$21.28
Starter	$21.28
Cleaner/Porter, Elevator Operator	$19.47

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

OVERTIME: (2, 5, 7, and 12 in addition to the day's pay) See Overtime Legend.

Continued on following page

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20, plus one personal day).
See Holiday Legend.
*** May be exchanged for Yom Kippur or a personal day**
 # May be exchanged for Lincoln's birthday, Veteran's Day and/or day after Thanksgiving.

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
15 years of work but less than 25 years of work - four weeks.
Five years of work but less than 15 years of work - three weeks.
25 years or more of work - five weeks.

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full day pay for each unused sick day.

NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

NEW EMPLOYEE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

UPON COMPLETION OF TWO YEARS OF EMPLOYMENT THE NEW HIRE RECEIVES THE FULL SUPPLEMENTAL BENEFIT RATE.

THIS PROVISION SHALL NOT APPLY TO ANY EXPERIENCED EMPLOYEE ("EXPERIENCED EMPLOYEE") WHO WAS EMPLOYED IN THE NEW YORK CITY BUILDING INDUSTRY ("INDUSTRY") AS OF FEBRUARY 3, 1996. "EXPERIENCED EMPLOYEE" SHALL BE DEFINED AS A PERSON WHO HAS WORKED FOR THIRTY (30) DAYS IN THE "INDUSTRY" WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING HIRING (EXCLUDING EMPLOYMENT AS A VACATION RELIEF).

CLASSIFICATION: **CLEANER (LOFT)**

LOFT BUILDING CLASS "B": (Over 120,000 and less than 280,000 square feet gross area)

Title	Wage Rate per Hour
Handyperson	$21.30
Foreperson	$21.23
Starter	$21.23
Cleaner/Porter, Elevator Operator	$19.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

OVERTIME: (2, 5, 7, and 12 in addition to the day's pay). See Overtime Legend.

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20, plus one personal day) See Holiday Legend.

*** May be exchanged for Yom Kippur or a personal day.**
 # May be exchanged for Lincoln's birthday, Veteran's Day and/or day after Thanksgiving.

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
Five years of work but less than 15 years of work - three weeks.
15 years of work but less than 25 years of work - four weeks.
25 years or more of work - five weeks.

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full day pay for each unused sick day.

Continued on following page

NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

NEW EMPLOYEE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

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***CLASSIFICATION*:** **CLEANER (LOFT)**

LOFT BUILDING CLASS "C": (Less than 120,000 square feet gross area)

Title	Wage Rate per Hour
Handyperson	$21.18
Foreperson	$21.09
Starter	$21.09
Cleaner/Porter, Elevator Operator	$19.38

Continued on following page

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

OVERTIME: (2, 5, 7, and 12 in addition to the day's pay). See Overtime Legend

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20, plus one personal day). See Holiday Legend.

*** May be exchanged for Yom Kippur or a personal day**
 # May be exchanged for Lincoln's birthday, Veteran's Day and/or day after Thanksgiving.

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
Five years of work but less than 15 years of work - three weeks.
15 years of work but less than 25 years of work - four weeks.
25 years or more of work - five weeks.

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full day pay for each unused sick day.

NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

NEW EMPLOYEE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

UPON COMPLETION OF TWO YEARS OF EMPLOYMENT THE NEW HIRE RECEIVES THE FULL SUPPLEMENTAL BENEFIT RATE.

THIS PROVISION SHALL NOT APPLY TO ANY EXPERIENCED EMPLOYEE ("EXPERIENCED EMPLOYEE") WHO WAS EMPLOYED IN THE NEW YORK CITY BUILDING INDUSTRY ("INDUSTRY") AS OF FEBRUARY 3, 1996. "EXPERIENCED EMPLOYEE" SHALL BE DEFINED AS A PERSON WHO HAS WORKED FOR THIRTY (30) DAYS IN THE "INDUSTRY" WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING HIRING (EXCLUDING EMPLOYMENT AS A VACATION RELIEF).

(Local #32 B/J)

***CLASSIFICATION*:** **CLEANER (OFFICE)**

OFFICE BUILDING CLASS "A": (Over 280,000 square feet gross area)

Title	Wage Rate per Hour
Handyperson	$21.42
Foreperson	$21.31
Starter	$21.31
Cleaner/Porter, Elevator Operator	$19.50

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

OVERTIME: (2, 5, 7, and 12 in addition to the day's pay). See Overtime Legend.

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20, plus one personal day). See Holiday Legend.

*** May be exchanged for Yom Kippur or a personal day.**
 # May be exchanged for Lincoln's birthday, Veteran's Day, and/or day after Thanksgiving.

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
Five years of work but less than 15 years of work - three weeks.
15 years of work but less than 25 years of work - four weeks.
25 years of work or more - five weeks

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full day pay for each unused sick day.

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NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

NEW HIRE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

UPON COMPLETION OF TWO YEARS OF EMPLOYMENT THE NEW HIRE RECEIVES THE FULL SUPPLEMENTAL BENEFIT RATE.

THIS PROVISION SHALL NOT APPLY TO ANY EXPERIENCED EMPLOYEE ("EXPERIENCED EMPLOYEE") WHO WAS EMPLOYED IN THE NEW YORK CITY BUILDING INDUSTRY ("INDUSTRY") AS OF FEBRUARY 3, 1996. "EXPERIENCED EMPLOYEE" SHALL BE DEFINED AS A PERSON WHO HAS WORKED FOR THIRTY (30) DAYS IN THE "INDUSTRY" WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING HIRING (EXCLUDING EMPLOYMENT AS A VACATION RELIEF).

CLASSIFICATION: CLEANER (OFFICE)

OFFICE BUILDING CLASS "B": (Over 120,000 and less than 280,000 square feet gross area)

Title	Wage Rate per Hour
Handyperson	$21.39
Foreperson	$21.28
Starter	$21.28
Cleaner/Porter, Elevator Operator	$19.47
SUPPLEMENTAL BENEFIT RATE PER HOUR:	$7.16

Continued on following page

OVERTIME: (2, 5, 7, and 12 in addition to the day's pay). See Overtime Legend.

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20, plus one personal day). See Holiday Legend.

*** May be exchanged for Yom Kippur or a personal day.**
 # May be exchanged for Lincoln's birthday, Veteran's Day and/or day after Thanksgiving.

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
Five years of work but less than 15 years of work - three weeks.
15 years of work but less than 25 years of work - four weeks.
25 years or more of work - five weeks.

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full days pay for each unused sick day.

NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

NEW HIRE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

UPON COMPLETION OF TWO YEARS OF EMPLOYMENT THE NEW HIRE RECEIVES THE FULL SUPPLEMENTAL BENEFIT RATE.

THIS PROVISION SHALL NOT APPLY TO ANY EXPERIENCED EMPLOYEE ("EXPERIENCED EMPLOYEE") WHO WAS EMPLOYED IN THE NEW YORK CITY BUILDING INDUSTRY ("INDUSTRY") AS OF FEBRUARY 3, 1996. "EXPERIENCED EMPLOYEE" SHALL BE DEFINED AS A PERSON WHO HAS WORKED FOR THIRTY (30) DAYS IN THE "INDUSTRY" WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING HIRING (EXCLUDING EMPLOYMENT AS A VACATION RELIEF).

CLASSIFICATION: **CLEANER (OFFICE)**

OFFICE BUILDING CLASS "C": (Less than 120,000 square feet gross area)

Title	Wage Rate per Hour
Handyperson	$21.35
Foreperson	$21.24
Starter	$21.24
Cleaner/Porter, Elevator Operator	$19.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

OVERTIME: (2, 5, 7, 12 in addition to the day's pay). See Overtime Legend.

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20, plus one personal day). See Holiday Legend.

*** May be exchanged for Yom Kippur or a personal day.**
 # May be exchanged for Lincoln's birthday, Veteran's Day and/or day after Thanksgiving.

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
Five years of work but less than 15 years of work - three weeks.
15 years of work but less than 25 years of work - four weeks.
25 years or more of work - five weeks.

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full days pay for each unused sick day.

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NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

NEW HIRE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

UPON COMPLETION OF TWO YEARS OF EMPLOYMENT THE NEW HIRE RECEIVES THE FULL SUPPLEMENTAL BENEFIT RATE.

THIS PROVISION SHALL NOT APPLY TO ANY EXPERIENCED EMPLOYEE ("EXPERIENCED EMPLOYEE") WHO WAS EMPLOYED IN THE NEW YORK CITY BUILDING INDUSTRY ("INDUSTRY") AS OF FEBRUARY 3, 1996. "EXPERIENCED EMPLOYEE" SHALL BE DEFINED AS A PERSON WHO HAS WORKED FOR THIRTY (30) DAYS IN THE "INDUSTRY" WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING HIRING (EXCLUDING EMPLOYMENT AS A VACATION RELIEF).

(Local #32 B/J)

CLASSIFICATION: CLEANER (RESIDENTIAL)

RESIDENTIAL BUILDINGS CLASS "A": Residential Buildings Class "A": buildings where the assessed value of the land and building, based upon the 1935 assessment, divided by the number of rooms in the building, gives an assessed value of over $4000.00 a room.

Title	Wage Rate Per Hour
Handyperson	$20.34
Effective January 1, 2008	$20.62
Cleaner/Porter	$18.44
Effective January 1, 2008	$18.69

SUPPLEMENTAL BENEFIT RATE PER HOUR: $ 7.08

Continued on following page

VACATION:
6 Months …….3 working days
1 Year……2 weeks
5 Years……..3 weeks
15 Years ……4 weeks
21 Years…….21 working days
22 Years…….22 working days
23 Years…….23 working days
24 years……..24 working days
25 years……..5 weeks

SICK LEAVE: After one year of service - 10 days per year.

OVERTIME: (2, 12). See Overtime Legend.

PAID HOLIDAYS: (2, 3, 6, 8, 9, 10, 11, 12, 16, 20, plus one personal day). See Holiday Legend. Plus one of the following holidays: Lincoln's Birthday, Good Friday, Yom Kippur, Eid Al-Fitr or a personal day.

(Local 32B/J)

***CLASSIFICATION*: CLEANER (RESIDENTIAL)**

RESIDENTIAL BUILDINGS CLASS "B": Residential Buildings Class "B": buildings where the assessed value of the land and building, based upon the 1935 assessment, divided by the number of rooms in the building, gives an assessed value of over $2000.00 a room and not over $4000.00 a room.

Title	Wage Rate Per Hour
Handyperson	$20.28
Effective January 1, 2008	$20.56
Cleaner/Porter	$18.38
Effective January 1, 2008	$18.63

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.08

OVERTIME: (2, 12). See Overtime Legend.

PAID HOLIDAYS: (2, 3, 6, 8, 9, 10, 11, 12, 16, 20, plus one personal day). See Holiday Legend. Plus one of the following holidays: Lincoln's Birthday, Good Friday, Yom Kippur, Eid Al-Fitr or a personal day.

Continued on following page

VACATION:
6 Months ……3 working days
1 Year……2 weeks
5 Years……..3 weeks
15 Years ……4 weeks
21 Years……21 working days
22 Years……22 working days
23 Years……23 working days
24 years……..24 working days
25 years……..5 weeks

SICK LEAVE: After one year of service - 10 days per year.

***CLASSIFICATION*: CLEANER (RESIDENTIAL)**

RESIDENTIAL BUILDINGS (CLASS "C") Residential Buildings Class "C": buildings where the assessed value of the land and building, based upon the 1935 assessment, divided by the number of rooms in the building, gives An assessed value of $2000.00 or less a room.

Title	Wage Rate per Hour
Handyperson	$20.23
Effective January 1, 2008	$20.50
Cleaner/Porter	$18.33
Effective January 1, 2008	$18.58

SUPPLEMENTAL BENEFIT RATE PER HOUR: $ 7.08

OVERTIME: (2, 12). See Overtime Legend

PAID HOLIDAYS: (2, 3, 6, 8, 9, 10, 11, 12, 16, 20, plus one personal day). See Holiday Legend. Plus one of the following holidays: Lincoln's Birthday, Good Friday, Yom Kippur, Eid Al-Fitr or a personal day.

VACATION:
6 Months ……3 working days
1 Year……2 weeks
5 Years……..3 weeks
15 Years ……4 weeks
21 Years……21 working days
22 Years……22 working days

Continued on following page

23 Years……23 working days
24 years……..24 working days
25 years……..5 weeks

SICK LEAVE:
After one year of service - 10 days per year.

(Local #32 B/J)

CLASSIFICATION: CLEANER (PARKING LOT) - FLOOR PERSON

	Wage Rate Per Hour
"A" Level Worker	**$14.56**
Effective March 4, 2008	**$14.81**
"B" Level Workers	**$10.00***

*** "B" Level Worker paid at least the Living Wage as per section 6-109**

SUPPLEMENTAL BENEFIT RATE PER HOUR:

"A" worker, "B" worker after three years of employment.	**$2.17**
"B" worker with less than 3 years employment.	**$1.50***

*** "B" Level Worker paid at least the Living Wage as per section 6-109**

OVERTIME: Time and one half the regular hourly rate after 40 hours in any work week.

VACATION:
Full time employees shall be entitled to
five days per year during each of the first two years of employment.
Ten days per year during each of the third through fifth years of employment.
Fifteen (15) days per year during each of the sixth (6) through tenth (10) years of employment.
Twenty days per year during each of the eleventh and each succeeding Year of employment.

BENEFIT DAYS:
Six days during each of the first through fifth years of employment.
Twelve days during the sixth and each succeeding year of employment.

(Local 272)

CLASSIFICATION: **EXTERMINATOR**

WAGE RATE PER HOUR: $18.49
Effective January 31, 2008 $18.74

SUPPLEMENTAL BENEFIT RATE PER HOUR: $4.83

OVERTIME: (2 & 8) If an employee works six (6) consecutive days, the 6th day is paid at time and one half. All work performed before regular starting time, or after eight (8) hours on any day, or on the sixth (6th) day of the regular work week, shall be paid for at time one-half the regular rate of pay. All work performed on Sunday shall be paid for at double the rate of pay except that employees hired on or after September 5, 1993 can be assigned any five (5) consecutive day work week without the requirement of double-time for Sunday. See Overtime Legend.

Paid Holidays: (2, 5, 8, 9, 10, 11, 16 & 20) Plus employee's birthday and two (2) additional holidays as floating holidays and one (1) additional day either for Martin Luther King's Birthday or Yom Kippur. All employees hired on or after February 1, 2001 shall not be entitled to floating holidays or a day off for their Birthday. See Holiday Legend.

Regular Work Day: shall be any eight (8) consecutive hours from 6:00 A.M. - 8:00 P.M. with one hour off for lunch. On a second shift the employee is paid an additional twelve dollars ($12.00) per week.

The Regular Work Week of day workers shall consist of forty (40) hours in any five (5) consecutive days Monday through Saturday, with two (2) consecutive days off. If a day worker works a split week by working one (1) or more days and one (1) or more nights, time and one half shall be paid for each night's work. If a day worker splits a week by working one (1) day and one or more nights, time and one-half shall be paid for each nights work.

Continued on following page

<u>Shift Rate:</u> The regular work week of night workers shall consist of five (5) consecutive nights totaling forty (40) hours. Any employee required to work between 5:00 P.M. and 7:00 A.M. for any given eight (8) hours consecutively shall receive an additional forty ($.40) cents per hour above the employees' regular straight time hourly rate. If a night worker works a split week by working one or more nights and one or more days, time and one-half the night rate shall be paid for each day worked. A night worker required to work on Saturday night shall be paid at time one half regardless of the number of nights the employee has worked during his regular workweek.

<u>Vacation:</u> All employees hired before February 1, 2001 shall be entitled to paid vacations as follows:

During the employees first 52 weeks of employment……1 week (5 days)
During the employees second 52 weeks of employment……2 weeks (10 days)
After (5) years employment……3 weeks (15 days)
After (15) years employment……..4 weeks (20 days)
After (21) years employment……..21 working days
After (22) years employment……..22 working days
After (23) years employment……..23 working days
After (24) years employment……..…24 working days
After (25) years employment……..5 weeks (25 days)

Employees hired on or after February 1, 2001 shall receive the following vacation benefits:

During the first (52) weeks of employment…….....1 week (5 days)
During the second (52) weeks of employment and thereafter…….2 weeks (10 days)
After ten (10) years of employment…… 3 weeks (15 days)

<u>Sick Leave:</u>
Ten (10) paid sick days in each calendar year after one year of service. Unused sick leave paid in cash in January of each calendar year.

(**Local 32 B/J)**

CLASSIFICATION: **FUEL OIL**

Title	Wage Rate per Hour
Fuel Oil, Coal, Fuel Gas, Petroleum Product Chauffeur	$26.60
Oil Burner Installer	$26.60
Oil Burner Installer Helper (employed less than 12 months in the industry)	$15.85
Oil Burner Installer Helper (employed at least 12 months in the industry)	$19.40
Oil Burner Installer Helper (employed at least 24 months in the industry)	$23.15
Serviceperson "Class A" (employed in the industry for three years or longer)	$26.85

SUPPLEMENTAL BENEFIT RATE PER HOUR: $14.80

OVERTIME: (2, 5, 8; and 13 when the following holidays are worked – 3, 4, 5, 8, 9, 10, 11, 12 & 15; and 14 when the following holidays are worked – 2, 16 & 20). See Overtime and Holiday Legends.

PAID HOLIDAYS: (2, 3, 4, 5, 8, 9, 10, 11, 12, 15, 16 & 20). See Holiday Legend.

SICK LEAVE: One day sick leave earned for each 40 days worked in the preceding calendar year for a maximum of five days per calendar year.

VACATION:
Less than 75 days worked - no vacation.
75 days worked in a calendar year but less than 110 days worked in a calendar year - five days the following year.
110 days or more worked in a calendar year - 10 days the following year.

(Local #553)

***CLASSIFICATION*:** **LANDSCAPER**

(Gardening, tree pruning and/or tree removing, spraying and park maintenance not included in a construction or reconstruction project.)

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Gardener		
(above 6 years experience)	**$ 20.00**	**$ 6.25**
(Effective April 1, 2008)	**$ 21.00**	**$ 6.75**
Gardener		
(3 - 6 years experience)	**$ 19.00**	**$ 6.25**
(Effective April 1, 2008)	**$ 20.00**	**$ 6.75**
Gardener		
(1-3 years experience)	**$ 16.50**	**$ 6.25**
(Effective April 1, 2008)	**$ 17.50**	**$ 6.75**
Groundsperson	**$ 16.50**	**$ 6.25**
(Effective April 1, 2008)	**$ 17.50**	**$ 6.75**
Tree Remover / Pruner	**$ 25.00**	**$ 6.25**
(Effective April 1, 2008)	**$ 26.00**	**$ 6.75**
Landscape Sprayer		
(Pesticide Applicator)	**$ 15.00**	**$ 6.25**
(Effective April 1, 2008)	**$ 16.00**	**$ 6.75**

OVERTIME: (2, 5 & 8) See Overtime Legend. Supplemental Benefits shall include an additional Seventy Five ($0.75) cents per hour for all overtime work performed.

PAID HOLIDAYS: (2, 8, 9, 10, 16 & 20). In the event that any employee is called to work on any of the above mentioned holidays, the employee shall receive, in addition to a full day's pay, pay at time and one-half (1-1/2 times) for all work performed on that day.

SHIFT RATES: Work performed on a 4pm to 12am shift has a 15% differential. Work performed on a 12am to 8am shift has a 20% differential.

(Local 175)

CLASSIFICATION: **MEDICAL WASTE REMOVAL**

Title	Wage Rate per Hour
Driver (Chauffeur)	$18.35
Helper	$14.05
Tractor Trailer Driver	$20.85
Roll off Driver	$20.85
Line Haul Driver	$18.35

SUPPLEMENTAL BENEFIT RATE PER HOUR: $6.53

OVERTIME: (2, the sixth day of work in a workweek is paid at time and one half the regular hourly rate, the seventh day of work in a workweek is paid at double time the regular hourly rate, 12 plus days pay for below paid holidays). See Overtime Legend.

PAID HOLIDAYS: (2, 6, 8, 9, 10, 16, 20, plus four personal days).
See Holiday Legend.

VACATION:

One year of service but less than five years	- 10 days
Five years of service but less than 10 years	- 15 days
Ten years of service	- 16 days
Eleven years	- 17 days
Twelve years	- 18 days
Thirteen years	- 19 days
Fourteen years	- 20 days
Twenty years	- 21 days
Twenty one years	- 22 days
Twenty two years	- 23 days
Twenty three years	- 24 days
Twenty four years	- 25 days

(Local #813)

CLASSIFICATION: **MOVER**

MOVING: All services involved in the packing and moving of office furniture and equipment.

TITLE	WAGE RATE PER HOUR	SUPPLEMENTAL BENEFIT RATE PER HOUR
Furniture Mover, Driver	$21.70	$12.41
Casual Rate*	$13.00	none
Furniture Mover, Assistant	$20.33	$12.41
Casual Rate*	$12.00	none

***Casual workers shall include only those workers who have been paid less than 600 hours during the calendar year. Casual workers do not receive travel time, paid vacations or paid holidays.**

OVERTIME: (2, 5, 8 & 12) See Overtime Legend.

PAID HOLIDAYS: (for workers with more than 5 years: 2, 8, 9, 10, 16 & 20; Workers who have worked three days during the calendar week in which the Holiday occurs: 3, 5, 7, 15 & 17; For workers with less than five years who have worked three days during the calendar week in which the holiday occurs: 3, 5, 7, 15 & 17). See Holiday Legend.

Days Worked	Vacation Days Earned Per Day Worked
30 to 124 days	.0333
125 to 144 days	.0400
145 to 154 days	.0483
155 to 174 days	.0516
175 days	.0571
	(Maximum 10 days)

(Local #814)

CLASSIFICATION: REFRIGERATION AND AIR CONDITIONER MAINTENANCE AND INSTALLATION SERVICE PERSON

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Journeyperson	$31.20	$8.70
Fourth Year of Employment	$25.63	$8.00
Third Year of Employment	$21.24	$7.40
Second Year of Employment	$18.24	$6.96
First Year (2nd six months of Employment)	$15.14	$6.56
First Year (1st six months of Employment)	$ 9.42	$6.12

1. No First or Second year serviceperson employed on service or repair work shall be allowed to do any work in the field unless the worker is accompanied and supervised by one or more service mechanics except in the event of emergency arising when the Employer must use his own discretion as to sending First or Second year men out to answer calls.

2. For every three (3) servicemen or maintenance mechanics steadily employed, the Employer may employ one (1) First year or Second year person, and if acceptable to the Employer, shall be continuously employed for one (1) year.

3. First and Second year persons shall be allowed to perform the following work:
   1) Filter changing and maintenance thereof.
   2) Oil and greasing.
   3) Tower and coil cleaning, scraping and painting.
   4) General housekeeping.
   5) Delivery and truck driving of parts and/or equipment trucks.
   6) Taking of water samples.

OVERTIME: (2, 5 & 8) and (13 for the following holidays 2, 9, 10, 15, 16 & 20) and (15 for the following holidays 3, 6, 8 & 11). See Overtime and Holiday Legend.

PAID HOLIDAYS: (2, 3, 6, 8, 9, 10, 11, 15, 16 & 20) Employees must work at least one day in the payroll week in which the holiday occurs to receive the paid holiday. See Holiday Legend.

(Local #638B)

CLASSIFICATION: **REFUSE REMOVER**

A. Rubbish and Garbage Route Trucks

1. On open-trucks, rack body, or trucks which have no self contained mechanical loading device, up to 22-yard capacity:

Title	Wage Rate per Hour	Effective 12/1/07
Chauffeur	$24.91	$25.66
Helper	$24.70	$25.45

2. On 10-wheel, open trucks, container loaders, dinomaster, over-cab loaders, rack body trucks, or any trucks 22 yards to and including 25 yards capacity:

Title	Wage Rate per Hour	Effective 12/1/07
Chauffeur	$25.06	$25.81
Helper	$24.70	$25.45

3. On rubbish and garbage trucks (except as provided in section "B" Below) 26 yards to and including 31 yards capacity:

Title	Wage Rate per Hour	Effective 12/1/07
Chauffeur	$25.43	$26.18
Helper	$25.13	$25.88

B. Roll-Off Trucks

1. Single axle working non-compactor containers up to 15 yards capacity on rubbish and garbage removal only:

Title	Wage Rate per Hour	Effective 12/1/07
Chauffeur	$25.62	$26.37

2. Roll-Off Trucks other than those described in (1) above up to and including 42 yards capacity:

Title	Wage Rate per Hour	Effective 12/1/07
Chauffeur	$26.60	$27.35

Continued on following page

3. **On any Roll-Off Truck with more than 42 yards capacity or any Tractor Trailer Trucks:**

Title	Wage Rate per Hour	Effective 12/1/07
Chauffeur	$27.83	$28.58

SUPPLEMENTAL BENEFIT RATE PER HOUR
FOR ALL REFUSE REMOVER TITLES: $ 8.11
Effective 12/1/07 $ 9.02

OVERTIME: (2, 5, triple time for Sunday, 13 for (#) designated holidays, all other holidays triple time). See Overtime Legend.

PAID HOLIDAYS: (2, 3#, 6#, 8, 9, 10, 11#, 16, 20, the employee's birthday, four personal days). See Holiday Legend.

VACATION: Annual vacations with pay in advance on the pay day before the vacation shall be given by the Employer to each employee as follows (not less than 40 hours for each week) at the Employee's regular rate of pay:

Those employed 1 year but less than 2 years - 1 week.
Those employed 2 years but less than 5 years - 2 weeks in each year.
Those employed 5 years but less than 15 years - 3 weeks in each year.
Those employed 15 years but less than 25 years - 4 weeks in each year.
Those employed 25 years or more - 5 weeks in each year.

SICK LEAVE:

(a) Employees shall be entitled to 7 paid leave days for each contract year. Unused sick leave shall be paid to employees as an attendance incentive bonus at the end of each contract year.

(b) During the first year of employment, employees shall be paid two (2) days sick leave after completing six months of employment. Following such six months of employment, such employee shall then receive pro-rata sick leave pay on the basis of one (1) day sick leave pay for each two (2) months or major portion of two (2) months worked until the following December 1st. Once an employee has completed 6 months or more of employment by December 1st, he shall be treated like other employees as set forth in (a) above.

(c) Once an employee has used up his sick leave, the employee must, upon request of the employer, put in writing the nature of the illness for which the employee was absent.

(Local #813)

CLASSIFICATION: **SECURITY GUARD**

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Security Guard (Unarmed)	**$10.00**	**$1.50**
Security Guard (Armed)	**$18.49**	**$0.75**

OVERTIME: Any work in excess of eight hours within any twenty four hour period and work in excess of forty hours in a week is overtime, and must be compensated at time and one half the hourly wage and at straight time for the supplemental benefit rate.

CLASSIFICATION: **WINDOW CLEANER**

TITLE	WAGE RATE PER HOUR
Window Cleaner	**$22.51**
(Effective September 1, 2007)	**$22.76**
Power Operated Scaffolds, Manual Scaffolds, and Boatswain Chairs	**$24.14**
(Effective September 1, 2007)	**$24.39**

SUPPLEMENTAL BENEFIT RATE PER HOUR: $9.10

OVERTIME: (2, 5, 8 & 12 plus the days pay). See Overtime legend.

PAID HOLIDAYS: (2, 3, 5, 7, 8, 9, 10, 11, 16, 17 & 20, plus one personal day). See Holiday Legend.

Continued on following page

VACATION:
After seven months but less than one year of service - one week.
One year but less than five years of service- two weeks.
Five years of service but less than 15 years of service - three weeks.
15 years of service but less than 25 years of service - four weeks.
21 years - 21 days.
22 years - 22 days.
23 years - 23 days.
24 years - 24 days.
25 years or more of service - five weeks.
Plus one day per year for medical visit.

SICK LEAVE:
Ten days after one year worked. Unused sick days to be paid in cash. An employee who is entitled to and receive a payment of 10 days of unused sick days shall also receive a hundred-dollar bonus.

(Local No. 32B/J)

NYC ADMINISTRATIVE CODE § 6-109 SCHEDULE OF "LIVING WAGES"

Contractors who provide the following services to the City of New York must post a copy of this Prevailing Wage Schedule at their public work site(s) as required by New York City Administrative Code § 6-109:

- **Building Services;**
- **Food Services;**
- **Temporary Services;**
- **Homecare Services;**
- **Day Care Services;**
- **Head Start Services, and**
- **Services to Persons with Cerebral Palsy.**

In accordance with NYC Administrative Code § 6-109, the Comptroller of the City of New York promulgated this schedule of prevailing wages for the above services on public work contracts for non-emergency work in excess of the small purchase limit set by the procurement policy board; contracting agencies must annex this schedule to such contract.

A city service contractor or subcontractor that provides homecare services, day care services, head start services or services to persons with cerebral palsy must pay its covered employees that directly render such services in performance of the city service contract or subcontract no less than the living wage and must provide its employees health benefits* or must supplement their hourly wage rate by an amount no less than the health benefits* supplement rate. This requirement applies for each hour that the employee works performing the city service contract or subcontract.

A city service contractor or subcontractor that provides building services, food services or temporary services must pay its employees that are engaged in performing the city service contract or subcontract no less than the living wage or the prevailing wage, whichever is greater. Where the living wage is greater than the prevailing wage, the city service contractor or subcontractor must either provide its employees health benefits* or must supplement their hourly wage rate by an amount no less than the health benefits* supplement rate. Where the prevailing wage is greater than the living wage, the city service contractor or subcontractor must provide its employees the prevailing wage and supplements. These requirements apply for each hour that the employee works performing the city service contract or subcontract.

The appropriate schedule of prevailing wages must be posted at all public work sites pursuant to NYC Administrative Code 6-109.

The schedule is applicable for work performed from July 1, 2007 through June 30, 2008, unless otherwise noted. You will be notified of any changes to this schedule by addenda published on our web site www.comptroller.nyc.gov. Schedules for future one-year periods will be published annually in the City Record on or about July 1st of each succeeding year and on our web site www.comptroller.nyc.gov.

The living wage rate and the health benefit* supplement rate are known through June 30, 2008, therefore, those rates are listed in this schedule.

The prevailing wage rates listed in this schedule may not include all hourly wage calculations for overtime, shift differential, Holiday, Saturday, Sunday or other premium time work. Similarly, this schedule does not set forth every prevailing practice with which employers must comply. However, all such unpublished rates are nonetheless part of the employer's prevailing wage rate obligation.

Answers to questions concerning prevailing wage rates and supplements and the application of prevailing trade practices may be found in the collective bargaining agreements of the prevailing union. Such agreements are available for inspection by appointment. Requests for appointments may be made by calling (212) 669-4437, Monday through Friday between the hours of 9 A.M. to 5 P.M. All other inquiries concerning compliance with this law, should be directed to: Bureau of Labor Law, Attention: Wasyl Kinach, P.E., Director of Classifications, Office of the Comptroller, 1 Centre Street, Room 1122, New York, New York 10007; fax (212) 669-4002.

Contractors are solely responsible for maintaining original payroll records, which delineate, among other things, the hours each employee worked within a given classification. Contractors using rates and/or classifications not promulgated by the Comptroller do so at their own risk. Additionally, prior to bid, an agency's chief contact officer must contact the Bureau of Labor Law when the need arises for a work classification not published in this schedule.

The information listed below is intended to assist you in meeting your living wage and prevailing wage obligation. Contractors are advised to review the Comptroller's Living Wage Schedule before bidding on public work. Any wage rate error made by the contracting agency in the contract documents will not preclude a finding against the contractor for an underpayment of the applicable living wage or the applicable prevailing wage.

This schedule sets forth the living wage and the prevailing wage rates required to be annexed to and form part of the contract specifications for New York City public work pursuant to New York City Administrative Code 6-109. The attached schedule of wages are the living wage rates and the prevailing rates and the contractor engaged in public work is obligated to pay not less that the rates specified in this schedule for the trade or occupation upon such public work.

Wasyl Kinach, P.E.
Director of Classifications
Bureau of Labor Law

***See Supplemental Benefit Rate in schedule**

HOLIDAY LEGEND

The Holidays listed below are to be paid at the prevailing rate the worker is classified.

(1) None
(2) New Years Day
(3) Martin Luther King Jr. Day
(4) Lincoln's Birthday
(5) Washington's Birthday
(6) President's Day
(7) Good Friday
(8) Memorial Day
(9) Independence Day
(10) Labor Day
(11) Columbus Day
(12) Election Day
(13) Presidential Election Day
(14) 1/2 day on Presidential Election Day
(15) Veteran's Day
(16) Thanksgiving Day
(17) Day after Thanksgiving
(18) Day Before Christmas
(19) 1/2 day before Christmas Day
(20) Christmas Day
(21) Day before New Year's Day
(22) 1/2 day before New Year's Day
(23) Employee's Birthday

OVERTIME LEGEND

The following is an explanation of the code(s) listed in the OVERTIME section of each classification contained in this prevailing rate schedule. Additional requirements may also be listed in the OVERTIME section.

(1) Time and one half the regular rate after a 7 hour day.
(2) Time and one half the regular rate after an 8 hour day.
(3) Double time the regular rate after a 7 hour day.
(4) Double time the regular rate after an 8 hour day.
(5) Time and one half the regular rate for Saturday.
(6) Double time the regular time rate for Saturday.
(7) Time and one half the regular rate for Sunday.
(8) Double time the regular rate for Sunday.
(9) Saturday may be used as a make-up day at straight time when a day is lost during that week to inclement weather.
(10) Saturday and Sunday may be used as a make-up day at straight time when a day is lost during that week due to inclement weather.
(11) Regular straight time rate for work on a holiday.
(12) Time and one half the regular rate for work on a holiday.
(13) Double time the regular rate for work on a holiday.

***NOTE:* Benefits are paid for *EACH HOUR WORKED* unless otherwise noted.**

NYC ADMINISTRATIVE CODE § 6-109 PREVAILING WAGE INDEX
JULY 1, 2007 – JUNE 30, 2008

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"BUILDING SERVICES"

CLASSIFICATION: **CLEANER (LOFT)**

LOFT BUILDING CLASS "A": (Over 280,000 square feet gross area)

Title	Wage Rate per Hour
Cleaner/Porter	$19.47

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

LOFT BUILDING CLASS "B": (Between 120,000 and 280,000 square feet gross area)

Title	Wage Rate per Hour
Cleaner/Porter	$19.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

LOFT BUILDING CLASS "C": (Less than 120,000 square feet gross area)

Title	Wage Rate per Hour
Cleaner/Porter	$19.38

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

NEW HIRE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

Continued on following page

"BUILDING SERVICES Continued"

UPON COMPLETION OF TWO YEARS OF EMPLOYMENT THE NEW HIRE RECEIVES THE FULL SUPPLEMENTAL BENEFIT RATE.

THIS PROVISION SHALL NOT APPLY TO ANY EXPERIENCED EMPLOYEE ("EXPERIENCED EMPLOYEE") WHO WAS EMPLOYED IN THE NEW YORK CITY BUILDING INDUSTRY ("INDUSTRY") AS OF FEBRUARY 3, 1996. "EXPERIENCED EMPLOYEE" SHALL BE DEFINED AS A PERSON WHO HAS WORKED FOR THIRTY (30) DAYS IN THE "INDUSTRY" WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING HIRING (EXCLUDING EMPLOYMENT AS A VACATION RELIEF).

THESE CLASSIFICATIONS INCLUDE, BUT ARE NOT LIMITED TO, CLEANING AND DISINFECTING OF CURTAINS, RUGS, AND DRAPES, JANITORIAL AND CUSTODIAL SERVICES (OTHER THAN SCHOOL CUSTODIAN), WASHING AND WAXING FLOORS. ADDITIONAL SUPPLEMENTAL BENEFITS FOR ALL CLASSES OF LOFT CLEANERS:

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20 & 23). See Holiday Legend.

*** may be exchanged for Yom Kippur or a personal day**
 # may be exchanged for Lincoln's birthday and/or Veteran's Day

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
Five years of work but less than 15 years of work - three weeks.
15 years of work but less than 25 years of work - four weeks.
25 years or more of work - five weeks.

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full days pay for each unused sick day.

OVERTIME: (2, 5, 7 and 12 in addition to the days pay) see Overtime Legend.

THIS CLASSIFICATION IS SUBJECT TO NEW YORK STATE LABOR LAW SECTION 230 ET SEQ.

(Local 32B/J)

"BUILDING SERVICES Continued"

CLASSIFICATION: **CLEANER (OFFICE)**

OFFICE BUILDING CLASS "A": **(Over 280,000 square feet gross area)**

Title	Wage Rate per Hour
Cleaner/Porter	$19.50

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

OFFICE BUILDING CLASS "B": **(Between 120,000 and 280,000 square feet gross area)**

Title	Wage Rate per Hour
Cleaner/Porter	$19.47

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

OFFICE BUILDING CLASS "C": **(Less than 120,000 square feet gross area)**

Title	Wage Rate per Hour
Cleaner/Porter	$19.42

SUPPLEMENTAL BENEFIT RATE PER HOUR: $7.16

NEW EMPLOYEES: EFFECTIVE FEBRUARY 4, 1996, A NEW HIRE EMPLOYED IN THE PORTER/CLEANER TITLE, MAY BE PAID A STARTING RATE OF EIGHTY (80%) OF THE HOURLY RATE PUBLISHED ABOVE. UPON COMPLETION OF THIRTY (30) MONTHS OF EMPLOYMENT, THE NEW HIRE SHALL BE PAID THE FULL WAGE RATE.

Continued on following page

"BUILDING SERVICES Continued"

NEW HIRE SUPPLEMENTAL BENEFIT RATE PER HOUR: $5.36

UPON COMPLETION OF TWO YEARS OF EMPLOYMENT THE NEW HIRE RECEIVES THE FULL SUPPLEMENTAL BENEFIT RATE.

THIS PROVISION SHALL NOT APPLY TO ANY EXPERIENCED EMPLOYEE ("EXPERIENCED EMPLOYEE") WHO WAS EMPLOYED IN THE NEW YORK CITY BUILDING INDUSTRY ("INDUSTRY") AS OF FEBRUARY 3, 1996. "EXPERIENCED EMPLOYEE" SHALL BE DEFINED AS A PERSON WHO HAS WORKED FOR THIRTY (30) DAYS IN THE "INDUSTRY" WITHIN THE 24 MONTHS IMMEDIATELY PRECEDING HIRING (EXCLUDING EMPLOYMENT AS A VACATION RELIEF).

THESE CLASSIFICATIONS INCLUDE, BUT ARE NOT LIMITED TO, CLEANING AND DISINFECTING OF CURTAINS, RUGS, AND DRAPES, JANITORIAL AND CUSTODIAL SERVICES (OTHER THAN SCHOOL CUSTODIAN), WASHING AND WAXING FLOORS. ADDITIONAL SUPPLEMENTAL BENEFITS FOR ALL CLASSES OF OFFICE CLEANERS:

PAID HOLIDAYS: (2, 3*, 5, 7#, 8, 9, 10, 11, 16, 17#, 20 & 23) see Holiday Legend.

*** may be exchanged for Yom Kippur or a personal day**
 # may be exchanged for Lincoln's birthday and/or Veteran's Day

VACATION:
Less than six months of work - no vacation.
Six months of work but less than one year of work - three days.
One year of work but less than five years of work - two weeks.
Five years of work but less than 15 years of work - three weeks.
15 years of work but less than 25 years of work - four weeks.
25 years or more of work - five weeks.

SICK LEAVE:
Ten sick days per year. Unused sick leave paid in the succeeding January, one full days pay for each unused sick day.

OVERTIME: (2, 5, 7; 12 in addition to the days pay) see Overtime Legend.

THIS CLASSIFICATION IS SUBJECT TO NEW YORK STATE LABOR LAW SECTION 230 ET SEQ.

(LOCAL 32B/J)

"BUILDING SERVICES Continued"

CLASSIFICATION: **CLEANER (RESIDENTIAL)**

Residential Building Class"A": buildings where the assessed value of the land and building, based upon the 1935 assessment, divided by the number of rooms in the building, gives an assessed value of over $4000.00 a room.

Title	Wage Rate per Hour
Cleaner/Porter	$18.44
Effective January 1, 2008	$18.69
SUPPLEMENTAL BENEFIT RATE PER HOUR:	$7.08

Residential Building Class"B": buildings where the assessed value of the land and building, based upon the 1935 assessment, divided by the number of rooms in the building, gives an assessed value of over $2000.00 a room and not over $4000.00 a room.

Title	Wage Rate per Hour
Cleaner/Porter	$18.38
Effective January 1, 2008	$18.63
SUPPLEMENTAL BENEFIT RATE PER HOUR:	$ 7.08

Residential Building Class"C": buildings where the assessed value of the land and building, based upon the 1935 assessment, divided by the number of rooms in the building, gives An assessed value of $2000.00 or less a room.

Title	Wage Rate per Hour
Cleaner/Porter	$18.33
Effective January 1, 2008	$18.58
SUPPLEMENTAL BENEFIT RATE PER HOUR:	$ 7.08

Continued on following page

"BUILDING SERVICES Continued"

THESE CLASSIFICATIONS INCLUDE, BUT ARE NOT LIMITED TO, CLEANING AND DISINFECTING OF CURTAINS, RUGS, AND DRAPES, JANITORIAL AND CUSTODIAL SERVICES (OTHER THAN SCHOOL CUSTODIAN), WASHING AND WAXING FLOORS.

ADDITIONAL SUPPLEMENTAL BENEFITS FOR ALL CLASSES OF RESIDENTIAL CLEANERS:

PAID HOLIDAYS: (2, 3*, 5, 7# , 8, 9, 10, 11, 16, 17#, 20 & 23). See Holiday Legend.

*** may be exchanged for Yom Kippur or a personal day**
 # may be exchanged for Lincoln's birthday and/or Veteran's Day

VACATION:
6 Months……3 working days.
1 Year……..……2 weeks.
5 Years……3 weeks.
15 Years……...4 weeks.
21 Years……21 working days.
22 Years……22 working days.
23 Years……23 working days.
24 Years……24 working days.
25 Years……5 weeks.

SICK LEAVE: After one year of service - 10 days per year.

OVERTIME: (2, 5, 7; 12 in addition to the days pay). See overtime legend.

THIS CLASSIFICATION IS SUBJECT TO NEW YORK STATE LABOR LAW SECTION 230 ET SEQ.

(Local 32B/J)

"BUILDING SERVICES Continued"

CLASSIFICATION: CLEANER (PARKING LOT) - FLOOR PERSON

	Wage Rate Per Hour
"A" Level Worker	**$14.56**
Effective March 4, 2008	**$14.81**
"B" Level Workers	**$10.00***

*** "B" Level Worker paid at least the Living Wage as per section 6-109**

SUPPLEMENTAL BENEFIT RATE PER HOUR:

"A" worker, "B" worker after three years of employment.	**$2.17**
"B" worker with less than 3 years employment.	**$1.50***

*** "B" Level Worker paid at least the Living Wage as per section 6-109**

OVERTIME: Time and one half the regular hourly rate after 40 hours in any work week.

VACATION:
Full time employees shall be entitled to
five days per year during each of the first two years of employment.
Ten days per year during each of the third through fifth years of employment. Fifteen (15) days per year during each of the sixth (6) through tenth (10) years of employment.
Twenty days per year during each of the eleventh and each succeeding Year of employment.

BENEFIT DAYS:
Six days during each of the first through fifth years of employment.
Twelve days during the sixth and each succeeding year of employment.

(Local 272)

"BUILDING SERVICES Continued"

CLASSIFICATION: **EXTERMINATOR**

WAGE RATE PER HOUR:	**$18.49**
Effective January 31, 2008	**$18.74**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$ 4.83**

OVERTIME: (2, 8) If an employee works six (6) consecutive days, the 6th day is paid at time and one half. All work performed before regular starting time, or after eight (8) hours on any day, or on the sixth (6th) day of the regular work week, shall be paid for at time one-half the regular rate of pay. All work performed on Sunday shall be paid for at double the rate of pay except that employees hired on or after September 5, 1993 can be assigned any five (5) consecutive day work week without the requirement of double-time for Sunday. See Overtime Legend.

Paid Holidays: (2, 5, 8, 9, 10, 11, 16 & 20) Plus employee's birthday and two (2) additional holidays as floating holidays and one (1) additional day either for Martin Luther King's Birthday or Yom Kippur. All employees hired on or after February 1, 2001 shall not be entitled to floating holidays or a day off for their Birthday. See Holiday Legend.

Regular Work Day: shall be any eight (8) consecutive hours from 6:00 A.M. - 8:00 P.M. with one hour off for lunch. On a second shift the employee is paid an additional twelve dollars ($12.00) per week.

The Regular Work Week of day workers shall consist of forty (40) hours in any five (5) consecutive days Monday through Saturday, with two (2) consecutive days off. If a day worker works a split week by working one (1) or more days and one (1) or more nights, time and one half shall be paid for each night's work. If a day worker splits a week by working one (1) day and one or more nights, time and one-half shall be paid for each nights work.

Continued on following page

"BUILDING SERVICES Continued"

Shift Rate: The regular work week of night workers shall consist of five (5) consecutive nights totaling forty (40) hours. Any employee required to work between 5:00 P.M. and 7:00 A.M. for any given eight (8) hours consecutively shall receive an additional forty ($.40) cents per hour above the employees' regular straight time hourly rate. If a night worker works a split week by working one or more nights and one or more days, time and one-half the night rate shall be paid for each day worked. A night worker required to work on Saturday night shall be paid at time one half regardless of the number of nights the employee has worked during his regular work week.

Vacation: All employees hired before February 1, 2001 shall be entitled to paid vacations as follows:

During the employees first 52 weeks of employment……1 week (5 days)
During the employees second 52 weeks of employment……2 weeks (10 days)
After (5) years employment……..……3 weeks (15 days)
After (15) years employment……..……..4 weeks (20 days)
After (21) years employment……..……..21 working days
After (22) years employment……..……..22 working days
After (23) years employment……..……..23 working days
After (24) years employment……..……..…24 working days
After (25) years employment……..……..5 weeks (25 days)

Employees hired on or after February 1, 2001 shall receive the following vacation benefits:

During the first (52) weeks of employment…….....1 week (5 days)
During the second (52) weeks of employment and thereafter….2 weeks (10 days)
After ten (10) years of employment…… 3 weeks (15 days)

SICK LEAVE:
Ten (10) paid sick days in each calendar year after one year of service. Unused sick leave paid in cash in January of each calendar year.

(Local 32 B/J)

THIS CLASSIFICATION IS SUBJECT TO NEW YORK STATE LABOR LAW SECTION 230 ET SEQ.

"BUILDING SERVICES Continued"

CLASSIFICATION: **LANDSCAPER**

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Groundsperson:	**$16.50**	**$6.25**
Effective April 1, 2008	**$17.50**	**$6.75**

OVERTIME: (2, 5 & 8) See Overtime Legend. Supplemental Benefits shall include an additional Seventy Five ($0.75) cents per hour for all overtime work performed.

PAID HOLIDAYS: (2, 8, 9, 10, 16 & 20). In the event that any employee is called to work on any of the above mentioned holidays, the employee shall receive, in addition to a full day's pay, pay at time and one-half (1-1/2 times) for all work performed on that day.

SHIFT RATES: Work performed on a 4pm to 12am shift has a 15% differential. Work performed on a 12am to 8am shift has a 20% differential.

(Local 175)

CLASSIFICATION: **SECURITY GUARD**

	Wage Rate Per Hour	Supplemental Benefit Rate Per Hour
Security Guard (Unarmed)	**$10.00**	**$1.50**
Security Guard (Armed)	**$18.49**	**$0.75**

OVERTIME: Any work in excess in eight hours within any twenty four hour period and work in excess of forty hours in a week is overtime, and must be compensated at time and one half the hourly wage and at straight time for the supplemental benefit rate.

"BUILDING SERVICES Continued"

CLASSIFICATION: **WINDOW CLEANER**

TITLE	WAGE RATE PER HOUR
Window Cleaner	$22.51
(Effective September 1, 2007)	$22.76
Power Operated Scaffolds, Manual Scaffolds, and Boatswain Chairs	$24.14
(Effective September 1, 2007)	$24.39

SUPPLEMENTAL BENEFIT RATE PER HOUR: $9.10

OVERTIME: (2, 5 & 8; 12 plus the days pay) see overtime legend

PAID HOLIDAYS: (2, 3, 5, 7, 8, 9, 10, 11, 16, 17 & 20, plus one personal day). See holiday legend.

VACATION:
After seven months but less than one year of service - one week.
One year but less than five years of service- two weeks.
Five years of service but less than 15 years of service- three weeks.
15 years of service but less than 25 years of service- four weeks.
21 years - 21 days.
22 years - 22 days.
23 years - 23 days.
24 years - 24 days.
25 years or more of service - five weeks.
Plus one day per year for medical visit

SICK LEAVE:
Ten days after one year worked. Unused sick days to be paid in cash. An employee who is entitled to and receive a payment of 10 days of unused sick days shall also receive a hundred dollar bonus.

(Local No. 32B/J)

CLASSIFICATION: **"FOOD SERVICE EMPLOYEES"**

TITLE	WAGE RATE PER HOUR	SUPPLEMENTAL BENEFITS PER HOUR
Cook (Level 1)	**$18.56**	**$4.54**
(Under supervision performs non-supervisory work of moderate difficulty and responsibility, or supervisory work of ordinary difficulty and responsibility in the preparation, distribution and service of pre-prepared meals, sandwiches, etc.)		
Assistant Cook (Level 1)	**$11.88**	**$2.91**
Cook (Level 2)	**$20.35**	**$4.98**
(Under general supervision, performs non-supervisory work of a difficult and responsible nature, or supervisory work of moderate difficulty and responsibility in the preparation, distribution, and service of meals using standard procedures and quantity recipes where less than 1200 meals per day are prepared)		
Assistant Cook (Level 2)	**$18.56**	**$4.54**
Cook (Level 3)	**$21.57**	**$5.28**
(Under general supervision, performs supervisory work of a difficult and responsible nature in the preparation, distribution, and service of meals, using standard procedure and quantity recipes where in excess of 1199 meals per day are prepared)		
Assistant Cook (Level 3)	**$20.28**	**$ 4.96**
Kitchen Helper	**$11.51**	**$ 2.82**
Cafeteria/Counter Attendant	**$11.88**	**$ 2.91**

OVERTIME: (2) see overtime legend

PAID HOLIDAYS: (1) see holiday legend

(Local 372; DC 37)

CLASSIFICATION: **DAY CARE SERVICES**

LIVING WAGE RATE PER HOUR **$10.00**

SUPPLEMENTAL BENEFIT RATE PER HOUR **$1.50**

"Day Care Services" means provision of day care services through the city's center-based day care program administered under contract with the city's Administration for Children's Services. No other day care programs shall be covered, including family-based day care programs administered by city-contracted day care centers.

CLASSIFICATION: **HEAD START SERVICES**

LIVING WAGE RATE PER HOUR **$10.00**

SUPPLEMENTAL BENEFIT RATE PER HOUR **$1.50**

"Head Start Services" means provision of head start services through the city's center-based head start program administered under contract with the city's Administration for Children's Services. No other head start programs shall be covered.

CLASSIFICATION: **HOMECARE SERVICES**

LIVING WAGE RATE PER HOUR **$10.00**

SUPPLEMENTAL BENEFIT RATE PER HOUR **$1.50**

"Homecare Services" means the provision of homecare services under the city's Medicaid Personal Care/Home Attendant or Housekeeping Programs, including but not limited to the In-Home Services for the Elderly Programs administered by the Department for the Aging.

For homecare services provided under the Personal Care Services program, the wage and supplemental benefit rate above shall apply only as long as the state and federal government maintain their combined aggregate proportionate share of funding and approved rates for homecare services in effect as of the date of the enactment of this section.

For contractors or subcontractors providing homecare services, the supplemental benefit rate may be waived by the terms of a bona fide collective bargaining agreement with respect to employees who have never worked a minimum of eighty (80) hours per month for two consecutive months for that covered employer, but such provision may not be waived for any employee once a minimum of eighty (80) hours for two consecutive months has been achieved.

CLASSIFICATION: SERVICES TO PERSONS WITH CEREBRAL PALSY

LIVING WAGE RATE PER HOUR **$10.00**

SUPPLEMENTAL BENEFIT RATE PER HOUR **$1.50**

"Services to Persons with Cerebral Palsy" means provision of services which enable persons with cerebral palsy and related disabilities to lead independent and productive lives through an agency that provides health care, education, employment, housing and technology resources to such persons under contract with the city or the department of education.

CLASSIFICATION: TEMPORARY OFFICE SERVICES

TITLES

Secretary (various)

WAGE RATE PER HOUR: **$19.28**
SUPPLEMENTAL BENEFIT RATE PER HOUR: **$0.17**

OVERTIME: (2) see Overtime Legend.

PAID HOLIDAYS: (1) see Holiday Legend.

Typist / Word Processing Machine Operator / Data Entry Clerk

WAGE RATE PER HOUR: **$12.42**
SUPPLEMENTAL BENEFIT RATE PER HOUR: **None**

OVERTIME: (2) see Overtime Legend.

PAID HOLIDAYS: (1) see Holiday Legend.

Clerk (various)

WAGE RATE PER HOUR: **$10.00**
SUPPLEMENTAL BENEFIT RATE PER HOUR: **$1.50**

OVERTIME: (2) see Overtime Legend.

PAID HOLIDAYS: (1) see Holiday Legend.

Continued on following page

Stenographer

WAGE RATE PER HOUR:	**$10.00**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$1.50**

OVERTIME: (2) see Overtime Legend.

PAID HOLIDAYS: (1) see Holiday Legend.

Cashier

WAGE RATE PER HOUR:	**$10.00**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$1.50**

OVERTIME: (2) see Overtime Legend.

PAID HOLIDAYS: (1) see Holiday Legend.

Messenger

WAGE RATE PER HOUR:	**$10.00**
SUPPLEMENTAL BENEFIT RATE PER HOUR:	**$1.50**

OVERTIME: (2) see Overtime Legend.

PAID HOLIDAYS: (1) see Holiday Legend.

SECTION 1.08

FEDERALLY MANDATED REQUIREMENTS

Book 1
Section 1.08

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Contract Requirements

INSTRUCTIONS FOR COMPLETING SF-LLL, DISCLOSURE OF LOBBYING ACTIVITIES

This disclosure form shall be completed by the reporting entity, whether subawardee or prime federal recipient, at the initiation or receipt of a covered federal action, or a material change to a previous filing, pursuant to Title 31, USC Section 1352. The filing of a form is required for each payment or agreement to make payment to any lobbying entity for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress, in connection with a covered federal action. Use the SF-LLL-A Continuation Sheet for additional information if the space on the form is inadequate. Complete all items that apply for both the initial filing and material change report. Refer to the implementing guidance published by the Office of Management and Budget for additional information.

1. Identify the type of covered federal action for which lobbying activity is and/or has been secured to influence the outcome of the covered federal action.
2. Identify the status of the covered federal action.
3. Identify the appropriate classification of this report. If this is a follow-up report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously-submitted report by this reporting entity for this covered federal action.
4. Enter the full name, address, city, state, and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be, a prime or subaward recipient. Identify the tier of the subawardee, e.g., the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants, and contract awards under grants.
5. If the organization filing the report in Item 4 checks "Subawardee", then enter the full name, address, city, state, and zip code of the prime federal recipient. Include Congressional District, if known.
6. Enter the name of the federal agency making the award or loan commitment. Include at least one organizational level below the agency name, if known. For example, U. S. Department of Transportation, Federal Highway Administration.
7. Enter the federal program name or description for the covered federal action (Item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.
8. Enter the most appropriate federal identifying number available for the federal action identified in Item 1 (e.g., Request for Proposal (RFP) number; Invitation to Bid (IFB) number; grant announcement number; the contract, grant, or loan award number; the application/proposal control number assigned by the federal agency). Include prefixes, e.g., "RFP-DE-90-001"
9. For a covered federal action where there has been an award or loan commitment by the federal agency, enter the federal amount of the award/loan commitment for the prime entity identified in Item 4 or 5.
10. (a) Enter the full name, address, city, state, and zip code of the lobbying entity engaged by the reporting entity identified in Item 4 to influence the covered federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10(a). Enter Last Name, First Name, and Middle Initial (MI).
11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (Item 4) to the lobbying entity (Item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.
12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payments.
13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.
14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include preparatory and related activity, not just time spent in actual contact with federal officials. Identify the federal official(s) or employee(s) contacted or the official(s), employee(s), or Member(s) of Congress that were contacted.
15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.
16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and
Budget, Paperwork Reduction Project (0348-0046), Washington, D. C. 20503.

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Contract Requirements

REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB
0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure)

1. Type of Federal Action: *(Check appropriate box)* ☐ a. contract ☐ b. grant ☐ c. cooperative agreement ☐ d. loan ☐ e. loan guarantee ☐ f. loan insurance	2. Status of Federal Action: *(Check appropriate box)* ☐ a. bid/offer/application ☐ b. initial award ☐ c. post-award	3. Report Type: *(Check appropriate box)* ☐ a. initial filing ☐ b. material change For Material Change Only: year _____ quarter _____ date of last report _____
4. Name and Address of Reporting Entity: ☐Prime ☐Subawardee (Tier _____ *If known*) Congressional District _____ *If known*	5. If Reporting Entity in Item No. 4 is Subawardee, Enter Name and Address of Prime: Congressional District _____ *If known*	
6. Federal Department Agency	7. Federal Program Name/Description CFDA Number, if applicable: _____	
8. Federal Action Number, *If known*	9. Award Amount, *If known* $ _____	
10. a. Name and Address of Lobbying Entity *(If individual, last name, first name, MI)* (attach Continuation Sheet(s) SF-LLL-A, if necessary)	10. b. Individuals Performing Services *(Include address if different from Item No. 10a.) (last name, first, MI)* (attach Continuation Sheet(s) SF-LLL-A, if necessary)	
11. Amount of Payment *(check all that apply)*: $_____ ☐actual ☐planned	13. Type of Payment *(check all that apply)* ☐ a. retainer ☐ b. One-time fee ☐ c. commission ☐ d. contingent fee ☐ e. deferred ☐ f. other, specify _____	
12. Form of Payment *(check all that apply)*: ☐a. cash ☐b. in-kind; specify: nature _____ value _____		
14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment indicated in Item No. 11: (attach Continuation Sheet(s) SF-LLL-A, if necessary)		
15. Continuation Sheet(s) SF-LLL-A attached: ☐Yes ☐No *(Check one box)*		
16. Information requested through this form is authorized by Title 31 U.S.C. section 1352. This disclosure of lobbying activities is a material representation a fact upon which ordinance was placed by tier above when this transaction was made or entered into. This disclosure is semi-annually and will be available for public inspection. Any person who fails to file the required disclosure shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.	Signature: _____ Print Name: _____ Title: _____ Telephone No.: ( )-_____-_____ Date: _____	
Federal Use Only:	Authorized for Local Reproduction Standard Form-LLL	

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Contract Requirements

REQUIREMENTS REGARDING LOBBYING ACTIVITIES ON FEDERAL AID CONTRACTS

DISCLOSURE OF LOBBYING ACTIVITIES
Continuation Sheet

Approved by OMB
0348-0046

Reporting Entity: _____ Page _____ Of _____

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Contract Requirements

NON-COLLUSIVE BIDDING CERTIFICATIONS

REQUIRED BY SECTION 139-D, STATE FINANCE LAW and SECTION 103-D OF GEN. MUNICIPAL LAW

Section 139-d, SFL and Section 103-d, GML, "Statement of non-collusion in bids to the state."

1. Every bid hereafter made to the state or any public department, agency, or official thereof, where competitive bidding is required by statute, rule, or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

   Non-collusive bidding certification.

   (a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid, each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

   (1) 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;

   (2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

   (3) No attempt has been made or will be made by the bidder to induce any other person, partnership, or corporation to submit or not to submit a bid for the purpose of restricting competition.

   (b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department, or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

   The fact that the bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to the state or any public department, agency, or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to have included the signing and submission of the bid and the inclusion therein of the certificate as to non collusion as the act and deed of the corporation."

REQUIRED BY TITLE 23, U. S. CODE, SECTION 112©. A NON-COLLUSIVE BIDDING CERTIFICATION MUST BE INCLUDED IN EVERY BID PROPOSAL REGARDLESS OF WHETHER NYSDOT SPECIFICATIONS OR LOCAL SPECIFICATIONS ARE USED.

(A)2 "By submission of this bid, the bidder does hereby tender to the Owner this sworn statement pursuant to Section 112© of Title 23, U. S. Code-Highways and does hereby certify, in conformance with said Section 112© of Title 23, U. S. Code-Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above contract."

Contract Requirements

REQUIRED BY TITLE 49, U. S. CODE, PART 29

"The signator to the proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, his/her company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (of five percent or more ownership):

1. Is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any Federal agency;

2. Has not been suspended, debarred, voluntarily excluded, or determined ineligible by any Federal agency within the past three years;

3. Does not have a proposed debarment pending; and

4. Has not been indicted, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

   EXCEPTIONS: The Contractor should list any relevant information, attaching additional sheets to the proposal if necessary. (Exceptions will not necessarily result in disapproval, but will be considered in determining responsibility. For any exception noted, the Contractor should indicate to whom it applies, the initiating agency, and the dates of actions. Providing false information may result in criminal prosecution or administrative sanctions.)"

THESE MUST BE INCLUDED IN ALL FEDERAL AID CONTRACTS. HOWEVER, THE NYS COLLUSIVE BIDDING CERTIFICATION AND MANY IN USE BY LOCAL GOVERNMENTS ARE ALMOST IDENTICAL AND ARE ACCEPTABLE.

Contract Requirements

THE FOLLOWING PAGES ARE THE REQUIRED CERTIFICATION REGARDING NON-COLLUSIVE BIDDING PROCEDURES AND THE CONTRACTOR'S ELIGIBILITY TO SUBMIT A BID UNDER FEDERAL LAW. THE LAST PAGE IS A GENERAL BIDDER INFORMATION FORM. ALL SHOULD BE INCLUDED IN THE CONTRACT DOCUMENTS, IMMEDIATELY FOLLOWING THE PAGE(S) WHICH CONTAIN THE NON-COLLUSIVE BIDDING REQUIREMENTS. BY SIGNING ONE OF THESE CERTIFICATIONS, THE CONTRACTOR CERTIFIES THAT HE UNDERSTANDS AND AGREES TO BE BOUND BY THE PROVISIONS OF THE FOLLOWING LAWS:

1. NEW YORK STATE LABOR LAW, SECTION 139-d
2. TITLE 49, U, S. CODE, PART 29
3. TITLE 23, U. S. CODE-HIGHWAYS, SECTION 112©

THE CONTRACTOR SHOULD CHOOSE THE APPROPRIATE NOTARIZATION WHICH CORRESPONDS TO THE TYPE OF COMPANY (SOLE PROPRIETORSHIP, PARTNERSHIP, OR CORPORATION) THAT HE/SHE REPRESENTS OR IS AFFILIATED WITH. ALL BIDDERS SHOULD FILL OUT THE APPROPRIATE SECTION OF THE BIDDER INFORMATION SHEET.

REPORTING VIOLATIONS OF NON-COLLUSIVE BIDDING PROCEDURES, MISCONDUCT, OR OTHER PROHIBITED CONTRACT ACTIVITIES

U. S. DEPARTMENT OF TRANSPORTATION HOTLINE. Persons with knowledge of bid collusion (i.e., contractors, suppliers, workers, etc.) or other questionable contract related practices (inadequate materials, poor workmanship, theft of materials, etc.) are encouraged to report such activities by calling the U. S. D. O. T. HOTLINE. The HOTLINE number is 1-800-424-9071 and calls will be answered from 8:00 A.M. to 5:00 P.M. EST, Monday thru Friday. This HOTLINE is under the direction of the U.S.D.O.T.'s Inspector General. All information will be treated confidentially and the caller's anonymity will be respected.

NEW YORK STATE INSPECTOR GENERAL HOTLINE. Reports of New York State Governmental Misconduct may be made in strict confidence to the New York State Inspector General on the Toll Free Statewide HOTLINE or by writing to the Office of the Inspector General. The Toll Free Statewide HOTLINE telephone number is 1-800-367-4448 and calls will be answered between 9:00 A.M. and 5:00 P.M., Monday through Friday. The address of the Office of the State Inspector General is the State Capitol, Executive Chamber, Albany, New York 12224.

THIS IS REQUIRED IN ALL FEDERAL AID CONTRACTS.

Contract Requirements

EQUAL OPPORTUNITY REQUIREMENTS FOR FEDERAL AID CONTRACTS

GENERAL. Title 23 USC Section 140(a) requires the Secretary of Transportation to ensure non-discrimination in employment generated by Federally-aided construction by the inclusion of Equal Employment Opportunity provisions in the contract specifications. Those provisions are found in the "Required Contract Provisions for Federal-Aid Construction Contracts", Form PR-1273, which is incorporated into this proposal. Those provisions require the Contractor to comply with 41 CFR 60, the applicable portions of which are included in this contract. The New York State Department of Transportation is required to enforce those provisions on its Federally-aided construction contracts by 23 CFR, Part 230, Subparts A and D. Such enforcement shall include efforts on the part of the Department of Transportation to ensure that these provisions are included in, and enforced as part of, all contracts let by other agencies, including municipal subdivisions of the State, which are funded with Federal monies administered by or through the Department of Transportation. Such enforcement includes, but is not limited to, monitoring the Contractor's and Subcontractor's employment practices, requiring employment related reports to be filed by the Contractor in a timely manner on forms acceptable to the Sponsor and the Department, determining the Contractor's compliance with these provisions and taking such actions as authorized by law, rule, or regulation to enforce compliance by the Contractor. In the enforcement of those rules by the Department, the term Director means the Director of the Department's Office of Equal Opportunity Development and Compliance.

Included in this contract are sections of 41 CFR 60 as required by regulation of the Office of Federal Contract Compliance Programs, US Department of Labor. The enforcement of those provisions is also the responsibility of the Office of Federal Contract Compliance Programs, separate and independent of the Department's enforcement responsibility.

TRAINING SPECIAL PROVISION. If this contract proposal includes the Training Special Provisions, the Contractor is required to comply with that provision as part of the Equal Employment Opportunity Requirements. The Training Special Provisions requires the Contractor to provide training to at least one minority or woman indentured apprentice or trainee. If the Contractor fails to meet the employment goals for minorities or women specified in these requirements, additional training of minorities and women will be required to satisfy the employment goals. No payment will be made for the training required of the Contractor under the Training Special Provision.

EQUAL EMPLOYMENT OPPORTUNITY OFFICER. The Contractor will designate and make known to the Sponsor and the Department an Equal Employment Opportunity Officer (EEO Officer) who will have the responsibility for, and must be capable of effectively administering and promoting, an active contractor program of Equal Employment Opportunity and who must be assigned adequate authority and responsibility to do so.

COMPLAINTS OF ALLEGED DISCRIMINATION. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all of his or her avenues of appeal.

ASSURANCE OF NON-DISCRIMINATION. The Sponsor, in accordance with Title VI of the Civil Rights Act of 1964, 78 Statute 252, 42 USC 2000d to 2000d-4, and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-Discrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all Bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, sex, or national origin in consideration for award.

Contract Requirements

"Code of Federal Regulations"

Title 41 - Public Contracts, Property Management

Chapter 60 - Office of Federal Contract Compliance Programs

PART 60-1, OBLIGATIONS OF CONTRACTORS AND SUBCONTRACTORS

Subpart A, Preliminary Matters; Equal Opportunity Clause; Compliance Reports

§ 60-1.1 Equal opportunity clause.

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, 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, 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 considerations for employment without regard to race, color, religion, sex, or national origin.
3. 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.
4. 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.
5. The Contractor will furnish all information and reports required by Executive Order 11246 of September 24, 1965, and by the 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.
6. In the event of the Contractor's non-compliance 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 for 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.

7. The Contractor will include the portion of the sentence immediately preceding paragraph (1) and the provisions of paragraph (1) through (7) in every subcontract or purchase order unless exempted by rules, regulations, or orders of the Secretary of Labor 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 non-compliance: *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.

PART 60-4, CONSTRUCTION CONTRACTORS, AFFIRMATIVE ACTION REQUIREMENTS

§ 60-4.2, Solicitations

NOTICE OF REQUIREMENT FOR AFFIRMATIVE ACTION TO ENSURE EQUAL EMPLOYMENT OPPORTUNITY (EXECUTIVE ORDER 11246)

(1) The Offerer's or Bidder's attention is called to the "Equal Opportunity Clause" and the "Standard Federal Equal Employment 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 set forth in the solicitations from which this contract resulted.

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 is also subject to the goals for both its federally involved and nonfederally involved construction.

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 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 make a good faith effort to employ minorities and women on each of its projects. The transfer of minorities 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 $10,000.00 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 subcontract is to be performed.

(4) As used in this Notice, and in the contract resulting form this solicitation, the "covered area" is the county where the contract is to be performed.

§ 60-4.3, Equal Opportunity Clauses

STANDARD FEDERAL EQUAL EMPLOYMENT OPPORTUNITY CONSTRUCTION CONTRACT SPECIFICATIONS (EXECUTIVE ORDER 11246)

4. 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 $10,000.00 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 make 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 (d) of these specifications. The goals set forth in the solicitations 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 geographic area 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, or the regulations promulgated pursuant thereto.

6. In order for the non-working 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 efforts 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 organizations' 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 7(b) 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 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 sources, 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 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 of subcontracts from minority and female construction contractors and suppliers, including circulation of solicitations to minority and female contractor associations and other business associations.

p. Conduct a review, at least annually, of all supervisors' adherence to and performance under the Contractor's EEO policies and affirmative action obligations.

8. Contractors are encouraged to participate in voluntary associations which assist in fulfilling one or more of their affirmative action obligations (7 (a) 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 sections 7(a) through 7(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 workforce participation, makes a good faith effort to meet its individual goals and timetables, and can provide access to documentation which demonstrates the effectiveness of actions taken on behalf of the Contractor. The obligation to comply, however, is the Contractor's, and failure of such a group to fulfill an obligation shall not be a defense for the Contractor's non-compliance.

9. 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 goal for women generally, the Contractor may be in violation of the Executive Order if a specific group of minority women is underutilized).

10. The Contractor shall not use the goals and timetables of affirmative action standards to discriminate against any person because of race, color, religion, or national origin.

11. The Contractor shall not enter into any subcontract with any person or firm debarred from Government contracts pursuant to Executive Order 11246.

12. The Contractor shall carry out such sanctions and penalties for violation of 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, an 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 obligation 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 60-4.3.

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 trainer, helper, or laborer), dates of changes in status, hours worked per week in the indicated trade, rate of pay, and location 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 the hiring of local or other area residents (e.g., those under the Public Works Employment Act of 1977 and the Community Development Block Grant Program).

§ 60-4.5, Hometown plans.

a. A contractor participating, either individually or through an association, in an approved Hometown Plan (including heavy highway affirmative action plans) shall comply with its affirmative action obligations under Executive Order 11246 by complying with its obligations under the Plan: *Provided,* that each contractor or subcontractor participating in an approved plan is individually required to comply with the equal opportunity clause set forth in 41 CFR 60-1.4; to make a good faith effort to achieve the goals for each trade participating in the plan in which it has employees; and that the overall good 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's goals and timetables. If a contractor is not participating in an approved Hometown Plan it shall comply with the specifications set forth in § 60-4.3 of this part, and with the goals and timetables for the appropriate area as listed in the notice required by 41 CFR 60-4.2 with regard to that trade. For the purposes of this part 60-4, a Contractor is not participating in a Hometown Plan for a particular trade if it:

1. Ceases to be signatory to a Hometown Plan covering that trade;
2. Is signatory to a Hometown Plan for that trade but is not party to a collective bargaining agreement for that trade;
3. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with labor organizations which are not or cease to be signatories to the same Hometown Plan for that trade;
4. Is signatory to a Hometown Plan for that trade and is party to a collective bargaining agreement with a labor organization for that trade but the two have not jointly executed a specific commitment to minority and female goals and timetables and incorporated the commitment in the Hometown Plan for that trade;
5. Is participating in a Hometown Plan for that trade which is no longer acceptable to the Office of Federal Contract Compliance Programs;
6. Is signatory to a Hometown Plan for that trade but is party to a collective bargaining agreement with a labor organization for that trade and the labor organization and the contractor have failed to make a good faith effort to comply with their obligations under the Hometown Plan for that trade.

b. Contractors participating in Hometown Plans must be able to demonstrate their participation and document their compliance with the provisions of the Hometown Plan.

§ 60-4.6, Goals and timetables

The Director, from time to time, shall issue goals and timetables for minority and female utilization which shall be based on appropriate workforce, demographic, or other relevant data and which shall cover construction projects or construction contracts performed in specific geographical areas. The goals, which shall be applicable to each construction trade in a covered contractor's or subcontractor's entire workforce which is working in the area covered by the goals and timetables, shall be published as notices in the FEDERAL REGISTER, and shall be inserted by the contracting officers and applicants, as applicable, in the Notice required by 41 CFR 60-4.2. 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 area where work is being performed.

§ 60-4.8, Show cause notice

If an investigation or compliance review reveals that a construction contractor or subcontractor has violated the Executive Order, and contract clause, specification, or the regulations in this chapter, and if administrative enforcement is contemplated, the Director shall issue to the Contractor or Subcontractor a notice to show cause which shall contain the items specified in paragraphs (I) through (iv) of 41 CFR 60-2.2(c)(1). If the Contractor does not show good cause within 30 days, or in the alternative, fails to enter an acceptable conciliation agreement which includes, where appropriate, make up goals and timetables, back pay, and seniority relief for affected class members, the OFCCP shall follow the procedure in 41 CFR 60-1.26(b): *Provided,* that where a conciliation agreement has been violated, no show cause notice is required prior to the initiation of the enforcement proceedings.

§ 60-4.9, Incorporation by operation of the order.

By operation of the order, the equal opportunity clause contained in § 60-1.4, the Notice of Requirement for Affirmative Action to Ensure Equal Employment Opportunity (Executive Order 11246) contained in § 60-4.2 and the Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) contained in § 60-4.3 shall be deemed to be a part of every solicitation or of every contract and subcontract, as appropriate, required by the order and the regulations in this chapter to include such clauses whether or not they are physically incorporated in such solicitation or contract and whether or not the contract is written.

PREPARED BY
NYSDOT

Contract Requirements

GOALS FOR MINORITY PARTICIPATION IN THE CONSTRUCTION INDUSTRY

COUNTY	% GOAL	COUNTY	% GOAL	COUNTY	% GOAL
Albany	3.2	Herkimer	2.1	Richmond	*
Allegany	6.3	Jefferson	2.5	Rockland	22.6
Broome	1.1	Kings	*	St. Lawrence	2.5
Bronx	*	Lewis	2.5	Saratoga	3.2
Cattaraugus	6.3	Livingston	5.3	Schenectady	3.2
Cayuga	2.5	Madison	3.8	Schoharie	2.6
Chautauqua	6.3	Monroe	5.3	Schuyler	1.2
Chemung	2.2	Montgomery	3.2	Seneca	5.9
Chenango	1.2	Nassau	5.8	Steuben	1.2
Clinton	2.6	New York	*	Suffolk	5.8
Columbia	2.6	Niagara	7.7	Sullivan	17.0
Cortland	2.5	Oneida	2.1	Tioga	1.1
Delaware	1.2	Onondaga	3.8	Tompkins	1.2
Dutchess	6.4	Ontario	5.3	Ulster	17.0
Erie	7.7	Orange	17.0	Warren	2.6
Essex	2.6	Orleans	5.3	Washington	2.6
Franklin	2.5	Oswego	3.8	Wayne	5.3
Fulton	2.6	Otsego	1.2	Westchester	22.6
Genesee	5.9	Putnam	22.6	Wyoming	6.3
Greene	2.6	Queens	*	Yates	5.9
Hamilton	2.6	Rensselaer	3.2		

The following goal ranges are applicable to the indicated trades in the Counties of Bronx, Kings, New York, Queens, and Richmond:

Electricians.....9.0 to 10.2
Carpenters.....27.6 to 32.0
Steam Filters.....12.2 to 13.5
Metal Lathers.....26.0 to 28.6
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
Glaziers.....16.0 to 20.0
Plasterers.....15.8 to 18.0
Teamsters.....22.0 to 22.5
Boilermakers.....13.0 to 15.5
All Others.....16.4 to 17.5

GOALS FOR WOMEN

Female Goals - 6.9%

Goals for the utilization of women by Federal and Federally assisted construction contractors were last published on April 7, 1978 (43 CFR 4988, 149000). That April 7, 1978 publication included a 6.9% goal for the period from April 1, 1980 until March 31, 1981. Pursuant to 41 CFR 60-4.6, the 6.9% goal for female utilization is extended until further notice

THESE MUST BE INCLUDED IN EACH BID PROPOSAL REGARDLESS OF WHOSE SPECIFICATIONS ARE USED.

REQUIRED CONTRACT PROVISIONS FOR FEDERAL AID PROJECTS- FHWA 1273

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I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the Contractor's own organization and with the assistance of workers under the Contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the Contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The Prime Contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

1. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided for in 29 CFR 5.12:

   Section I, Paragraph 2;
   Section IV, Paragraphs 1, 2, 3, 4, and 7
   Section V, Paragraphs 1 and 2a through 2g.

2. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U. S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the Contractor (or any of its Subcontractors) and the contracting agency, the DOL, or the Contractor's employees or their representatives.

3. Selection of Labor: During the performance of this contract, the Contractor shall not:

   a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal Aid construction contracts and to all related subcontracts of $10,000.00 or more)

1. Equal Employment Opportunity: Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal employment opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630, and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the Contractor's project activities under this contract. The Equal Employment Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American with Disabilities Act of 1990 (42 U.S.C. 12101 et. seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the Contractor agrees to comply with the following minimum specific requirement activities of EEO:

   a. The Contractor will work with the Owner, the State Highway Agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

   b. The Contractor will accept as his/her operating policy the following statement:

      "It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age, or disability. Such action shall include: 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, preapprenticeship, and/or other on-the-job training."

2. EEO Officer: The Contractor will designate and make known to the Owner's contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. Dissemination of Policy: All members of the Contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the Contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

4. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less than once every six months, at which time the Contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

   a. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the Contractor's EEO obligations within thirty days following their reporting for duty with the Contractor.

   b. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the Contractor's procedures for locating and hiring minority group employees.

c. Notices and posters setting forth the Contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment, and potential employees.

d. The Contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

5. Recruitment: When advertising for employees, the Contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The Contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the Contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the Contractor for employment consideration.

b. In the event that the Contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the Contractor's compliance with the EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the Contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The Contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. Personnel Actions: Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age, or disability. The following procedures shall be followed:

a. The Contractor will conduct periodic inspection of project sites to ensure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The Contractor will periodically evaluate the spread of wages within each classification to determine any evidence of discriminatory wage practices.

c. The Contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the Contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The Contractor will promptly investigate all complaints of alleged discrimination made to the Contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the Contractor will inform every complainant of all his avenues of appeal.

6. Training and Promotion:

a. The Contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the Contractor's work force requirements and as permissible under Federal and State regulations, the Contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The Contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The Contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

4. Unions: If the Contractor relies in whole or in part upon unions as a source of employees, the Contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the Contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The Contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The Contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age, or disability.

c. The Contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the Contractor, the Contractor shall so certify to the Owner and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the Contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the Contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age, or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the Contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the Contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such Contractor shall immediately notify the Owner.

5. Selection of Subcontractors, Procurement of Materials, and Leasing of Equipment: The Contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age, or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The Contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the Contractor enters into pursuant to this contract. The Contractor will use his best efforts to solicit bids from and

use DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA and/or Owner personnel offices.

c. The Contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

6. Records and Reports: The Contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of, the Owner, the SHA, and the FHWA.

   a. The records kept by the Contractor shall document the following:

      (1) The number of minority and non-minority group members and women employed in each work classification on the project;

      (2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

      (3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

      (4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

7. The Contractors will submit an annual report to the Owner and the SHA each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the-job training is being required by special provision, the Contractor will be required to collect and report training data.

III. NON SEGREGATED FACILITIES

(Applicable to all Federal Aid construction contracts and to all related subcontracts of $10,000.00 or more)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal Aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provision of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, time clocks, locker rooms and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age, or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g., disabled parking).

c. The Contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material

supply agreements of $10,000.00 or more and that it will retain such certification in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal Aid construction contracts exceeding $2,000.00 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

   a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at the time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the Contractor or its Subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the Contractor and its Subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

   b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employee's payroll records accurately set forth the time spent in each classification in which work is performed.

   c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

   a. The Owner's contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

   b. The contracting officer shall approve an additional classification, wage rates, and fringe benefits only when the following criteria have been met:

      (1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

      (2) the additional classification is utilized in the area by the construction industry;

      (3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the Contractor or Subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D. C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. The event the Contractor or Subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representative, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

a. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe benefits:

a. Whenever the minimum wage rates prescribed in the contract for a class of laborers or mechanics include a fringe benefit which is not expressed as an hourly rate, the Contractor or subcontractors, as appropriate, shall either pay the benefits as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the Contractor or Subcontractor, as appropriate, does not make payments to a trustee or other third party person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the Contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentice and Trainees (Programs of the U. S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they perform when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State

apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire workforce under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice preforming work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage determination for the work actually performed. Where a Contractor or Subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor or Subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided for in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the training program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination

unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than the full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the Contractor or Subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under an approved definition, shall be paid not less than the applicable wage rate determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U. S. DOT): Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with the Federal Aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding: The Owner shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the Contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the Contractor or any Subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the Owner's contracting officer may, after written notice to the Contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements: No Contractor or Subcontractor contracting for any part of the contract which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraph 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any work week in which he/she is employed on such work, to work in excess of 40 hours in such work week unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such work week.

8. Violations: Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the Contractor and any Subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such Contractor or 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, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10.00 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment

of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages: The Owner shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies 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 8 above.

V. STATEMENT AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3): The Contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

   a. Payrolls and basic records relating thereto shall be maintained by the Contractor and each Subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

   b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates or contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types of described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the Contractor and each Subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

   c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the Owner's resident engineer or agent in charge of the project a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), US Government Printing Office, Washington DC 20402. The Prime Contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less than the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 USC 1001 and 31 USC 231.

g. The Contractor or Subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the Owner, the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the Contractor or subcontractor fails to submit the required records or to make them available, the Owner, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal Aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000.00 (23 CFR 635) the Contractor shall:

   a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

   b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

   c. Furnish, upon the completion of the contract, to the Owner's resident engineer or agent in charge of the project on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the Prime Contractor's option, either a single report covering all contract work or separate reports for the Contractor and for each Subcontractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The Contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a total percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the Owner. Speciality items may be performed by subcontract and the amount of any such speciality items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the Contractor's own organization (23 CFR 635).

   a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of a subcontractor, assignee, or agent of the Prime Contractor.

   b. "Speciality Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The Contractor amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The Contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizations resources (supervision, management and engineering services) as the Owner's contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the Owner's contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the Owner has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the Contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The Contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the Owner's contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the Contractor enters into pursuant to this contract, that the Contractor and any Subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under Construction Safety and Health Standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have the right of entry to any site of contract performance to inspect or investigate the matter of compliance with the Construction Safety and Health Standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 USC 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, supplies, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 USC 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowing makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-Aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid Construction contracts and to all related subcontracts of $100,000.00 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 USC 1857 et seq., as amended by Pub. L 91-604), and under the Federal Water Pollution Control Act, as amended (33 USC 1251 et seq., as amended by Pub. I. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed on the date of contract award, on the US Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the Owner of the receipt of any communication form the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. Instructions for Certification - Primary Covered Transactions: (Applicable to all Federal-aid contracts - 49 CFR 29)

   a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

   b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

   c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause of default.

   d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

   e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal,"

and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of the rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

   a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

   b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

   c. Are not presently indicated for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

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

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2. **Instructions for Certification - Lower Tier Covered Transactions: (Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000.00 or more - 49 CFR 29)**

a. By signing and submitting this proposal, the prospective lower tier participant is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if an any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily exclude," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of these regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of a participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealing.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered

transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated my pursue available remedies, including suspension and/or debarment.

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Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

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

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XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certified, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

   a. No federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal 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 Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying." in accordance with its instructions.

2. 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 USC 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.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

REQUIRED IN ALL FEDERAL AID CONTRACTS, AND MUST BE INCLUDED IN EACH BID PROPOSAL REGARDLESS OF WHOSE SPECIFICATIONS ARE USED.

Contract Requirements

ADDENDUM A

This is a federally-aided contract subject to the approval of the New York State Department of Transportation (NYSDOT).

The selected proposer will be required to complete a New York State Uniform Contracting Questionnaire, which must be approved by NYSDOT prior to an award being made.

Whenever local requirements differ from Federal requirements, the Federal requirements will prevail.

Contract Requirements

PROVISIONS RELATING TO THE NEW YORK STATE LABOR LAW, PREVAILING WAGES, AND THE USE OF CONVICT LABOR AND MATERIALS ON FEDERAL & STATE CONTRACTS

GENERAL PROVISIONS. All projects funded with Federal aid and let to contract in New York State shall conform to the provisions of the New York State Labor Law, except that in accordance with the authorization in Section 85 of the New York State Highway Law, any provisions of the above referenced Labor Law which are in conflict with the following enumerated mandatory Federal Aid highway construction compliance requirements, as contained in Section 635.124 of the Code of Federal Regulations, Title 23-Highways, and other Federal legislation, rules, and regulations, as referenced below, are superseded:

CONVICT LABOR. No convict labor, unless performed by convicts who are on parole, supervised release, or probation, shall be employed in construction or used for maintenance or any other purposes at the site or within the limits of any Federal Aid highway construction project from the time of award of the contract or the start of work on force account until final acceptance of the work by the Owner.

SELECTION OF LABOR. No procedures or requirements shall be imposed by any state or municipal subdivision thereof which will operate to discriminate against the employment of labor from any other state, possession, or territory of the United States, in the construction of a Federal Aid project. The selection of labor to be employed by the Contractor on any Federal Aid project shall be of his/her own choosing.

WAGE RATES ON FEDERAL AID PROJECTS. Attention is directed to the statutory provisions governing the prevailing rates of wages for workmen, mechanics, and laborers who are employed on this project.
Section 220 of the New York State Labor Law, as amended, requires that the wages paid for a legal day's work shall be not less than the rate of wages plus the supplements prevailing at the time the work is performed, the current schedules of which shall be included in the contract documents. Such schedules may be amended or supplemented from time to time, and such amendments or supplements shall be forwarded to the Contractor.

The Federal Aid Highway Act of 1968 provides for the payment of wages at rates not less than those determined in accordance with the Davis-Bacon Act (40 USC, Section 276-a), the schedule of which shall also be included in the contract documents.

On-site materials suppliers, in addition to all subcontractors, are subject to the provisions of the Davis-Bacon Act. This will not necessarily be construed as causing the on-site material suppliers to be classified as subcontractors as part of the 50% limitation on the subcontracting of this project.

In case of a variance between (1) the schedules of prevailing rates of wages and supplements as determined under Section 220 of the New York State Labor Law, and (2) the schedule of rates of wages as determined pursuant to the Davis-Bacon Act, the Contractor shall accept and use the schedule or schedules that establish the higher rate of wages as the minimum for the workmen who are employed on the project.

CONSTRUCTION BY FEDERAL AGENCIES. When construction on Federal Aid highways is being performed by any Federal agency under its procedures and by Federal contract, the labor standards relating to direct federal contracts shall be applicable.

NON-DISCRIMINATION. Employment shall be provided without regard to race, color, religion, sex, or national origin.

Contract Requirements

CONVICT-PRODUCED MATERIALS. The use of convict-produced materials on any Federal or Federally-assisted contract must comply with the following requirements:

a. Materials produced by convict labor may only be incorporated in a Federal Aid highway construction project if such materials have been:

1. Produced by convicts who are on parole, supervised release, or probation from a prison; or

2. Produced in a qualified prison facility and the cumulative annual production amount of such materials for use in Federal Aid highway construction does not exceed the amount of such materials produced in such facility for use in Federal Aid highway construction during the 12-month period ending July 1, 1987.

b. "Qualified prison facility" means any prison facility in which convicts, during the 12-month period ending July 1. 19897, produced materials for use in Federal Aid highway construction projects.

c. Standard State and Federal Aid contract procedures may be used to assure compliance with the requirements of this paragraph.

REQUIRED IN ALL FEDERAL AID CONSTRUCTION CONTRACTS. IF NYSDOT SPECIFICATIONS ARE USED, THIS SECTION IS REFERENCED IN 102-10A, AND DOES NOT HAVE TO BE PLACED IN THE BID PROPOSAL.

STRAIGHT PURCHASE CONTRACTS WHICH DO NOT INVOLVE INSTALLATION OR LABOR DO NOT REQUIRE WAGE RATES.

Contract Requirements

"BUY AMERICA" REQUIREMENTS & WAIVERS FOR FEDERAL AND STATE CONTRACTS

GENERAL BUY AMERICA BID REQUIREMENTS AND DEFINITION. In accordance with New York State Department of Transportation Official Order No. 1511 establishing consistency for application of Section 146 of the State Finance Law, and Section 165 of the U. S. Surface

Transportation Act of 1982, as amended, the Bidder must submit a bid based on permanently incorporating only domestic steel and/or iron in the construction of this contract.

The Bidder may also submit a bid based upon being allowed to permanently incorporate foreign steel and/or iron into the work of the contract. If the Bidder chooses to submit such a bid, the Bidder should purchase an additional proposal for this contract and legibly print the following in ink on the proposal cover and at the bottom of the proposal sheet which contains the phrase "Total gross sum written in words": TOTAL BID BASED UPON USING FOREIGN STEEL AND/OR IRON.

When bids are submitted based upon domestic and foreign steel and/or iron, both bids are to be submitted in the same envelope.

To qualify as domestic, all manufacturing processes (including the fabrication of any product containing steel and/or iron) must have been performed in the United States. To further define the coverage, a domestic product is a manufactured steel and/or iron construction material that was produced in one of the 50 States, the District of Columbia, Puerto Rico, or in the territories and possessions of the United States. Raw material used in the steel and/or iron may be imported. All manufacturing processes to produce steel and/or iron products must occur domestically. Raw materials are materials such as iron ore, limestone, waste products, etc., which are used in the manufacturing process to produce the steel and/or iron products. Waste products would include scrap; i.e., steel and/or iron no longer useful in its present form from old automobiles, machinery, pipe, railroad tracks, and the like. Also, steel and/or iron trimmings from mills or product manufacturing are considered waste. Extracting, crushing, and handling the raw materials which is customary to prepare them for transporting are exempt from Buy America.

AWARD OF CONTRACT. Award of this contract will be made to the lowest bidder who submits the lowest total bid based upon furnishing domestic steel and/or iron unless such total bid exceeds the lowest total bid based upon furnishing foreign steel and/or iron by more than 25 percent, in which case award will be made to the lowest responsible bidder based upon furnishing foreign steel and/or iron.

CONTROL OF MATERIALS. All items, regardless or origin, shall comply with their individual specification requirements. In the event the contract is awarded based upon using only domestic steel and/or iron, the Contractor must supply only domestic steel and/or iron and will be paid the domestic steel and/or iron bid prices. The Contractor will be responsible for ensuring that the domestic steel and/or iron is supplied in conformance with the above referenced laws. Such responsibility extends to informing all affected subcontractors and material suppliers of these specific requirements and ascertaining that steel and/or iron being supplied is in conformance with the standard specifications.

In the event that the contract is awarded based upon being allowed to permanently incorporate foreign steel and/or iron in the work, the Contractor may supply either domestic or foreign steel and/or iron and will be paid the foreign steel and/or iron bid prices. If the contract is awarded based upon the domestic steel and/or iron bid, the Contractor may permanently incorporate in the construction of this contract a minimal amount of foreign steel and/or iron if the combined cost of such materials does not exceed one-tenth of one percent (0.1 percent) of the total

contract cost or $2,500.00, whichever is greater. The combined cost of foreign steel and/or iron will be that shown to be the value of the steel and/or iron products as they are delivered to the project.

BUY AMERICA WAIVERS. The following is a list of materials or products which have been granted waivers or exclusions from the "BUY AMERICA" provisions:

1. Hollow 'I'-shaped steel extrusions

REQUIRED IN ALL FEDERAL AID CONTRACTS. IF NYSDOT SPECIFICATIONS ARE USED, THIS SECTION IS REFERENCED IN 110-10 AND DOES NOT HAVE TO BE CONTAINED IN THE BID PROPOSAL.

Contract Requirements

REQUIREMENTS FOR THE PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISES IN FEDERAL AID CONTRACTS

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION. It is the policy of the United States and of the State of New York that Disadvantaged Business Enterprises (DBE's) shall have the maximum opportunity to participate in the performance of State contracts for construction. The parties to this contract shall take all necessary and reasonable steps in accordance with the laws, rules, and regulations cited in this section to ensure that DBEs have the maximum opportunity to compete for and perform contracts. The Owner and its Contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federal Aid contracts. This policy shall be made a part of all subcontracts and agreements entered into as a result of this contract.

The Congress of the United States, to this end, has enacted the Surface Transportation Assistance Act ("STAA") of 1982, Public Law 97-424, Section 105(f), the Surface Transportation and Uniform Relocation Assistance Act of 1987, Public Law 100-17, Section 106(c), the Intermodal Surface Transportation Efficiency Act of 1991 and Regulations have been promulgated under CFR 49 23. New York State, to this end, has enacted Section 85 of the Highway Law, Section 428 of the Transportation Law, and Chapter 1, Title 17 of the Official Compilation of Codes, Rules, and Regulations. The parties to this contract are required to comply with these laws, rules, and regulations and the following DBE Program requirements.

A. **ELIGIBILITY OF DBEs.** Only those DBE firms that are certified by the New York State Department of Transportation (NYSDOT) are eligible to be used for goal attainment on this contract. DBE certification is not an endorsement of the quality or performance of the business but simply and acknowledgment of the firm's status as a DBE. In the event that the apparent Low Bidder, in good faith, proposes to use a firm that is listed as a certified DBE in the project proposal, and that firm is later found by the Owner to be ineligible or unable to perform, then the apparent Low Bidder will be required to substitute another certified firm of the kind needed to meet the goal, before the award, at no additional cost to the Owner.

B. **GOAL.** The Owner has established a utilization goal for DBEs which is expressed as a percentage of the total contract price. This goal is stated in the proposal and remains in effect throughout the life of the contract. In executing the contract or bid documents the Bidder declares that he/she subscribes to the utilization goal and must meet or exceed the goal or demonstrate that he/she could not meet it despite his/her best efforts. The contract goal is then considered to be a target or a minimum figure to which the Contractor commits as a part of his/her bidding for a Federal-aid project. When the contract is awarded with DBE participation that is less than the contract goal, the Prime Contractor is required to continue good faith efforts, as defined in Section F, throughout the life of the contract in order to increase the DBE participation to meet or exceed the contract goal.

C. **ZERO PERCENT GOAL.** For contracts which have a 0% (zero percent) goal, the Bidder agrees to make good faith efforts to utilize certified DBEs for any subcontracts awarded by the Bidder in connection with the contract.

B. **COUNTING DBE PARTICIPATION TOWARDS DBE GOALS.** DBE participation shall be counted toward meeting the DBE goal in accordance with the following:

1. **Subcontracting.** If a firm is determined to be an eligible DBE, as defined in Section A, the total DBE agreed amount of the items of work to be performed by the DBE is counted toward the applicable DBE goal except as provided in paragraphs 2, 3, and 4 below.

Contract Requirements

2. **Joint Ventures.** Joint ventures between certified DBE firms and non-DBE firms as subcontractors will be counted toward the DBE goal in proportion to the percentage of ownership and control of each firm within the joint venture, subject to approval by the Owner of the joint venture agreement to be furnished by the Bidder before award of the contract. The joint venture agreement must include a detailed breakdown of the following:

   a. Contract responsibility of the DBE for specific contract items of work,
   b. Capital participation by the DBE,
   c. Specific equipment to be provided to the joint venture by the DBE,
   d. Specific responsibilities of the DBE in the control of the joint venture,
   e. Specific staffing and skills to be provided to the joint venture by the DBE, and
   f. Percentage distribution to the DBE of the projected profit or loss incurred by the joint venture.

In addition to these requirements, the DBE joint venture must perform a commercially useful function as a DBE subcontractor as defined in Section E.

3. **Supplies (Regular Dealers), Manufacturers, and Fabricators.** Count toward the DBE goal the expenditures for materials and supplies obtained from DBE suppliers (regular dealers) and manufacturers in the amount noted below. The DBE supplier or manufacturer must assume the actual and contractual responsibility for the provision of the materials and supplies.

   a. *Count the entire expenditure to a DBE manufacturer.* A manufacturer is a firm that operates or maintains a factory or establishment that produces on the premises the materials or supplies obtained by the Contractor.

   b. *Count the entire expenditure to a DBE fabricator.* A fabricator is a firm that substantially alters materials or supplies before resale.

   c. *Count 60% (sixty percent) of the expenditures to a DBE supplier.* A supplier is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. It is a firm that engages in, as its principal business, and in its own name, the purchase and sale of the products in question. One who deals in bulk items such as steel, cement, gravel, stone, and petroleum products need not keep such product in stock, if it owns or operates distribution equipment.

   d. The Bidder must indicate in the form of an explanation on the AAPHC-890, DBE Utilization Worksheet, the item number(s) for the material supplied.

EXAMPLE:

ITEM NUMBER	NAME	LESS THAN 100%	AMOUNT
619M17	Supply Temp. Concrete Barrier	XX%	$ Value

Contract Requirements

4. **Trucking Services.** Count toward the DBE goal the expenditure for trucking services provided by certified DBEs in accordance with the following:

   a. Count the pro-rated value of trucking services provided by trucks owned or leased on a long-term basis by the DBE trucking firm. For the purposes of this Section, a long-term lease is a lease of six (6) months or more. Also, trucks that are leased on a long-term basis are leased without an operator.

   b. Count the pro-rated value of trucking services provided by trucks hired or rented from other certified DBE trucking firms by the DBE trucking firm.

   c. No credit will be received for the value of trucking services that are provided by trucks that are not owned, leased on a long-term basis, hired, or rented from certified DBE trucking firms.

EXAMPLE:

Ten (10) trucks are needed to perform $50,000 of trucking services. The DBE who appears on the Utilization form will provide two (2) self-owned trucks and three (3) trucks hired from DBE trucking firms for a total of five (5) certified DBE trucks providing trucking services. The remaining five (5) trucks are not obtained from certified DBE trucking firms. In this situation, 50% (fifty percent), or $25,000, can be counted toward the DBE goal.

   d. The Bidder must indicate in the form of an explanation the item number(s) for which the trucking services are to be performed, the type of trucking service to be performed (on-site vs. off-site), and the corresponding dollar value for those services (per item).

EXAMPLE:

ITEM NO.	NAME	LESS THAN 100%	AMOUNT
99.99	Off-site Trucking Services for Item 403.11	XX%	$ VALUE

   e. The Bidder must provide, before award, the calculations and any pertinent documentation that support the dollar value or the proposed DBE trucking services. The Bidder must also provide before award a list of all proposed DBE trucking firms to be used on the project and the number of trucks to be provided by each proposed DBE trucking firm.

   f. On-Site Trucking. For the purposes of this Section, on-site trucking is defined as: 1. Within the boundaries of the physical place where the construction will remain; (2) Off-site facilities that are dedicated exclusively to the performance of the contract and are so located in proximity to the actual construction location that it would seem reasonable to include them. Trucking services provided for on-site trucking are considered to be a subcontracting activity. The DBE trucking firm may not subcontract any portion of their on-site trucking operations.

   g. Off-Site Trucking. For the purposes of this Section, off-site trucking is defined as: 1. Outside of the boundaries of the physical place where the construction will remain; (2) Off-site facilities that were established by a commercial supplier or materialman prior to award of the project and used for multiple customers. Trucking services provided for off-site trucking are not considered to be a subcontracting activity; it is considered to be a service.

h. The DBE trucking firm that appears on the Utilization form must control the day-to-day trucking operations on the project. The DBE is responsible for:

1. Negotiating and executing rental/leasing agreements;
2. Hiring and firing the work force;
3. Coordinating the daily trucking needs with the Prime Contractor;
4. Scheduling and dispatching trucks.

e. The Bidder must explain in writing the scope of work to be performed by the DBE for all items indicated as partial items at the time the Low Bidder submits the Utilization Package.

6. A DBE that holds a contract may not count its own utilization in the contract toward the DBE contract goal.

E. CONDITIONS OF PARTICIPATION. DBE participation will be counted toward meeting the DBE contract goal, subject to all of the following conditions:

1. Commercially Useful Function. The Prime Contractor is responsible for ensuring that DBEs performing work on the contract perform a commercially useful function. A DBE is considered to perform a commercially useful function when it is responsible for the execution of a distinct element of work on a contract and carries out his/her responsibilities by actually performing, managing, and supervising the work involved in accordance with normal industry practice (except where such practices are inconsistent with the DBE regulations). Regardless of whether an arrangement between the Contractor and the DBE represents standard industry practice, if the arrangement erodes the ownership, control, or independence of the DBE or in any way does not meet the commercially useful function requirement, the Contractor shall receive no credit toward the goal.

2. Work Force. The DBE firm must employ a work force (including administrative and clerical positions), separate and apart from that employed by the Prime Contractor, other subcontractors on the project, or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

3. Supervision. All work performed by the DBE must be controlled and supervised by the DBE without duplication of supervisory personnel from the Prime Contractor or other subcontractors. This does not preclude routine communication between the supervisory personnel of the DBE and other supervisors necessary to coordinate the work of the contract.

4. Equipment. DBE subcontractors may supplement their equipment by renting or leasing additional equipment in accordance with customary industry practice. However, no more than 50% of the equipment required to perform the work of the subcontractor may be obtained from the Prime Contractor, other subcontractors on the project, or their affiliates. If the DBE obtains equipment from any of those sources, the Owner shall obtain from the DBE documentation demonstrating that similar equipment and terms could not be obtained at a lower cost from other customary sources of equipment. The required documentation shall include, but not be limited to, copies of the rental or leasing agreements, and the names, addresses, and terms quoted by other sources of equipment.

Contract Requirements

A. **GOOD FAITH EFFORTS.** To ensure that DBE firms are given the maximum practical opportunity to participate in the work of the contract, the Bidder must make good faith efforts to obtain DBE participation in order to fulfill the DBE contract goal. The Bidder's demonstration of good faith efforts must be at least extensive as, but not limited to, the following:

1. Efforts to utilize the services of minority and women community organizations; minority and women contractors groups; local, State, and Federal minority and women business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.

2. Attendance by a representative of the Bidder who is knowledgeable of the contract work at pre-bid, pre-award, and/or other meetings, if any, scheduled by the Owner to inform DBEs of subcontracting and other opportunities for participation in a specific contract. At these meetings, the Bidder's representative will explain the required contract work and solicit the interest of the DBE attendees in any specific portions of the work.

3. *Efforts to secure participation by certified DBE firms.* Only DBEs certified by the NYSDOT shall be used to fulfill goals on federally funded projects.

4. Written solicitation of DBEs. A written solicitation inquiry will be sent to all DBE firms and, when necessary, minority and women's business associations when necessary in order to meet DBE goals. Notification must be made in a timely fashion such that the DBEs contacted have a reasonable period of time in which to respond. The Bidder's solicitation will cover certified DBEs listed in the Registry of Disadvantaged Business Enterprises maintained by the Office of Equal Opportunity Development and Compliance (EODC) of the NYSDOT. Such geographic limits are not acceptable as good faith efforts for work typically subcontracted to non-DBE firms on a statewide basis, e. g., pavement markings, guide rail, etc. It will be mandatory for the Bidder to contact all DBEs who have expressed interest in the specific contract to the Bidder and to document efforts taken to secure their participation in the contract and in any future work.

5. Efforts to select portions of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the contract goal. Where certified DBEs have expressed interest to the Bidder in performing certain work that the Bidder normally performs with his/her own forces, and the contract goal has not otherwise been attained, the Bidder will be required to subcontract such work or portions of it in order to meet the goal.

6. Efforts to negotiate with DBEs for specific subcontracts. Price alone will not be an acceptable basis for rejecting DBE bids, unless it can be shown that no reasonable price can be obtained from a DBE.

7. *Efforts to assist the DBEs contacted which needed assistance in obtaining bonding or insurance required by the Bidder or the Owner.* Difficulties encountered by the DBE in obtaining bonding or insurance required by the Bidder will not be acceptable reasons for the Bidder's failure to meet the contract goal.

8. *Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract.*

9. Record of solicitation efforts. All Bidders must keep records of efforts to solicit and negotiate with DBEs and a continuing record of pre- and post-letting activity. When

submitting a D/M/WBE Schedule of Utilization to the Owner, the apparent Low Bidder will attach it together with the supplemental information specified in the instructions as evidence of good faith efforts. Such supplemental efforts must include at least the following:

a. All Solicitation Responses returned to the Bidder by DBEs;

b. All envelopes of solicitation inquiries that were returned as undeliverable; and

C. Any quotations submitted by DBEs that are not included in the D/M/WBE Schedule of Utilization with an explanation for the Bidder's action in each case.

G. DBE UTILIZATION PACKAGE. The Bidder shall submit a complete utilization package within seven (7) calendar days after the bid opening. The DBE Utilization Package consists of:

1. D/M/WBE Schedule of Utilization;

2. D/M/WBE Utilization Worksheet (Note: Schedule must be co-signed by both the Prime Contractor and the Subcontractor); and

3. All of the information listed in Section F.

H. BIDDER'S FAILURE TO COMPLY. The Owner's acceptance of the Bidder's proposal is conditioned upon the Bidder's fulfillment of the requirements of this Section. If the Bidder fails to submit a complete utilization package as defined in Section G by the seventh calendar day after the bid opening and/or fails to attain the DBE utilization goal, and to satisfactorily document his/her good faith efforts as defined in Section F above, the bid may be declared incomplete and the deposit may be subject to forfeiture.

I. DISADVANTAGED BUSINESS ENTERPRISE OFFICER. The Bidder shall designate a Disadvantaged Business Enterprise Officer who will have the responsibility to, and be capable of, effectively administering and promoting an active DBE program, and, who is assigned adequate authority to do so.

J. CONFORMANCE TO DBE SCHEDULE OF UTILIZATION. Following the award of the contract, the Contractor is required to enter into subcontracts or agreements with the DBEs identified on the approved D/M/WBE Schedule of Utilization, for the work of the kind and amount identified therein. The Owner will monitor the work of the contract to ensure that the DBEs identified perform the work in accordance with the D/M/WBE Schedule of Utilization. Any direction by the Owner to comply with the Schedule is a lawful direction under Article 8 of the contract. Where such direction is not complied with, the Contractor shall not be entitled to have any estimate made for the purpose of payment, nor shall any estimate be rendered on account of work done or material furnished.

K. REVISIONS IN DBE UTILIZATION. If, after the award of the contract, a subcontract or purchase order held by a DBE or joint venture involving a DBE is modified or terminated, the Contractor shall immediately notify the Owner of such modification or termination and the reasons therefor or an alternative subcontract or purchase order for a commensurate dollar amount furnished by another DBE. Any change in DBE utilization must be approved by the Owner through submission of a revised Schedule of Utilization (Amended) signed by both parties. The Contractor must receive this approval prior to implementing any proposed change. Failure by the Contractor to obtain approval could result in appropriate sanctions. For the purposes of this Section, a revision in DBE utilization is considered to be any of the following modifications:

Contract Requirements

A. Reducing the dollar value of or eliminating the DBE's item(s) of work. In the event that this results in a shortfall in goal attainment, the Contractor will be required to make good faith efforts to backfill in accordance with Section F.

B. Removing one DBE and substituting another DBE for the same item(s) of work.

C. Increasing the dollar value of (an) item(s) of work or adding (a) new item(s) of work to a DBE already participating in the contract.

D. Adding a DBE to the contract.

L. MONITORING CONTRACTOR COMPLIANCE. The Contractor will allow authorized representatives of the Owner to conduct periodic inspections of the Contractor's DBE participation efforts during the performance of the contract. In order to determine whether the Contractor has complied with the requirements of this Section, the Owner may proceed by order to show cause, or may follow any other lawful procedure upon due notice in writing to the Contractor. When the Contractor has been found to have failed to meet the contract goals, to exert a good faith effort, or otherwise failed to comply with this Section, the contract may be canceled, terminated, or suspended in whole or in part in accordance with the contract and Section 40 of the Highway Law, and the Contractor may be referred to the USDOT for possible suspension or debarment as provided for in 49 CFR 29 and such other sanctions as may be imposed and remedies invoked as provided for under the authority of 49 CFR 29, or by rule, regulation, or order of the Owner, or as otherwise provided by law.

M. PROMPT PAYMENT. Failure by the Contractor to pay any subcontractor within fifteen calendar days of receipt of payment from the Owner for work performed that is accepted by the Owner, in violation of Section 149 of the State Finance Law, could result in the withholding of future estimated payments by the Owner. The Contractor shall submit reports on payments made to subcontractors as required by the Owner. If it is determined by the Owner that a subcontractor has not received payment due and owing in accordance with Section 139-f of the State Finance Law, the Owner may direct the Prime Contractor to make such payment. Any such direction by the Owner is a lawful direction under Article 8 of the contract. Where such direction is not complied with, the Contractor shall not be entitled to have any estimate made for the purpose of payment nor shall any estimate be rendered on account of work done.

N. REQUIRED RECORDS. The Contractor shall keep records and documents for three years following performance of this contract to indicate compliance with this Section. These records and documents, or copies thereof, will be made available at reasonable times and places for inspection by any authorized representatives of the Owner and will be submitted to the Owner upon request, together with other compliance information which may be required.

O. NON-DISCRIMINATION. The Contractor shall not use the requirements of this Section to discriminate against any qualified company or group of companies.

P. REPORTING VIOLATIONS OF PROGRAM RULES. The Contractor is responsible for ensuring that the DBE performs a commercially useful function on the contract as defined in Section E. If the Contractor becomes aware of any violation of this Section, the Contractor is required to promptly report the violation to the Owner.

Contract Requirements

FEDERAL AID PROJECT

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION GOALS

NEW YORK STATE DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE

UTILIZATION REQUIREMENTS

The Department has established the following Disadvantaged Business Enterprise (DBE) utilization goals for this contract. The goal is expressed as a percentage of the total bid price.

Disadvantaged Business Enterprise Utilization Goal 9 %

Information related to the current certification status of Disadvantaged Business Enterprises, can be obtained by contacting the:

NYS Department of Transportation
Office of Equal Opportunity Development and Compliance
1220 Washington Avenue
Bldg. 4, Room G-16
Albany, NY 12232
(518) 457-1128 or 457-1129

Disadvantaged Business Enterprise Officer

The Bidder shall designate and enter below the name of a Disadvantaged Business Enterprise Officer who will have the responsibility for and must be capable of effectively administering and promoting an active Disadvantaged Business Enterprise Program and who must be assigned adequate authority and responsibility to do so.

Bidder Designated DBE Officer _____
(Name, Title)

Telephone Number _____

RETURN THIS PAGE WITH BID

1 OF 1

Contract Requirements

REQUIRED IN ALL CONTRACTS OF $1,000,000 OR MORE. The DBE program is similar to, but different from, local or state programs which call for the participation of MBE's and WBE's. On Federal Aid projects, all participation should be geared toward DBE's. The Office of Equal Opportunity, Development, and Compliance (EODC) is responsible for certifying DBE firms in New York State. Local requirements for MBE/WBE participation should be omitted from Federal Aid contracts.

IF NYSDOT SPECIFICATIONS ARE USED, THIS SECTION IS REFERENCED IN SECTION 102-22 AND DOES NOT HAVE TO BE CONTAINED IN THE BID PROPOSAL. IF THE PROJECT IS VALUED AT $1,000,000 OR MORE, THE GOAL PAGE, WITH A PERCENTAGE GOAL STATED, MUST BE PUBLISHED IN THE BID PROPOSAL.

REQUIREMENTS REGARDING TRAINING IN FEDERAL AID CONTRACTS TRAINING SPECIAL PROVISION

GENERAL. The primary objective of this Training Special Provision is to provide training opportunities to minority and disadvantaged[1] persons and women in construction trades for two purposes:

1. To maintain a pool of qualified minority and disadvantaged persons and women to replace those journeyworkers[2] who, in the natural course of events, will leave the workforce; and

2. To provide minority and disadvantaged persons and women as indentured apprentices or trainees in those geographic areas where shortages in minority and women journeyworkers are recognized because of the Contractor's inability to meet the Equal Employment Opportunity (EEO) goals set forth in this contract.

This work shall consist of the employment and meaningful and effective training of minority and disadvantaged persons and women in training programs approved by the N. Y. S. Department of Transportation leading to their qualifications as journeyworkers in the skilled trades required in highway construction. This Training Special Provision supplements the Equal Employment Opportunity requirements included elsewhere in this Proposal entitled either "Standard Federal Equal Employment Opportunity Construction Contract Specifications (Executive Order 11246) or "Equal Employment Opportunity Requirements." Each of the foregoing prescribe specific percentage goals for utilization of minorities and women in the performance of work for the geographic area location of the contract.

Each contract which contains this Training Special Provision shall require the training of at least one minority or woman indentured apprentice or trainee. Such individual shall be either approved or selected by the Owner with concurrence by the Department of Transportation. Other than this initial training obligation, to be undertaken and provided by the Contractor, no additional training obligations will exist under this Training Special Provision unless the goals for minority and women employment and training in the skilled workforce (exclusive of laborers) are not continuously met on the contract and generally distributed amongst the trades. In the five counties of New York City, the goals specified for each trade are applicable. Whenever the goals are not met, additional minority and/or women indentured apprentices and/or trainees will be assigned or approved in numbers necessary to meet the goals. Data necessary to determine if goals are being met will be provided on Contractor and Subcontractor Monthly Employment Utilization Reports (Form AAP 33d) submitted by the Contractor on a monthly basis to the Engineer-in-Charge of the construction contract, or other agent of the Owner responsible for administering the contract, or other forms approved by the Department of Transportation.

The data will be verified by the visual observance of the Engineer-in-Charge, or designated project inspectors, or other agent of the Owner, and hours of employment reported on Contractor and Subcontractor certified weekly payrolls.

The number of minority and women indentured apprentices and trainees required to be trained under this item shall not exceed the equivalent of 12 1/2% of the total journeyworker workforce on the contract (counted in hours worked), i.e., no more than 1 in 8 of the skilled workforce is required to be a minority or woman indentured apprentice or trainee. This limitation applies regardless of minority or women representation in the trades. However, this limit on required training in no way absolves the Contractor of the responsibility to comply with the EEO contract requirements.

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[1] Disadvantaged means a person who is either: (a) a member of a family that receives public assistance; or (b) a member of a family whose income during the previous six (6) months, on an annualized basis, was such that: (1) the family would have qualified for public assistance, if it had applied for such assistance; or (2) it does not exceed the poverty level. NOTE: The name, address, and social security number of candidates to be trained under the disadvantaged criteria must be submitted to the Owner accompanied by related economic documentation for approval prior to commencing training

[2] Journeyworker means a person who is capable of performing all the duties within a trade or a given work classification of a trade, approval prior to commencing training, subject to concurrence by the Department of Transportation.

Contract Requirements

REQUIREMENTS REGARDING TRAINING ON FEDERAL AID CONTRACTS

PRECONSTRUCTION MEETING. Before the Contractor will be allowed to begin work, the Contractor shall attend a Preconstruction Meeting and shall submit for the Owner's use and acceptance, a Manpower and Training Utilization Schedule (Form AAP 35) which shall be correlated to the Contractor's work schedule. The Schedule shall include at least the following information:

1. A work schedule for the entire contract,
2. An estimate of the work force required to conform to the work schedule on a monthly basis including an estimate of the work force in each trade and/or work classification projected to be used,
3. Separate estimates of the number of minority and women indentured apprentices or trainees that would be required in each skilled trade to meet the contract EEO employment goals for that trade assuming no minority or women journeyworkers in the workforce,
4. The approved training programs to be used and the proposed starting dates for training in each trade and/or work classification,
5. An estimate of the availability of minority and women journeyworkers in numbers sufficient to meet the EEO contract goals, and
6. Any proposal by the Contractor to use trainees or indentured apprentices to make up for anticipated EEO goal shortfalls. Such proposals shall include the name and craft of any individual proposed by the Contractor as the required trainee or indentured apprentice. In the case of an indentured apprentice, evidence of indentureship and registration of the approved apprenticeship program must be included.

No contract work may be undertaken until the Owner has accepted the Schedule and obtained the concurrence of the Department of Transportation. The Contractor shall submit a revised Manpower and Training Utilization Schedule at such times as major changes in the contract work schedule or a significant workforce buildup occurs which substantially affect the previously submitted Schedule.

RECRUITMENT. Although the training requirements of this Training Special Provision are not intended , and shall not be used to discriminate against any applicant for training, whether a member of a protected class or not, it is recognized that non-minority males have traditionally been and continue to be trained, either formally or on-the-job in an informal manner, for work in the trades utilized in construction work. Therefore, until such time that representative numbers of minorities and women complete training and their utilization as journeyworkers is demonstrated to the extent of the participation goals set forth in the Department of Transportation's construction contracts, training required under this Training Special Provision will be primarily limited to minorities, women, and disadvantaged individuals.

Thus, the Contractor shall demonstrate compliance with the intent of this Training Special provision by affording the Owner, with the concurrence of the Department of Transportation's appropriate Regional Compliance Specialist (RCS), the opportunity to:

Contract Requirements

1. First, approve the use of a minority or woman indentured apprentice known to the Contractor through an existing Joint Apprenticeship Training Program, or

2. Second, provide a partially-trained minority or woman trainee who is currently enrolled in a New York State Department of Transportation approved training program, or

3. Third, work cooperatively with the Contractor in recruitment of new minority or women trainees, when needed.

In conformance with the foregoing, the Contractor should submit a Department of Transportation Form AAP-17, Request for Personnel, to the Owner at the Preconstruction Meeting, and the Owner should seek concurrence of that from Department of Transportation's Regional Compliance Specialist. The Contractor is responsible for ensuring that on-the-job orientation for approved indentured apprentices or assigned trainees is provided to such individuals within their first month of employment.

WORK HISTORY. No individual shall be employed as a trainee or indentured apprentice in any trade and/or work classification in which such person has successfully completed a training course providing journeyworker status in the same trade or work classification, or in which such person has been gainfully employed as a journeyworker by virtue of informal on-the-job training. Detection of individuals in the above categories may be accomplished by including appropriate questions on employee application forms, inquiries to the Department of Transportation Regional Compliance Specialist, checking personal references, or by other suitable means. Regardless of the method used, the Contractor shall document the findings for each indentured apprentice or trainee provided training under this requirement. A copy of the findings shall be given to the Owner's Engineer or agent in charge of the project, who shall request concurrence of the Department of Transportation. In the case of indentured apprentices, evidence of indentureship in a registered approved apprenticeship program shall also be provided.

SUBCONTRACTING. In the event the Contractor subcontracts a portion of the contract work, the Contractor shall ensure that the requirements of this Training Special Provision are physically incorporated into such subcontracts to ensure that the workforce utilized by the Subcontractor meets the goals for minority and women employment and training, either independently or in combination with the Contractor's workforce. The Contractor must determine the hours of training, if any, and in which trade or work classifications, minority or women indentured apprentices or trainees are to be trained by the Subcontractor(s). However, the Contractor shall retain the primary responsibility for meeting the training requirements of this Training Special Provision. **Subcontractors are herewith advised that disregard of these requirements may result in the Department of Transportation either rescinding approval or disapproving their use on subsequent contracts let by the Department of Transportation or on contracts let by other agencies under agreement to the Department of Transportation.**

TRAINING AND APPRENTICESHIP PROGRAMS. The minimum length, type of training, and rate of pay for the trade or the work classification of the trade will be specified in the training program approved or sanctioned by the New York State Department of Transportation with the concurrence of the Federal Highway Administration. Both of these agencies shall approve or sanction a training program if it meets the Equal Employment Opportunity obligation of the Contractor and qualifies the trainee for journeyworker status in the trade or work classification concerned by the end of the training period. Furthermore, apprenticeship programs registered with the U. S. Department of Labor, Office of Manpower Development, Apprentice Training Section, and training programs approved, but not necessarily sponsored, by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided they are administered in a manner consistent with the Equal Employment Opportunity obligations of New York State Department of Transportation

construction contracts. A copy of the training programs approved by the NYSDOT will be made available by the NYSDOT upon request by the Owner or the Contractor. The Contractor shall provide a copy of the approved apprenticeship or training program to the indentured apprentice or trainee.

Where training is to be provided under this Training Special Provision, the Contractor shall obtain acceptance or approval of the training or apprenticeship program to be used, and the starting time for training, prior to commencing training. The Contractor shall provide on-the-job training directed toward developing journeyworkers in the trade, or work classification(s) of the trade, involved. To the extent that the work involved on the contract permits, such training should include all phases and facets of a trade, or work classification of a trade, to satisfy usual construction industry requirements for continued or future employment therein. Additionally, the Contractor shall provide a minimum of 144 hours per calendar year of related classroom training at an approved facility for each individual so enrolled, in accordance with Article 23 of the New York State Labor Law, Section 815.3.

WAGES. Indentured apprentices will be paid at least 60 percent of the appropriate prevailing wage rate specified in the contract for the same trade or work classification for which they are being trained for the first half of the training period, 75 percent for the third quarter of the training period, and 90 percent for the last quarter of the training period. Trainees will be paid the appropriate prevailing wage specified in the contract for the same trade or work classification for which they are being trained.

Indentured apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determinations for the applicable classification. On-the-job (OJT) trainees shall be paid fringe benefits in accordance with the provisions of the prevailing wage rates.

If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determinations unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyworker wage rate on the wage determination which provides for less than full benefits for apprentices.

DURATION OF TRAINING. Once an indentured apprentice is approved or a trainee is assigned to the contract under this Training Special Provision, that individual shall be trained in the designated trade throughout the duration of the contract whenever such trade is in use on the contract until the trainee or indentured apprentice has completed the approved training program. Where training is provided under a multi-phase apprenticeship or training program, it is expected that training will be provided continually through all phases to the extent that opportunities for such training exist in the work under contract. Upon satisfactory completion of a phase of training under a multi-phase apprenticeship or training program, if training in the remaining phases is not available and work in the completed phase is available, the minority or woman indentured apprentice or trainee shall continue employment, and be compensated at the prevailing journeyworker wage rate for such work. Hours of employment as a journeyworker described above will not be credited toward training hours required by the approved training or apprenticeship program.

A trainee may be terminated at any time during training for excessive absenteeism, lack of punctuality, accident-proneness, lack of interest, poor attitude, and continued failure to conduct his/herself in a professional manner. However, termination will not occur prior to proper counseling, documentation, and notification in writing to the Owner's Engineer or agent in charge of the project, and to the Department of Transportation's Regional Compliance Specialist, and

subsequently, the concurrence of the Owners's engineer or agent and the NYSDOT Regional Compliance Specialist, with that termination.

REQUIRED RECORDS. The Contractor shall provide each minority or woman trained under this provision with a certification showing the type and length of training satisfactorily completed. In addition, the Contractor shall keep records on the job site indicating the nature and hours of training provided to each trainee or indentured apprentice documenting performance under this Training Special Provision to the Owner's Engineer or agent in charge of the project and to the Department of Transportation's Regional Compliance Specialist. Form AAP-42a, Training Report, will be submitted once the trainee or indentured apprentice commences training, completes training, or is terminated and each December 31st that individual is in training. Form AAP-26a, Monthly Training Progress Report, will be submitted every month after the individual commences training. No measurement will be made of training provided to indentured apprentices or trainees for whom no work history has been provided to the Owner's Engineer or agent in charge of the project. In addition, no measurement will be made of the training provided to apprentices for whom no evidence of indentureship in a registered program has been provided to the Owner's Engineer or agent in charge of the project.

NO PAYMENT FOR TRAINING. No payment will be made to the Contractor for the training required by this Training Special Provision. The required training is a labor cost which is included in the unit prices bid by the Contractor for the items of work comprising the contract.

LISTS OF OJT & REGISTERED APPRENTICESHIP PROGRAMS. Effective April 1, 1992, the New York State Department of Transportation commenced a demonstration program in NYSDOT Regions 2, 3, 5, and 11 requiring the exclusive use of apprenticeship training to fulfill the Training Special Provision and supplement EEO goal attainment. In the remaining NYSDOT Regions, contractors will be allowed to use on-the-job training (OJT) programs during the period of the demonstration project. However, only OJT programs for crafts that have been deemed as apprenticeable occupations will be approved. In order to ease the transition from OJT to apprenticeship, it is required that all OJT participants receive related classroom instruction.

It is the policy of the New York State Department of Transportation to afford equal employment opportunity to traditionally socially and economically disadvantaged persons by providing training opportunities to minority and disadvantaged persons and women to improve their potential for construction employment. NYSDOT, therefore, provides training as a contract requirement on selected construction contracts, including those let by other agencies and local governments under an agreement with NYSDOT.

When OJT is to be provided under this Training Special Provision, the Contractor shall obtain acceptance from the Owner and NYSDOT for the OJT Program to be utilized and the starting time frame for training, prior to commencing training. Accordingly, the following is a listing of OJT programs which have been approved by the NYSDOT and the Federal Highway Administration (FHWA) for utilization in NYSDOT Regions 1, 4, 6, 7, 8, and 10.

NOTE: A contractor in these Regions may opt to use either OJT or apprenticeship programs. However, the use of apprenticeship programs is strongly encouraged.

Contract Requirements

REQUIREMENTS REGARDING TRAINING IN FEDERAL AID CONTRACTS

APPROVED OJT PROGRAMS

1. **Carpenter**
   10.10 Carpenter Training Program (Highway and Bridge)

2. **Mason**
   20.10 Concrete Finisher/Cement Mason Training Program

3. **Operating Engineer**
   30.20 Roller & Bulldozer Operator Training Program
   30.21 Crane, Clamshell, Derrick, and Dragline Operator Training Program (1 1/2 yd. under/over)
   30.22 Roller and Front End Loader Operator Training Program (1 cu yd under/over)
   30.23 Roller and Grader Operator Training Program
   30.24 Roller and Scraper Pan Operator Training Program
   30,25 Heavy Duty Mechanic Training Program

4. **Ironworker**
   40.10 Ironworker (Reinforcing and Structural) Training Program

5. **Rodman**
   50.10 Instrument person Training Program

6. **Painter**
   60:10 Painter Training Program

7. **Welder**
   90.10 Heavy Duty Welder Training Program

PREPARED BY
NYSDOT

Contract Requirements

REQUIREMENTS REGARDING TRAINING IN FEDERAL AID CONTRACTS

Apprenticeship programs registered with the U. S. Department of Labor, Bureau of Apprenticeship and Training, or with the New York State Department of Labor, Office of Manpower Development, Apprentice Training Section, and training programs approved but not necessarily sponsored by the U. S. Department of Labor, Manpower Administration, Bureau of Apprenticeship and Training, shall also be considered acceptable provided that they are being administered in a manner consistent with the Equal Employment Opportunity obligations of NYSDOT construction contracts.

APPROVED APPRENTICESHIP PROGRAMS

NYS Dept. of Labor #	NYSDOT #	TITLE
1. Carpenter		
860.381.022	10.01	Carpenter Apprentice Locals # 1093, 1379, 1772, 1292 & Carpenters JAC of Nassau County
842.361.010	10.02	Lather (Carpenter)
860.381.022	10.03	Carpenter Apprentice Open Shop Association
2. Mason		
844.364.010	20.01	Cement Finisher Apprentice
861.381.018	20.02	Bricklayer & Mason Apprentice Locals #1, 9, 21, 30, 34, 37, & 41, and Bricklayer JAC of New York
844.364.010	20.03	Cement Mason Apprentice
844.364.010	20.04	Cement Mason Open Shop Association
4. Operating Engineer		
859.683.010	30.01	Heavy Equipment Operator Apprentice Locals #138, 138A, 138B, & International Union of Operating Engineers
859.683.010	30.02	Equipment Operator Apprentice Locals #106, 410, 463, 545, & 832
620.261.022	30.03	Operating Engineer Apprentice-Heavy Duty Repairperson
859.683.010	30.04	Equipment Operator Apprentice Grade 7 Paving
859.683.010	30.05	Operating Engineer Open Shop Association
859.683.010	30.06	Operating Engineer Apprentice Program - Local 17
859.683.010	30.07	Operating Engineer Apprentice program - Local 825
859.683.010	30.08	Operating Engineer Universal Equipment Apprentice - Local 137
018.167.018	30.09	Field Engineer Surveyor Apprentice - Local 825
859.683.010	30.10	Heavy Equipment Operator Apprentice (International Union of Operating Engineers) - Locals 14 & 14B
5. Ironworker		
801.361.014	40.01	Ornamental Ironworker Apprentice
801.361.014	40.02	Ironworker Apprentice
6. Technical Engineer		
018.167.018	50.01	Technical Engineer Apprentice
018.167.018	50.02	Technical Engineer Surveyor Apprentice - Locals 106, 410, 463, 545, & 832
869.381.010	50.03	Rodperson Apprentice
7. Painter		
840.381.010	60.01	Painter & Decorator Apprentice

Contract Requirements

8. **Electrician**
   824.261.010 80.01 Electrician Apprentice Program - Locals 3 & 25

REQUIRED ON ALL FEDERAL AID CONTRACTS OF $1,000,000 OR MORE, AND MUST BE PUBLISHED IN THE BID PROPOSAL REGARDLESS OF WHOSE SPECIFICATIONS ARE USED.

SCHEDULE "B"

1

WORKER'S COMPENSATION AND LIABILITY INSURANCE

The CONTRACTOR agrees to procure and maintain, until final acceptance by the City of the work covered by this Agreement, insurance of the kinds and in amounts hereinafter provided in insurance companies authorized to do business in the State of New York, covering all operations under this Agreement whether performed by him or subcontractors. Before commencing the work, the CONTRACTOR shall furnish to the COMMISSIONER and to the City of New York a certificate or certificates, in form satisfactory to the COMMISSIONER and to the CITY, showing that he has complied with this requirement, which certificate or certificates, shall provide that the policies shall not be changed or cancelled until thirty (30) days written notice has been given to the COMMISSIONER and to the City of New York. The kinds and amounts of insurance required are as specified in Schedule "A" shown on Pages SA 1 and SA 2.

CONR 335-1f (9/89)

APPENDIX A

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licensor, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $5,000 ($20,000 for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. In accordance with Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal satutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, age, disability or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statues, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING REQUIREMENT. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor warrants, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further warrants that at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN: In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment, employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective barganing or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis or race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b" and "c", above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a contractor or subcontractor with the requirements of any federal law concerning equal employment opportunity which effectuates the purpose of his section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article XI-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized)

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it be registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

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8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2 NYCRR 105.4)

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION:

(a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER.

All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on his invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION.

(1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of State Accounts, Office of the State Comptroller, AESOB, Albany, New York 12236.

NON-COLLUSIVE BIDDING CERTIFICATION

§139-d. Statement of non-collusion in bids and proposals to political subdivision of the state or fire district

[1] 1 Every bid or proposal hereafter made to a political subdivision of the state or any public department, agency or official thereof where competitive bidding is required by statute, rule, regulation or local law, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury: Non-collusive bidding certification.

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of knowledge and belief:

(1) 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;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a) (1) (2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a) (1) (2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the political subdivision, public department, agency or official thereof to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items, or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to any political subdivision of the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule, regulation, or local law, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder, and such authorization shall be deemed to include the signing and submission of the bid and the inclusion therein of the certificate as to non-collusion as the act and deed of the corporation.

NON-DISCRIMINATION

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

(a) The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, national origin or sex, and will take affirmative action to insure that they are afforded equal employment opportunities without discrimination because of race, creed, color, national origin sex, age, sexual orientation and marital status. Such action shall be taken with reference, but not be limited, to: recruitment, employment, job assignment, promotion, upgrading, demotion, transfer, layoff or termination, rates of pay or other forms of compensation, and selection for training or retraining, including apprenticeship and on-the-job training.

(b) The contractor will send to each labor union or representative of workers with which he has or is bound by a collective bargaining or other agreement or understanding, a notice, to be provided by the State Division of Human Rights, advising such labor union or representative of the contractor's agreement under clauses (a) through (g) (hereinafter called "non-discrimination clauses"). If the contractor was directed to do so by the contracting agency as part of the bid or negotiation of this contract, the contractor shall request such labor union or representative to furnish him with a written statement that such labor union or representative will not discriminate because of race, creed, color, national origin or sex and that such labor union or representative either will affirmatively cooperate, within the limits of its legal and contractual authority, in the implementation of the policy and provisions of these non-discrimination clauses or that it consents and agrees that recruitment, employment and the terms and conditions of employment under this contract shall be in accordance with the purposes and provisions of these non-discrimination clauses. If such labor union or representative fails or refuses to comply with such a request that it furnish such a statement, the contractor shall promptly notify the State Division of Human Rights of such failure or refusal.

(c) The contractor will post and keep posted in conspicuous places, available to employees and applicants for employment, notices to be provided by the State Division of Human Rights setting forth the substance of the provisions of clauses (a) and (b) and such provisions of the State's laws against discrimination as the State Division of Human Rights shall determine.

(d) The contractor will state, in all solicitations or advertisements for employees placed by or on behalf of the contractor, that all qualified applicants will be afforded equal employment opportunities without discrimination because or race, creed, color, national origin or sex.

(e) The contractor will comply with the provisions of Sections 291-299 of the Executive Law and the Civil Rights Law, will furnish all information and reports deemed necessary by the State Division of Human Rights under these non-discrimination clauses and such sections of the Executive Law, and will permit access to his books, records and accounts by the State Division of Human Rights, the Attorney General and the Industrial Commissioner for the purposes of investigation to ascertain compliance with these non-discrimination clauses and such sections of the Executive Law and Civil Rights Law.

(f) This contract may be forthwith canceled, terminated or suspended, in whole or in part, by the contracting agency upon the basis of a finding made by the State Division of Human Rights that the contractor has not complied with these non-discrimination clauses, and the contractor may be declared ineligible for future contracts made by or on behalf of the State or a public authority or agency of the State, until he satisfies the State Division of Human Rights that he has established and is carrying out a program in conformity with the provisions of these non-discrimination clauses. Such finding shall be made by the State Division of Human Rights after conciliation efforts by the State Division of Human Rights have failed to achieve compliance with these non-discrimination clauses and after a verified complaint has been filed with the State Division of Human Rights, notice thereof has been given to the contractor and an opportunity has been afforded him to be heard publicly before three members of the State Division of Human Rights. Such sanctions may be imposed and remedies involved independently of or in addition to sanctions and remedies otherwise provided by law.

(g) The contractor will include the provisions of clauses (a) through (f) in every subcontract or purchase order in such a manner that such provisions will be binding upon each sub-contractor or vendor as to operations to be performed within the State of New York. The contractor will take such action in enforcing such provisions of such subcontract or purchase order as the contracting agency may direct, including sanctions or remedies for non-compliance. If the contractor becomes involved in or is threatened with litigation with a subcontractor or vendor as a result of such direction by the contracting agency, the contractor shall promptly so notify the Attorney General, requesting him to intervene and protect the interests of the State of New York.

It is hereby agreed by and between the parties hereto that every contractor and sub-contractor engaged in the public work described in this contract shall post and maintain at each of his establishments and at all places at which the public work described hereunder is being conducted, the Notice of the State Commission for Human Rights indicating the substantive provisions of the Law Against Discrimination, where complaints may be filed, and other pertinent information. Such Notice shall be posted in easily accessible and well lighted places customarily frequented by employees and applicants for employment.

LABOR LAW

The CONTRACTOR specifically agrees, as required by the Labor Law, Sections 220 and 220-d, as amended, that:

The execution of this Contract by the CONTRACTOR binds him to the following specific agreements required by law:

(a) no laborer workman or mechanic in the employ of the CONTRACTOR, sub-contractor or other person doing or contracting to do the whole or any part of the work included in the Contract shall be permitted or required to work more than eight hours in any one calendar day or more than five days in any one week, except in the emergencies set forth in the Labor Law;

(b) the wages (including supplements) paid for a legal day's work shall be not less than the prevailing rate of wages (including supplements) as defined by law;

(c) the minimum hourly rate of wages (including supplements) to be paid shall be not less than that designated by the Industrial Commissioner;

(d) the minimum hourly supplements to be paid shall be in accordance with the prevailing practices in the locality where the contract is located and shall be not less than designated by the Industrial Commissioner.

(e) the CONTRACTOR and every sub-contractor shall post in a prominent and accessible place on the site of the work a legible statement of all wage rates and supplements as specified in the contract to be paid or provided, as the case may be, for the various classes of mechanics, workingmen or laborers employed on the work.

Supplements as defined in Section 220 of the Labor Law, as amended, mean all remuneration for employment paid in any medium other than cash or reimbursement for expenses or any payments which are not wages within the meaning of the law, including, but not limited to health, welfare, non-occupational disability, retirement, vacation benefits, holiday pay and life insurance.

The labor law provides that the CONTRACT may be forfeited and no sum paid for any work done thereunder on a second conviction for willfully paying less than:

(a) the stipulated wages scale (including supplements) as provided in the Labor Law, Section 220, subdivision 3, as amended, or

(b) the stipulated minimum hourly wages scale (including supplements) as provided in the Labor Law, Section 220-d, as amended.

The CONTRACTOR specifically agrees, as required by the provisions of the Labor Law, Section 220-e, as amended, that:

(a) in the hiring of employees for the performance of work under the Contract or any sub-contract hereunder, no CONTRACTOR, sub-contractor or any person acting on behalf of such CONTRACTOR or sub-contractor, shall by reason of race, creed, color or national origin discriminate against any citizen of the State of New York who is qualified and available to perform the work to which the employment relates

(b) no CONTRACTOR, sub-contractor or any person on his behalf, shall in any manner discriminate against or intimidate any employee hired for the performance of work under the Agreement on account of race, creed, color or national origin;

(c) there may be deducted from the amount payable to the CONTRACTOR by the CITY under the contract a penalty of five dollars for each person for each calendar day during which such person was discriminated against or intimidated in violation of the provisions of the Contract;

(d) the Contract may be cancelled or terminated by the CITY and all moneys due or to become due thereunder may be forfeited for a second or any subsequent violation of the terms or conditions of this section of the Contract;

(e) this provision shall be limited to operations performed within the territorial limits of the State of New York.

ASSIGNMENT OF AGREEMENT

The Contractor agrees not to assign, transfer, convey, sublet or otherwise dispose of this agreement or any part thereof, or of its right, title or interest therein or its power to execute such agreement to any person, company or corporation without the previous consent in writing of the City and of the Commissioner of Transportation.

NON-COLLUSIVE BIDDING

Accompanying this proposal is a certified check or bank cashier's check for the specified amount of Deposit Required. In the event this proposal shall be accepted by the Department and the undersigned shall fail to execute the contract and in all respects comply with the provisions of Section 38 of the Highway Law, as amended, or where applicable, Section 30 of the Canal Law, as amended, the moneys represented by such certified check or bank cashier's check shall be regarded as liquidated damages and shall be forfeited and become the property of the State of New York; otherwise to be returned to the depositor in accordance with the provisions of said Section 38 of the Highway Law, as amended, or where applicable with Section 30 of the Canal Law, as amended.

On acceptance of this proposal for said work the undersigned does or do hereby bind herself/himself or themselves to enter into written contract, within ten days of date of notice of award, with the said State Department of Transportation, and to comply in all respects with Subdivision 6 of Section 38 of the Highway Law, as amended, or where applicable with Subdivision 7 of Section 30 of the Canal Law, as amended, in relation to security for the faithful performance of the terms of said contract.

NON-COLLUSIVE BIDDING CERTIFICATIONS
REQUIRED BY SECTION 139-d OF THE STATE FINANCE LAW

§ 139-d "Statement of non-collusion in bids to the state.

1. Every bid hereafter made to the state or any public department, agency or official thereof, where competitive bidding is required by statute, rule or regulation, for work or services performed or to be performed or goods sold or to be sold, shall contain the following statement subscribed by the bidder and affirmed by such bidder as true under the penalties of perjury:

Non-collusive bidding certification.

(a) By submission of this bid, each bidder and each person signing on behalf of any bidder certifies, and in the case of a joint bid each party thereto certifies as to its own organization, under penalty of perjury, that to the best of his knowledge and belief:

(1) 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;

(2) Unless otherwise required by law, the prices which have been quoted in this bid have not been knowingly disclosed by the bidder and will not knowingly be disclosed by the bidder prior to opening, directly or indirectly, to any other bidder or to any competitor; and

(3) No attempt has been made or will be made by the bidder to induce any other person, partnership or corporation to submit or not to submit a bid for the purpose of restricting competition.

(b) A bid shall not be considered for award nor shall any award be made where (a)(1)(2) and (3) above have not been complied with; provided however, that if in any case the bidder cannot make the foregoing certification, the bidder shall so state and shall furnish with the bid a signed statement which sets forth in detail the reasons therefor. Where (a)(1)(2) and (3) above have not been complied with, the bid shall not be considered for award nor shall any award be made unless the head of the purchasing unit of the state, public department or agency to which the bid is made, or his designee, determines that such disclosure was not made for the purpose of restricting competition.

The fact that a bidder (a) has published price lists, rates, or tariffs covering items being procured, (b) has informed prospective customers of proposed or pending publication of new or revised price lists for such items or (c) has sold the same items to other customers at the same prices being bid, does not constitute, without more, a disclosure within the meaning of subparagraph one (a).

2. Any bid hereafter made to the state or any public department, agency or official thereof by a corporate bidder for work or services performed or to be performed or goods sold or to be sold, where competitive bidding is required by statute, rule or regulation, and where such bid contains the certification referred to in subdivision one of this section, shall be deemed to have been authorized by the board of directors of the bidder and such authorization shall be deemed to included the signing and submission of the bid and the inclusion therein of the certificate as to non collusion as the act and deed of the corporation."

That the Contractor to whom the above identified contract is to be awarded does hereby tender to the New York State Department of Transportation this sworn statement pursuant to Section 112(c) of Title 23 U.S. Code Highways and does hereby certify, in conformance with said Section 112(c) of Title 23 U.S. Code Highways that the said Contractor has not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the above identified contract.

A 6-22-89
L 7-13-89

K

JURAT FA

CERTIFICATION REQUIRED BY 49CFR, PART 29

The signator to this proposal, being duly sworn, certifies that, EXCEPT AS NOTED BELOW, its company and any person associated therewith in the capacity of owner, partner, director, officer, or major stockholder (five percent or more ownership):

1) is not currently under suspension, debarment, voluntary exclusion, or determiuation of ineligibility by any federal agency;

2) has not been suspended, debarred, voluntarily excluded or determined ineligible by any federal agency within the past three years;

3) does not have a proposed debarment pending; and

4) has not been indited, convicted, or had a civil judgment rendered against it by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three years.

EXCEPTIONS - List any relevant information, attaching additional sheets if necessary. (Exceptions will not necessarily result in disapproval, but will be considered in determining responsibility. For any exception noted, indicate below to whom it applies, the initiating agency, and dates of action. Providing false information may result in criminal prosecution or administrative sanctions.)

JURAT FA

NON-COLLUSIVE BIDDING

BY EXECUTING THIS PROPOSAL, THE CONTRACTOR AGREES TO:

1. perform all work listed in accordance with the Contract Documents at the unit prices bid; subject to the provisions of §109-16 if applicable;
2. all the terms and conditions of the non-collusive bidding certifications required by Section 139D of the State Finance Law;
3. certification of Specialty Items category selected, if contained in this proposal;
4. certification of any other clauses required by this proposal and contained herein.
5. certification, under penalty of perjury, as to the current history regarding suspensions, debarments, voluntary exclusions, determinations of ineligibility, indictments, convictions or civil judgments required by 49 Code of Federal Regulations, Part 29.

Dated....., 19..... .....
Name of person, firm or corporation

By .....
Signature (Title)

(Acknowledgment by individual contractor)

STATE OF NEW YORK
County of _____ ss.:

On this _____ day of _____ 19 _____, before me personally came _____ to me known and known to me to be the person described in and who executed the foregoing instrument, and acknowledged that she/he executed the same.

_____
Notary Public County

(Acknowledgment by co-partnership contractor)

STATE OF NEW YORK
County of _____ ss.:

On this _____ day of _____ 19 _____, before me personally came and appeared _____ to me known and known to me to be the person who executed the above instrument, who, being duly sworn by me, did for herself/himself depose and say that she/he is a member of the firm of _____, consisting of herself/himself and _____, and that she/he executed the foregoing instrument in the firm name of _____ _____, and that she/he had authority to sign same, and did duly acknowledge to me that she/he executed the same as the act and deed of said firm of _____, for the uses and purposes mentioned therein.

_____
Notary Public

(Acknowledgment by contractor, if a corporation)

STATE OF
County of _____ ss.:

On this _____ day of _____ 19 _____, before me personally came _____ to me known, who being duly sworn, did depose and say that she/he resides in _____ _____ that she/he is the _____ of the _____, the corporation described in and which executed the foregoing instrument; and that she/he signed her/his name thereto by order of the Board of Directors of said Corporation.

*COMPANY, INC.

_____
Notary Public

JURAT FA

NONCOLLUSIVE BIDDING

Please Complete Information Requested Below:

The P.O. address of the bidder is:

..... Street

..... City, State and Zip Code

Federal Identification No. .....

Contact Person .....

Phone No. ( ) .....

If a Corporation

Name	Address
.....,	President .....
.....,	Secretary .....
.....,	Treasurer .....

If a Firm

Name	Address
.....,	.....
.....,	.....
.....,	.....

MA 2A (03-09-33)
NYCDOT

NEW YORK CITY DEPARTMENT OF TRANSPORTATION
DEBARMENT HISTORY CERTIFICATION
CONTRACT NO. _____

I, _____, being duly sworn, certifies that,
(PRESIDENT OF AUTHORIZED OFFICIAL)
except as noted herein, _____ INC. or any person
(THE COMPANY)
associated therewith in the capacity of owner, partner, director, officer, principal investigator, project director, manager, auditor, or any position involving the administration of Federally Aided Projects:

is not currently under suspension, debarment, voluntary exclusion, or determination of ineligibility by any governmental entity;

has not been suspended, debarred, voluntary excluded or determined ineligible by any governmental entity within the past three (3) years;

does not have a proposed debarment pending; and

has not been indicted, convicted, or had a civil judgement rendered against (it) by a court of competent jurisdiction in any matter involving fraud or official misconduct within the past three (3) years.

(INSERT EXCEPTIONS HERE. ATTACH SUPPLEMENTAL SHEETS AS NECESSARY)

N/A

Exceptions will not necessarily result in denial of approval, but will be considered in determining responsibility. For any exception noted herein, indicate to whom it applies, initiating governmental entity and dates of action. A material false statement wilfully or fraudulently made in connection with this certification may result in rendering the company not responsible for the project and any future projects, and in addition may subject the person making the false statement to criminal charges.

_____ (PRINT NAME)

By: _____ (SIGNATURE)

_____ (TITLE)

_____ (DATE)

Subscribed and sworn to before me this _____ day of _____, 199/_.

MA 2A (03-09-33)
NYCDOT

NEW YORK CITY DEPARTMENT OF TRANSPORTATION
DEBARMENT HISTORY CERTIFICATION
CONTRACT NO. _____

GOVERNMENTAL ENTITY:

Governmental Entities shall include any/all city, state and federal public agencies, quasi-public agencies, authorities and corporations, public development corporations, and local development corporations.

COMPANY:

Companies shall include the persons or affiliates for which a suspension or debarment decision has been rendered, and shall include all subsidiaries, divisions and other organizational elements thereof unless said decision is limited by its terms to one or more specifically identified individuals or organizational elements or to specific types of transactions.

PERSON:

Persons shall include any individual, corporation, partnership, association or legal entity however organized, including any subsidiary of the foregoing.

SUBSIDIARY:

Subsidiaries shall include any corporation, partnership, association or legal entity however organized, which is owned or controlled by another person.

AFFILIATE:

Persons are affiliates of one another if, directly or indirectly, one owns, controls, or has the power to control the other, or a third person owns, controls, or has the power to control both.

CONTROL:

Control shall be taken to mean the power to exercise, either directly or indirectly, a controlling influence over managment, policies or activities of a person, whether through ownership of voting securities, through one or more intermediary persons, or otherwise. Indications of control shall include, but not be limited to: a person who owns or has the power to vote more than 25 percent of the voting securities of another person, or 25 percent of the total equity if the other person has no voting securities; interlocking management or ownership; identity of interests among family members; shared facilities and equipment; common use of employees; and establishment, following debarment, suspension or other exclusion decision, of any organization or entity which is to operate in the same business or activity and is to have substantially the same management, owner-ship or principal employees as the debarred, suspended or excluded person.

Certification for Federal-Aid Contracts

The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL. "Disclosure Form to Report Lobbying,"in accordance with its instructions. (See Exhibit 1 annexed hereto)

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 Section 1352, Title 31, U.S. Code. 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.

The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such subrecipients shall certify and disclose accordingly.

APPENDIX C
INSTRUCTIONS FOR COMPLETION OF SF-LLL DISCLOSURE OF LOBBYING ACTIVITIES

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

1. Identify the type of covered Federal action for which lobbying activity is and/or has been secured to influence the outcome of a covered Federal action.

2. Identify the status of the covered Federal action.

3. Identify the appropriate classification of this report. If this is a followup report caused by a material change to the information previously reported, enter the year and quarter in which the change occurred. Enter the date of the last previously submitted report by this reporting entity for this covered Federal action.

4. Enter the full name, address, city, state and zip code of the reporting entity. Include Congressional District, if known. Check the appropriate classification of the reporting entity that designates if it is, or expects to be a prime or subaward recipient. Identify the tier of the subawardee, e.g. the first subawardee of the prime is the 1st tier. Subawards include but are not limited to subcontracts, subgrants and contract awards under grants.

5. If the organization filing the report in item 4 checks "Subawardee", then enter the full name, address, city, state and zip code of the prime Federal recipient. Include Congressional District, if known.

6. Enter the name of the Federal agency making the award or loan commitment. Include at least one organizational level below agency name, if known. For example, Department of Transportation, United States Coast Guard.

7. Enter the Federal program name or description for the covered Federal action (item 1). If known, enter the full Catalog of Federal Domestic Assistance (CFDA) number for grants, cooperative agreements, loans, and loan commitments.

8. Enter the most appropriate Federal identifying number available for the Federal action identified in item 1 (e.g.. Request for Proposal (RFP) number. Invitation for Bid (IFB) number, grant announcement number, the contract grant or loan award number, the application/proposal control number assigned by the Federal agency). prefixes, e.g.. "RFP.DE-90-001."

9. For a covered Federal action where there has been an award or loan commitment by the Federal agency, enter the Federal amount of the award/loan commitment for the prime entity identified in item 4 or 5.

10. (a) Enter the full name, address, city, state and zip code of the lobbying entity engaged by the reporting entity identified in item 4 to influence the covered Federal action.

    (b) Enter the full names of the individual(s) performing services, and include full address if different from 10 (a). Enter Last Name, First Name, and Middle Initial (MI).

11. Enter the amount of compensation paid or reasonably expected to be paid by the reporting entity (item 4) to the lobbying entity (item 10). Indicate whether the payment has been made (actual) or will be made (planned). Check all boxes that apply. If this is a material change report, enter the cumulative amount of payment made or planned to be made.

12. Check the appropriate box(es). Check all boxes that apply. If payment is made through an in-kind contribution, specify the nature and value of the in-kind payment.

13. Check the appropriate box(es). Check all boxes that apply. If other, specify nature.

14. Provide a specific and detailed description of the services that the lobbyist has performed, or will be expected to perform, and the date(s) of any services rendered. Include all preparatory and related activity, not just time spent in actual contact with Federal officials. Identify the Federal official(s) or employee(s) contacted or the officer(s), employee(s), or Member(s) of Congress that were contacted.

15. Check whether or not a SF-LLL-A Continuation Sheet(s) is attached.

16. The certifying official shall sign and date the form, print his/her name, title, and telephone number.

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including time for renewing instructions, searchign existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Office of Management and Budget, Paperwork Reduction Project (0348-0046), Washington, D.C. 20503.

APPENDIX C IF APPLICABLE

DISCLOSURE OF LOBBYING ACTIVITIES

Approved by OMB 0348-0046

Complete this form to disclose lobbying activities pursuant to 31 U.S.C. 1352
(See reverse for public burden disclosure.)

1. Type of Federal Action:
   - ☐ a. contract
   - b. grant
   - c. cooperative agreement
   - d. loan
   - e. loan guarantee
   - f. loan insurance

2. Status of Federal Action:
   - ☐ a. bid/offer/application
   - b. initial award
   - c. post-award

3. Report Type:
   - ☐ a. initial filing
   - b. material change

   For Material Change Only:
   year _____ quarter _____
   date of last report _____

4. Name and Address of Reporting Entity:
   - ☐ Prime
   - ☐ Subawardee
     Tier _____, *if known:*

   Congressional District, *if known:*

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

   Congressional District, *if known:*

6. Federal Department/Agency:

7. Federal Program Name/Description:

   CFDA Number, *if applicable:* _____

8. Federal Action Number, *if known:*

9. Award Amount, *if known:*
   $

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

    b. Individuals Performing Services *(including address if different from No. 10a)*
    (last name, first name, MI):

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

11. Amount of Payment *(check all that apply):*
    $ _____ ☐ actual ☐ planned

12. Form of Payment *(check all that apply):*
    - ☐ a. cash
    - ☐ b. in-kind; specify: nature _____
      value _____

13. Type of Payment *(check all that apply):*
    - ☐ a. retainer
    - ☐ b. one-time fee
    - ☐ c. commission
    - ☐ d. contingent fee
    - ☐ e. deferred
    - ☐ f. other; specify: _____

14. Brief Description of Services Performed or to be Performed and Date(s) of Service, including officer(s), employee(s), or Member(s) contacted, for Payment Indicated in Item 11:

(attach Continuation Sheet(s) SF-LLL-A, if necessary)

15. Continuation Sheet(s) SF-LLL-A attached: ☐ Yes ☐ No

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

Signature: _____
Print Name: _____
Title: _____
Telephone No.: _____ Date: _____

Federal Use Only:

Authorized for Local Reproduction
Standard Form - LLL

EXHIBIT 1

APPENDIX C

DISCLOSURE OF LOBBYING ACTIVITIES
CONTINUATION SHEET

Approved by
0348-0046

Reporting Entity: _____ Page _____ of _____

Authorized for Local Reproduction

SCHEDULE "C"

NOTICE TO ALL PROSPECTIVE BIDDERS
FEDERAL-AID CONTRACTS

ASSURANCE OF NON-DISCRIMINATION

The N.Y. State Dept. of Trans. in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 U.S.C. 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-assisted programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively insure that in any contract entered into pursuant to this advertisement, minority business enterprises will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, or national origin in consideration for an award.

SUBCONTRACTS

The attention of the Contractor is directed to the requirement that the standard contract clauses, as set forth in the Proposal and in the Labor Compliance Manual (Federal-aid Construction, Appendix D-2, 3) must be physically incorporated in all subcontracts.

Copies of the Labor Compliance Manual referred to above may be examined in the office of the Regional Director.

Rev. 2/27/70
4/20/72
8/30/73
12/7/76

SCHEDULE D

Federal Prevailing Wage Rates

GENERAL DECISION: **NY20070003** 08/31/2007 NY3

Date: August 31, 2007
General Decision Number: **NY20070003** 08/31/2007

Superseded General Decision Number: NY20

State: New York

Construction Types: Building, Heavy, Highway and Residential

Counties: Bronx, Kings, New York, Queens and Richmond
Counties in New York.

BUILDING & RESIDENTIAL CONSTRUCTION PROJECTS (includes single family homes and apartments up to and including 4 stories),
HEAVY AND HIGHWAY CONSTRUCTION PROJECTS

Modification Number	Publication Date
0	02/09/2007
1	02/16/2007
2	04/06/2007
3	04/20/2007
4	05/04/2007
5	07/06/2007
6	07/20/2007
7	08/03/2007
8	08/17/2007
9	08/31/2007

ASBE0012-001 07/02/2007

	Rates	Fringes
Asbestos Workers/Insulator includes application of all insulating materials, protective coverings,coatings and finishing to all types of mechanical systems	$ 45.36	26.22
HAZARDOUS MATERIAL HANDLER	$ 24.45	8.50

BOIL0005-001 01/01/2007

	Rates	Fringes
BOILERMAKER	$ 44.98	28.95+a

FOOTNOTE:

a. PAID HOLIDAYS: New Year's Day, Thanksgiving Day, Memorial Day, Independence Day, Labor Day and Good Friday, Friday after Thanksgiving, Christmas Eve Day and New Year's Eve

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BRNY0001-001 07/01/2007

	Rates	Fringes
BRICKLAYER	$ 44.99	19.71
MASON - STONE	$ 54.34	21.13

BRNY0001-002 07/01/2007

	Rates	Fringes
Pointer, cleaner and caulker	$ 37.39	19.29

BRNY0003-001 07/01/2006

	Rates	Fringes
TERRAZZO FINISHER	$ 38.75	21.75
TERRAZZO WORKER/SETTER	$ 40.09	21.75

BRNY0004-001 07/01/2007

	Rates	Fringes
MARBLE SETTER	$ 47.83	22.20

BRNY0020-001 07/01/2007

	Rates	Fringes
MARBLE FINISHER	$ 39.65	22.03

BRNY0024-001 01/01/2007

	Rates	Fringes
BRICKLAYER		
MARBLE POLISHERS	$ 35.66	17.40

BRNY0052-001 06/01/2007

	Rates	Fringes
Tile Layer	$ 42.94	22.33

BRNY0088-001 06/01/2007

	Rates	Fringes
TILE FINISHER	$ 34.95	18.90

CARP0001-009 07/01/2005

	Rates	Fringes
Carpenters:		
Carpenters & Soft floor layers	$ 40.25	30.36

CARP0740-001 07/01/2005

	Rates	Fringes
MILLWRIGHT	$ 38.13	35.40

CARP1456-004 07/01/2005

	Rates	Fringes
Dock Builder & Piledrivermen		
DOCKBUILDERS	$ 40.27	29.86

CARP1456-005 07/01/2005

	Rates	Fringes
Diver Tender	$ 36.44	29.86
Diver	$ 49.79	29.86

CARP1536-001 07/01/2003

	Rates	Fringes
Carpenters:		
TIMBERMEN	$ 34.47	26.05

ELEC0003-001 05/12/2005

	Rates	Fringes
ELECTRICIAN		
Electricians	$ 43.00	32.84
Jobbing, and maintenance and repair work	$ 24.80	12.87+a

PAID HOLIDAYS:

a. New Years Day, Martin Luther King, Jr.'s Birthday, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Thanksgiving Day, the day after Thanksgiving Day, and Christmas Day

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ELEC1049-001 04/02/2006

QUEENS COUNTY

	Rates	Fringes
Line Construction (Substation and Switching structures pipe type cable installation and maintenance jobs or projects; Railroad electrical distribution/transmission systems maintenance (when work is not performed by		

railroad employees) Overhead
and Underground
transmission/distribution
line work. Fiber optic,
telephone cable and equipment)

Groundman	$ 22.86	13.93
Heavy Equipment Operator	$ 30.48	13.93
Lineman and Cable Splicer	$ 38.10	13.93
Tree Trimmer	$ 23.06	9.84

ELEV0001-002 03/17/2007

	Rates	Fringes
ELEVATOR MECHANIC		
Elevator Constructor	$ 45.98	19.48+a+b
Modernization and Repair	$ 36.80	19.33+a+b

FOOTNOTE:

a. PAID HOLIDAYS: New Year's Day, Good Friday, President's Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, Friday after Thanksgiving, and Christmas Day.

b. PAID VACATION: An employee who has worked less than 5 years shall recieve vacation pay credit on the basis of 4% of his hourly rate for all hours worked; an employee who has worked 5 to 15 years shall receive vacation pay credit on the basis of 6% of his hourly rate for all hours worked; an employee who has worked 15 or more years shall receive vacation pay credit on the basis of 8% of his hourly rate for all hours worked.

ENGI0014-001 07/01/2007

	Rates	Fringes
Pavement equipment operator		
Asphalt Plants	$ 40.39	24.80+a
Asphalt roller	$ 48.16	24.80
Asphalt spreader	$ 49.52	24.80+a
Power Equipment Operator (HEAVY & HIGHWAY)		
GROUP 1	$ 64.68	24.80+a
GROUP 2	$ 52.94	24.80+a
GROUP 3	$ 54.68	24.80+a
GROUP 4	$ 53.35	24.80+a
GROUP 5	$ 52.25	24.80+a
GROUP 6	$ 50.07	24.80+a
GROUP 7	$ 51.04	24.80+a
GROUP 8	$ 49.52	24.80+a
GROUP 9	$ 48.40	24.80+a
GROUP10	$ 46.21	24.80+a
GROUP11	$ 43.00	24.80+a
GROUP12	$ 43.98	24.80+a
GROUP13	$ 44.37	24.80+a

GROUP14	$ 32.89	24.80+a
GROUP15	$ 30.38	24.80+a
Steel erector		
Compressors, Welding Machines	$ 33.46	24.80+a
Cranes, Hydraulic Cranes, 2 drum derricks, Forklifts, Boom Trucks	$ 57.10	24.80+a
Three drum derricks	$ 59.49	24.80+a
Utility Laborer		
Horizontal boring rig	$ 46.97	24.80+a
Off shift compressors	$ 38.65	24.80+a
Utility Compressors	$ 30.18	24.60

POWER EQUIPMENT OPERATOR CLASSIFICATIONS

GROUP 1: Tower crane

GROUP 2: Backhoes, power shovel, Hydraulic clam shells, moles and machines of a similar type

GROUP 3: Mine hoists and crane, etc. used as mine hoists

GROUP 4: Gradalls, keystones, cranes (with digging buckets), bridge cranes, trenching machines, vermeer cutter and machines of a similar nature

GROUP 5: Piledrivers, derrick boats, tunnel shovels

GROUP 6: All drills, and machines of a similar nature

GROUP 7: Back filling machines, cranes, mucking machines, dual drum pavers

GROUP 8: Mixers (concrete w/loading attachments), concrete pavers, cableways, land derricks, power house (low pressure units), concrete pumps

GROUP 9: Concrete plants, well drilling machines, stone crushers double drum hoist, power house (other than above)

GROUP 10: Concrete mixers

GROUP 11: Elevators

GROUP 12: Concrete breaking machine, Hoists (single drum), load masters, locomotive and dinkies over 10 tons

GROUP 13: Vibratory console

GROUP 14: Compressors (portable 3 or more in battery), tugger machine (caissons), well point pumps, chum drill

GROUP 15: Boilers, (high pressure, compressors (portable, single, or 2 in battery, not over 100' apart), pumps (river cofferdam and welding machines (except where arc is operated by members of local 15) push button machines, all

engines irrespective of power (power pac) used to drive auxilliary equipment, air, hydraulic etc.

PREMIUMS ON CRANES (Crawler or Truck):
100' to 149' boom - add .50
150' to 249' boom - add .75
250' to 349' boom - add 1.00
350' to 450' boom - add 1.50

Premiums for Cranes on Steel Erection:
100' to 149' boom - add 1.75
150' to 249' boom - add 2.00
250' to 349' boom - add 2.25
350' to 450' boom - add 2.75
Tower crane - add 2.00

FOOTNOTE:
a. Paid Holidays: New Year's Day; Lincoln's Birthday; Washington's Birthday; Memorial Day; Independence Day; Labor Day; Veterans Day; Columbus Day; Election Day; Thanksgiving Day; and Christmas Day; provided the employee works one day the payroll week in which the holiday occurs.

ENGI0014-002 07/01/2007

	Rates	Fringes
Power Equipment Operator		
BUILDING & RESIDENTIAL		
GROUP 1	$ 53.57	24.80+a
GROUP 2	$ 56.79	24.80+a
GROUP 3	$ 51.71	24.80+a
GROUP 4	$ 46.94	24.80+a
GROUP 5	$ 34.89	24.80+a

POWER EQUIPMENT OPERATORS CLASSIFICATIONS

GROUP 1: Double drum

GROUP 2: Stone derrick, cranes, hydraulic cranes, boom trucks

GROUP 3: 4 pole Hoist, Single Drum Hoists

GROUP 4: Fork lift, house cars, plaster (platform machine), plaster bucket, concrete pump and all other equipment used for hoisting material

GROUP 5: Compressors, welding machines (cutting concrete work), paint spraying, sand blasting, pumps (with the exclusion of concrete pumps), house car (settlement basis only), all engines irrespective of power (power pac) used to drive auxiliary equipment, air, hydraulic, etc., boilers

Premiums for Cranes:
100'-149' boom - add 1.75
150'-249' boom - add 2.00

250'-349' boom - add 2.25
350'-450' boom - add 2.75
Tower cranes add 2.00

FOOTNOTE:
a. PAID HOLIDAYS: New Year's Day, Lincoln's Birthday, Memorial Day, Independence Day, Labor Day, Veteran's Day, Columbus Day, Election Day, Thanksgiving Day, and Christmas Day, provided the employee works one day in the payroll week in which the holiday occurs

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IRON0040-002 07/01/2007

BRONX, NEW YORK, RICHMOND

	Rates	Fringes
IRONWORKER, STRUCTURAL	$ 38.40	48.01

IRON0046-003 07/01/2005

	Rates	Fringes
IRONWORKER		
METALLIC LATHERS	$ 40.55	27.37

IRON0197-001 01/01/2007

	Rates	Fringes
IRONWORKER		
STONE DERRICKMAN	$ 38.36	34.73

IRON0361-002 07/01/2007

KINGS, QUEENS

	Rates	Fringes
Ironworkers:		
(STRUCTURAL)	$ 38.40	48.01

IRON0580-001 07/01/2006

	Rates	Fringes
IRONWORKER, ORNAMENTAL	$ 38.60	34.90

LABO0006-001 07/01/2003

	Rates	Fringes
Laborers:		
BUILDING CONSTRUCTION CEMENT AND CONCRETE WORKERS	$ 31.50	15.27

LABO0029-001 07/01/2001

	Rates	Fringes
Laborers:		
Heavy		
Blasters (hydraulic trac drill)	$ 32.08	16.70
Blasters	$ 31.53	16.70
Hydraulic Trac Drill	$ 28.38	16.70
Jackhammers, Chippers, Spaders, Concrete Breakers, All Other Pneumatic Tools, Walk Behind Self-Propelled Hydraulic Asphalt and Concrete Breaker	$ 27.14	16.70
Powder Carriers	$ 24.50	16.70
Wagon; Airtrac; Quarry Bar Drill Runners	$ 27.83	16.70

LABO0078-001 12/01/2003

	Rates	Fringes
ASBESTOS WORKER/HEAT & FROST INSULATOR		
ASBESTOS (Removal, Abatement, Encapsulation or Decontamination of asbestos); LEAD; & HAZARDOUS WASTE LABORERS (Hazardous Waste, Hazardous Materials, Biochemical and Mold Remediation, HVAC, Duct Cleaning, Re-spray Fireproofing, etc	$ 25.50	6.81

LABO0079-001 01/01/2005

	Rates	Fringes
Laborers Building Construction		
Mason Tenders	$ 28.00	16.39
Demolition Laborers		
Tier A	$ 28.00	14.99
Tier B	$ 17.70	8.95

CLASSIFICATIONS

TIER A: Responsible for the removal of all interior petitions and structural petitions that can consist of sheet rock, block or masonry. Also, all structural slab openings for ducts, mechanical, shafts, elevators, slab openings and exterior walls where the building is not being completely demolitioned.

TIER B: Responsible for shoveling of debris into containers, pushing containers from the inside to the outside of the building.

LABO0147-001 07/01/2003

	Rates	Fringes
Laborers:		
LABORERS	$ 28.86	30.51

FREE AIR TUNNEL WORKERS Tunnel Workers (including Maintenance Men, Inside Muck Lock Tenders, Pump Men, Electricians, Cement Finishers, Caulkers, Hydraulic Men, Shield Men, Monorail Operators, Motor Men, Conveyor Men, Powder Carriers, Pan Men, Riggers, Chuck Tenders, Track Men Painters, Nippers, Brakemen, Cable Men, Hose Men, Grout Men, Gravel Men, Form Workers, Concrete Workers, Tunnel Laborers, Mole Nipper (one (1) Mole Sipper per Working Shaft per Shift for up to and including Two (2) Moles)

LABO0731-001 07/01/2005

	Rates	Fringes
Laborers:		
Building, Heavy and Residential		
UNSKILLED	$ 33.59	18.69
UTILITY LABORER	$ 33.44	18.69

Paid Holidays: Labor Day and Thanksgiving Day

LABO1010-001 07/01/2001

	Rates	Fringes
Laborers:		
HIGHWAY CONSTRUCTION		
Fence Installer & Repairer	$ 28.84	15.55+a
FORMSETTERS	$ 32.04	15.55+a
LABORERS	$ 28.94	15.55+a
Landscape Planting & Maintenance	$ 28.84	15.55+a
Maintenance Safety Surface	$ 28.44	15.55+a
Slurry/Sealcoater/Play Equipment Installer	$ 28.69	15.55+a
Small Equipment Operator (Not Operating Engineer)	$ 28.94	15.55+a
Small Power Tools Operator	$ 28.44	15.55+a

FOOTNOTES:

a. PAID HOLIDAYS: Memorial Day, Fourth of July, Labor Day, Columbus Day, Election Day and Thanksgiving Day, provided

the employee has worked one (1) day in the calendar week in which the said holiday occurs.

LABO1018-001 07/01/2001

	Rates	Fringes
Laborers:		
Asphalt Rakers	$ 32.36	15.55+a
Asphalt Tampers	$ 29.92	15.55+a
Landscape Planting & Maintenance Fence Installer/Maintenance	$ 29.81	15.55+a
Line Striping Installers	$ 29.56	15.55+a
Play Equipment/Safety Surface Installer	$ 29.31	15.55+a
Screedman/Micropaver	$ 32.73	15.55+a
Shoveler, General Laborers/ All other incidental work	$ 29.81	15.55+a
Slurry/Sealcoater	$ 29.31	15.55+a
Small Equipment Operator	$ 29.56	15.55+a

FOOTNOTE:
a. Paid Holidays: Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans Day, and Thanksgiving Day

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PAIN0009-001 05/01/2006

	Rates	Fringes
GLAZIER	$ 35.40	25.90
Painters:		
Painters, Drywall Finishers, Lead Abatement Worker (Bridge Work)	$ 33.50	18.85
Spray, Scaffold and Sandblasting	$ 36.50	18.85

PAIN0806-001 10/01/2006

	Rates	Fringes
Painters:		
Structural steel and Bridge	$ 43.00	26.47

PAIN1974-001 09/06/2006

	Rates	Fringes
Painters:		
Drywall Tapers/Pointers	$ 36.82	18.73

PLAS0260-001 07/01/1999

BRONX, NEW YORK AND RICHMOND COUNTIES:

	Rates	Fringes
PLASTERER	$ 27.91	15.55

PLAS0260-002 07/01/1999

KINGS AND QUEENS COUNTIES

	Rates	Fringes
PLASTERER	$ 27.91	15.16

PLAS0530-001 02/04/2004

	Rates	Fringes
PLASTERER		
DRYWALL PLASTERERS	$ 31.00	15.55

PLAS0780-001 07/01/2007

	Rates	Fringes
CEMENT MASON/CONCRETE FINISHER	$ 44.40	26.10

PLUM0001-001 01/01/2007

	Rates	Fringes
PLUMBER		
JOBBING AND ALTERATIONS		
Any repair and/or replacement of the present plumbing system that does not change the existing roughing	$ 20.97	7.43
PLUMBERS:	$ 46.16	29.65

PLUM0638-001 07/05/2006

	Rates	Fringes
PLUMBER		
SERVICE FITTERS	$ 26.30	2.55
SPRINKLER FITTERS, STEAMFITTERS	$ 43.82	32.72

Service Fitter work shall consist of all repair, service and maintenance work on domestic, commercial and industrial refrigeration, air conditioning and air cooling, stoker and oil burner apparatus and heating apparatus etc., including but not exclusively the charging, evacuation, leak testing and assembling for all machines for domestic, commercial and industrial refrigeration, air conditioning and heating apparatus. Also, work shall include adjusting, including

capacity adjustments, checking and repairing or replacement of all controls and start up of all machines and repairing all defects that may develop on any system for domestic, commercial and industrial refrigeration and all air conditioning, air cooling, stoker and oil burner apparatus and heating apparatus regardless of size or type.

ROOF0008-003 04/01/2006

	Rates	Fringes
ROOFER, Including Built Up, Composition and Single Ply.....	$ 33.08	22.47

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* SHEE0028-002 08/02/2007

	Rates	Fringes
Sheet metal worker.....	$ 42.53	34.10

TEAM0282-001 07/01/2005

	Rates	Fringes
Truck drivers:		
TRUCK DRIVERS:		
Asphalt.....	$ 31.235	23.6025+a+b
Euclids & Turnapulls.....	$ 31.80	23.6025+a+b
High Rise.....	$ 32.31	23.6525+a+b

FOOTNOTES:

PAID HOLIDAYS: New Year's Day, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Election Day, Veterans' Day (Armistice Day), Thanksgiving Day and Christmas Day. Employees working two (2) days in the calendar week in which a holiday falls are to be paid for such holiday, provided that they shape each remaining workday during such calendar week.

b. VACATION: For each 15 days worked within the contract year an employee will receive one day's vacation with pay with a maximum vacation of 3 weeks per year.

TEAM0813-001 12/01/1998

	Rates	Fringes
Truck drivers:		
GROUP 1.....	$ 19.49	3.61+a
GROUP 2.....	$ 19.76	3.61+a
GROUP 3.....	$ 19.90	3.61+a
GROUP 4.....	$ 20.23	3.61+a
GROUP 5.....	$ 20.40	3.61+a
GROUP 6.....	$ 21.29	3.61+a
GROUP 7.....	$ 22.40	3.61+a
GROUP 8.....	$ 19.90	3.61+a

FOOTNOTE:

a. PAID HOLIDAYS: New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents' Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Thanksgiving Day, Christmas Day, Employee's Birthday, Two (2) Personal Days, and any holiday or day of mourning proclaimed as such by the State or Federal Government.

TRUCK DRIVER CLASSIFICATIONS

GROUP 1: Closed body trucks with self contained loading unit up to and including 22 yard capacity

GROUP 2: Open trucks, rack body or trucks with no self contained mechanical loading device, up to 22 yard capacity. One-container tractor hoist

GROUP 3: 10 wheel, open trucks, container loaders, dino-master, over-cab loaders, rack body trucks, or any trucks 22 yards to and including 25 yards capacity

GROUP 4: Rubbish and garbage trucks, 26 yards to and including 31 yards

GROUP 5: Single axle working non-compactor containers up to 15 yards capacity on rubbish and garbage removal

GROUP 6: Roll-off trucks up to and including 42 yard capacity

GROUP 7: Roll-off truck with more than 42 yard capacity or any tractor trailer trucks

GROUP 8: One-container tractor hoist on construction and alteration debris removal

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WELDERS - Receive rate prescribed for craft performing operation to which welding is incidental.

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Unlisted classifications needed for work not included within the scope of the classifications listed may be added after award only as provided in the labor standards contract clauses (29CFR 5.5 (a) (1) (ii)).

In the listing above, the "SU" designation means that rates listed under the identifier do not reflect collectively bargained wage and fringe benefit rates. Other designations indicate unions whose rates have been determined to be prevailing.

WAGE DETERMINATION APPEALS PROCESS

1.) Has there been an initial decision in the matter? This can be:

* an existing published wage determination
* a survey underlying a wage determination
* a Wage and Hour Division letter setting forth a position on a wage determination matter
* a conformance (additional classification and rate) ruling

On survey related matters, initial contact, including requests for summaries of surveys, should be with the Wage and Hour Regional Office for the area in which the survey was conducted because those Regional Offices have responsibility for the Davis-Bacon survey program. If the response from this initial contact is not satisfactory, then the process described in 2.) and 3.) should be followed.

With regard to any other matter not yet ripe for the formal process described here, initial contact should be with the Branch of Construction Wage Determinations. Write to:

Branch of Construction Wage Determinations
Wage and Hour Division
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

2.) If the answer to the question in 1.) is yes, then an interested party (those affected by the action) can request review and reconsideration from the Wage and Hour Administrator (See 29 CFR Part 1.8 and 29 CFR Part 7). Write to:

Wage and Hour Administrator
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

The request should be accompanied by a full statement of the interested party's position and by any information (wage payment data, project description, area practice material, etc.) that the requestor considers relevant to the issue.

3.) If the decision of the Administrator is not favorable, an interested party may appeal directly to the Administrative Review Board (formerly the Wage Appeals Board). Write to:

Administrative Review Board
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, DC 20210

4.) All decisions by the Administrative Review Board are final.

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SECTION 1.09
FEDERAL TRANSIT ADMINISTRATION MANDATED REQUIREMENTS

Book 1
Section 1.09

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FEDERAL TRANSIT ADMINISTRATION (FTA) THIRD PARTY REQUIREMENTS

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

This contract is subject to the Federal Transit Administration (FTA) requirements for implementing the U.S. Department of Transportation (USDOT) regulations for the following areas:

1. FLY AMERICA (49 U.S.C. § 40118, 41 CFR Part 301-10)

The Contractor agrees to comply with 49 U.S.C. 40118 (the "Fly America" Act) in accordance with the General Services Administration's regulations at 41 CFR Part 301-10, which provide that the New York City Department of Transportation, (NYCDOT) of Federal funds and its Contractors are required to use U.S. Flag air carriers for U.S Government-financed international air travel and transportation of their personal effects or property, to the extent such service is available, unless travel by foreign air carrier is a matter of necessity, as defined by the Fly America Act. The Contractor shall submit, if a foreign air carrier was used, an appropriate certification or memorandum adequately explaining why service by a U.S. flag air carrier was not available or why it was necessary to use a foreign air carrier and shall, in any event, provide a certificate of compliance with the Fly America requirements. The Contractor agrees to include the requirements of this section in all subcontracts that may involve international air transportation.

2. BUY AMERICA (49 U.S.C. 5323(j)(2)©, 49 CFR Part 661.11)

The Contractor agrees to comply with 49 U.S.C. 5323(j) and 49 CFR Part 661, which provide that Federal funds may not be obligated unless steel, iron, and manufactured products used in FTA-funded projects are produced in the United States, unless a waiver has been granted by FTA or the product is subject to a general waiver. General waivers are listed in 49 CFR 661.7, and include final assembly in the United States for 15 passenger vans and 15 passenger wagons produced by Chrysler Corporation, microcomputer equipment, software, and small purchases (currently less than $100,000) made with capital, operating, or planning funds. Separate requirements for rolling stock are set out at 5323(j)(2)(C) and 49 CFR 661.11. Rolling stock must be assembled in the United States and have a 60 percent domestic content.

A bidder or offeror must submit to NYCDOT the appropriate Buy America certification (Appendix A) with all bids on FTA-funded contracts, except those subject to a general waiver.

3. CARGO PREFERENCE (46 U.S.C. 1241, 46 CFR Part 381)

The Contractor agrees: (a.) to use privately owned United States-Flag commercial vessels to ship at least 50 percent of the gross tonnage (computed separately for dry bulk carriers, dry cargo liners, and tankers) involved, whenever shipping any equipment, material, or commodities pursuant to the underlying contract to the extent such vessels are available at fair and reasonable rates for United States-Flag commercial vessels; (b.) to furnish within 20 working days following the date of loading for shipments originating within the United States or within 30 working days following the date of loading for shipments originating outside the United States, a legible copy of a rated, "on-board" commercial ocean bill-of -lading in English for each shipment of cargo described in the preceding paragraph to the Division of National Cargo, Office of Market Development, Maritime Administration, Washington, DC 20590 and to NYCDOT (through the Contractor in the case of a Subcontractor's bill-of-lading) (c.) to include these requirements in all subcontracts issued pursuant to this contract when the subcontract may involve the transport of equipment, material, or commodities by ocean vessel.

4. SEISMIC SAFETY REQUIREMENTS (42 U.S.C. 7701 et seq., 49 CFR Part 41)

The Contractor agrees that any new building or addition to an existing building will be designed and constructed in accordance with the standards for Seismic Safety required in Department of Transportation Seismic Safety Regulations 49 CFR Part 41 and will certify to compliance to the extent required by the regulation. The Contractor also agrees to ensure that all work performed under this contract including work performed by a Subcontractor is in

compliance with the standards required by the Seismic Safety Regulations and the certification of compliance issued on the project.

5. ENERGY CONSERVATION (42 U.S.C. §§ 6321 et seq., 49 CFR 18)

The Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act.

6. CLEAN WATER (33 U.S.C. §§ 1251)

(1) The Contractor agrees to comply with all applicable standards, orders or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. 1251 et seq. The Contractor agrees to report each violation to NYCDOT and understands and agrees that NYCDOT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

7. BUS TESTING (49 U.S.C. 5323(c), 49 CFR Part 665)

The Contractor agrees to comply with 49 U.S.C. A 5323(c) and FTA's implementing regulation at 49 CFR Part 665 and shall perform the following:

1) A manufacturer of a new bus model or a bus produced with a major change in components or configuration shall provide a copy of the final test report to the recipient at a point in the procurement process specified by the recipient which will be prior to the recipient's final acceptance of the first vehicle.

2) A manufacturer who releases a report under paragraph 1 above shall provide notice to the operator of the testing facility that the report is available to the public.

3) If the manufacturer represents that the vehicle was previously tested, the vehicle being sold should have the identical configuration and major components as the vehicle in the test report, which must be provided to the recipient prior to recipient's final acceptance of the first vehicle. If the configuration or components are not identical, the manufacturer shall provide a description of the change and the manufacturer's basis for concluding that it is not a major change requiring additional testing.

4) If the manufacturer represents that the vehicle is "grandfathered" (has been used in mass transit service in the United States before October 1, 1988, and is currently being produced without a major change in configuration or components), the manufacturer shall provide the name and address of the recipient of such a vehicle and the details of that vehicle's configuration and major components.

8. PRE-AWARD AND POST DELIVERY AUDITS REQUIREMENTS

The Contractor agrees to comply with 49 U.S.C. § 5323(l) and FTA's implementing regulation at 49 C.F.R. Part 663 and to submit the following certifications:

(1) Buy America Requirements: The Contractor shall complete and submit a declaration certifying either compliance or noncompliance with Buy America. If the bidder/offeror certifies compliance with Buy America, it shall submit documentation which lists a) component and subcomponent parts of the rolling stock to be purchased identified by manufacturer of the parts, their country of origin and costs; and b) the location of the final assembly point for the

rolling stock, including a description of the activities that will take place at the final assembly point and the cost of final assembly.
(2) Solicitation Specification Requirements: The Contractor shall submit evidence that it will be capable of meeting the bid specifications.
(3) Federal Motor Vehicle Safety Standards (FMVSS): The Contractor shall submit 1) manufacturer's FMVSS self-certification sticker information that the vehicle complies with relevant FMVSS or 2) manufacturer's certified statement that the contracted buses will not be subject to FMVSS regulations.

9. LOBBYING (31 U.S.C. 1352, 49 CFR Parts 19 & 20)

The Contractor who apply or bid for an award of $100,000 or more shall file the certification required by 49 CFR Parts 19 & Part 20, "New Restrictions on Lobbying" (Appendix B). Each tier of Contractor certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to NYCDOT.

10. ACCESS TO RECORDS AND REPORTS (49 C.F.R. 5325, 18 CFR 18.36(i), 49 CFR 633.17)

The Contractor shall comply with the following access to records requirements:

1. In accordance with 18 CFR 18.36(i), the Contractor agrees to provide NYCDOT, the FTA Administrator, the Comptroller General of the United States or any of their authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to this contract for the purposes of making audits, examinations, excerpts and transcriptions. Contractor also agrees, pursuant to 49 C. F. R. 633.17 to provide the FTA Administrator or his/her authorized representatives including any PMO Contractor access to Contractor's records and construction sites pertaining to a major capital project, defined at 49 U.S.C. 5302(a) 1, which is receiving federal financial assistance through the programs described at 49 U.S.C. 5307, 5309 or 5311.

2. Where NYCDOT, in accordance with 49 U.S.C. 5325(a) enters into a contract for a capital project or improvement (defined at 49 U.S.C. 5302(a) (1) through other than competitive bidding, the Contractor shall make available records related to the contract to NYCDOT, the Secretary of Transportation and the Comptroller General or any authorized officer or employee of any of them for the purposes of conducting an audit and inspection.

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

4. The Contractor agrees to maintain all books, records, accounts and reports required under this contract for a period of not less than three years after the date of termination or expiration of this contract, except in the event of litigation or settlement of claims arising from the performance of this contract, in which case Contractor agrees to maintain same until NYCDOT, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto. (Reference 49 CFR 18.39 (i)(11).

5. FTA does not require the inclusion of these requirements in subcontracts.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Requirements for Access to Records and Reports by Types of Contract

Contract Characteristics	Operational Service Contract	Turnkey	Construction	Architectural Engineering	Acquisition of Rolling Stock	Professional Services
I . State Grantees a. Contracts below SAT ($100,000) b. Contracts above $100,000/ Capital Projects	None None unless[1] non-competitive award	Those imposed on state pass thru to Contractor	None Yes, if non-competitive award or if funded thru[2] 5307/5309/ 5311	None None unless non-competitive award	None None unless non-competitive award	None None unless non-competitive award
II . Non State Grantees a. Contracts below SAT ($100,000) b. Contracts above $100,000/Capital Projects	Yes[3] Yes[3]	Those imposed on non-state Grantee pass thru to Contractor	Yes Yes	Yes Yes	Yes Yes	Yes Yes

Sources of Authority:

[1] 49 USC 5325 (a)

[2] 49 CFR 633.17

[3] 18 CFR 18.36 (i)

SAT: Source Acquisition Threshold

11. FEDERAL CHANGES (49 CFR Part 18)

The Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Master Agreement between NYCDOT and FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this contract.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

12. BONDING

For those construction or facility improvement contracts or subcontracts exceeding $100,000, FTA may accept the bonding policy and requirements of NYCDOT, provided that they meet the minimum requirements for construction contracts as follows:

a. A performance bond on the part to the Contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the Contractor's obligations under such contract.

b. A payment bond on the part of the Contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment, as required by law, of all persons supplying labor and material in the execution of the work provided for in the contract. Payment bond amounts required from Contractors are as follows:

(1) 50% of the contract price if the contract price is not more than $1 million;

(2) 40% of the contract price if the contract price is more than $1 million but not more than $5 million; or

(3) $2.5 million if the contract price is more than $5 million.

d. A cash deposit, certified check or other negotiable instrument may be accepted by a grantee in lieu of performance and payment bonds, provided the grantee has established a procedure to assure that the interest of FTA is adequately protected. An irrevocable letter of credit would also satisfy the requirement for a bond.

Performance and Payment Bonding Requirements (Construction)

The Contractor shall be required to obtain performance and payment bonds as follows:

(a) Performance bonds

1. The penal amount of performance bonds shall be 100 percent of the original contract price, unless the NYCDOT determines that a lesser amount would be adequate for the protection of NYCDOT.

2. The NYCDOT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100 percent of the increase in contract price. NYCDOT may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(b) Payment bonds

1. The penal amount of the payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million.

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is more than $5 million.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

2. If the original contract price is $5 million or less, (NYCDOT) may require additional protection as required by subparagraph 1 if the contract price is increased.

Performance and Payment Bonding Requirements (Non-Construction)

The Contractor may be required to obtain performance and payment bonds when necessary to protect NYCDOT's interest. The FTA requirements apply to first tier subcontractors as well as the Contractor.

(a) The following situations may warrant a performance bond:

1. NYCDOT's property or funds are to be provided to the Contractor for use in performing the contract or as partial compensation (as in retention of salvaged material).

2. The Contractor sells assets to or merges with another concern and NYCDOT after recognizing the latter concern as the successor in interest, desires assurance that it is financially capable.

3. Substantial progress payments are made before delivery of end items starts.

4. Contracts are for dismantling, demolition, or removal of improvements.

(b) When it is determined that a performance bond is required, the Contractor shall be required to obtain performance bonds as follows:

1. The penal amount of performance bonds shall be 100% of the original contract price, unless NYCDOT determines that a lesser amount would be adequate for the protection of NYCDOT.

2. NYCDOT may require additional performance bond protection when a contract price is increased. The increase in protection shall generally equal 100% of the increase in contract price. NYCDOT may secure additional protection by directing the Contractor to increase the penal amount of the existing bond or to obtain an additional bond.

(c) A payment bond is required only when a performance bond is required, and if the use of payment bond is in NYCDOT's interest.

(d) When it is determined that a payment bond is required, the Contractor shall be required to obtain payment bonds as follows:

1. The penal amount of payment bonds shall equal:

(i) Fifty percent of the contract price if the contract price is not more than $1 million;

(ii) Forty percent of the contract price if the contract price is more than $1 million but not more than $5 million; or

(iii) Two and one half million if the contract price is increased.

Advance Payment Bonding Requirements

The Contractor may be required to obtain an advance payment bond if the contract contains an advance payment provision and a performance bond is not furnished. NYCDOT shall determine the amount of the advance payment bond necessary to protect NYCDOT.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Patent Infringement Bonding Requirements (Patent Indemnity)

The Contractor may be required to obtain a patent indemnity bond if a performance bond is not furnished and the financial responsibility of the Contractor is unknown or doubtful. NYCDOT shall determine the amount of the patent indemnity to protect NYCDOT.

Warranty of the Work and Maintenance Bonds

1. The Contractor warrants to NYCDOT, the Architect and/or Engineer that all materials and equipment furnished under this contract will be of highest quality and new unless otherwise specified by NYCDOT, free from faults and defects and in conformance with the contract documents. All work not so conforming to these standards shall be considered defective. If required by the Project Manager, the Contractor shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

2. The Work furnished must be of first quality and the workmanship must be the best obtainable in the various trades. The Work must be of safe, substantial and durable construction in all respects. The Contractor hereby guarantees the Work against defective materials or faulty workmanship for a minimum period of one (1) year after Final Payment by NYCDOT and shall replace or repair any defective materials or equipment or faulty workmanship during the period of the guarantee at no cost to NYCDOT. As additional security for these guarantees, the Contractor shall, prior to the release of Final Payment, furnish separate Maintenance (or Guarantee) Bonds in form acceptable to NYCDOT written by the same corporate surety that provides the Performance Bond and Labor and Material Payment Bond for this contract. These bonds shall secure the Contractor's obligation to replace or repair defective materials and faulty workmanship for a minimum period of one (1) year after Final Payment and shall be written in an amount equal to ONE HUNDRED PERCENT (100%) of the CONTRACT SUM, as adjusted (if at all).

13. CLEAN AIR(42 U.S.C. §§ 7401 et seq, 40 CFR 15.61, 49 CFR Part 18)

(1) The Contractor shall agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. §§ 7401 et seq. The Contractor shall agree to report each violation to NYCDOT and understands and agrees that NYCDOT will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.

(2) The Contractor shall also agree to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with Federal assistance provided by FTA.

14. RECYCLED PRODUCTS (42 U.S.C. 6962, 40 CFR Part 247, Executive Order 12873)

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

15. DAVIS-BACON AND COPELAND ANTI-KICKBACK ACTS

1) **Minimum wages -** (i) All laborers and mechanics employed or working upon the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of the project), will be paid unconditionally and not less often than once a week, and without subsequent deduction or rebate on any account (except such payroll deductions as are permitted by regulations issued by the Secretary of Labor under the Copeland Act (29 CFR Part 3)), the full amount of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment computed at rates not less than those contained in the wage determination of the

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Secretary of Labor which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor and such laborers and mechanics.

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

(ii)(A) The Contracting officer shall require that any class of laborers or mechanics, including helpers, which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefore only when the following criteria have been met:

(1) Except with respect to helpers as defined as 29 CFR 5.2(n)(4), the work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) With respect to helpers as defined in 29 CFR 5.2(n)(4), such a classification prevails in the area in which the work is performed.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, U.S. Department of Labor, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the Contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(ii) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(iii) Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly cash equivalent thereof.

(iv) If the Contractor does not make payments to a trustee or other third person, the contractor may consider as part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, Provided, That the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the Contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

(v)(A) The Contracting officer shall require that any class of laborers or mechanics which is not listed in the wage determination and which is to be employed under the contract shall be classified in conformance with the wage determination. The contracting officer shall approve an additional classification and wage rate and fringe benefits therefor only when the following criteria have been met:

(1) The work to be performed by the classification requested is not performed by a classification in the wage determination; and

(2) The classification is utilized in the area by the construction industry; and

(3) The proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination.

(B) If the Contractor and the laborers and mechanics to be employed in the classification (if known), or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, DC 20210. The Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

(C) In the event the Contractor, the laborers or mechanics to be employed in the classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Administrator for determination. The Administrator, or an authorized representative, will issue a determination with 30 days of receipt and so advise the Contracting officer or will notify the Contracting officer within the 30-day period that additional time is necessary.

(D) The wage rate (including fringe benefits where appropriate) determined pursuant to paragraphs (a)(1)(v) (B) or (C) of this section, shall be paid to all workers performing work in the classification under this contract from the first day on which work is performed in the classification.

(2) **Withholding** - NYCDOT shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the Contractor under this contract or any other Federal contract with the same prime contractor, or any other federally-assisted contract subject to Davis-Bacon prevailing wage requirements, which is held by the same prime Contractor, so much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work (or under the United States Housing Act of 1937 or under the Housing Act of 1949 in the construction or development of

the project), all or part of the wages required by the contract, the NYCDOT may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

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

(ii)(A) The Contractor shall submit weekly for each week in which any contract work is performed a copy of all payrolls to the NYCDOT for transmission to the Federal Transit Administration. The payrolls submitted shall set out accurately and completely all of the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal Stock Number 029-005-00014-1), U.S. Government Printing Office, Washington, DC 20402. The prime contractor is responsible for the submission of copies of payrolls by all Subcontractors.

(B) Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the Contractor or Subcontractor or his or her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:
(1) That the payroll for the payroll period contains the information required to be maintained under section 5.5(a)(3)(i) of Regulations, 29 CFR part 5 and that such information is correct and complete;

(2) That each laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in Regulations, 29 CFR part 3;

(3) That each laborer or mechanic has been paid not less than the applicable wage rates and fringe benefits or cash equivalents for the classification of work performed, as specified in the applicable wage determination incorporated into the contract.

(C) The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph (a)(3)(ii)(B) of this section.

(D) The falsification of any of the above certifications may subject the contractor or subcontractor to civil or criminal prosecution under section 1001 of title 18 and section 231 of title 31 of the United States Code.

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(iii) The Contractor or Subcontractor shall make the records required under paragraph (a)(3)(i) of this section available for inspection, copying, or transcription by authorized representatives of the Federal Transit Administration or the Department of Labor, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the Federal agency may, after written notice to the contractor, sponsor, applicant, or owner, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

(4) **Apprentices and trainees** - (i) Apprentices - Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the U.S. Department of Labor, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State Apprenticeship Agency recognized by the Bureau, or if a person is employed in his or her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State Apprenticeship Agency (where appropriate) to be eligible for probationary employment as an apprentice. The allowable ratio of apprentices to journeymen on the job site in any craft classification shall not be greater than the ratio permitted to the Contractor as to the entire work force under the registered program. Any worker listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a Contractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman's hourly rate) specified in the Contractor's or Subcontractor's registered program shall be observed. Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeymen hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator of the Wage and Hour Division of the U.S. Department of Labor determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination. In the event the Bureau of Apprenticeship and Training, or a State Apprenticeship Agency recognized by the Bureau, withdraws approval of an apprenticeship program, the Contractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(ii) Trainees - Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the U.S. Department of Labor, Employment and Training Administration. The ratio of trainees to journeymen on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Every trainee must be paid at not less than the rate specified in the approved program for the trainee's level of progress, expressed as a percentage of the journeyman hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman wage rate on the wage determination which provides for less than full fringe benefits for apprentices. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate

on the wage determination for the work actually performed. In the event the Employment and Training Administration withdraws approval of a training program, the contractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

(iii) Equal employment opportunity - The utilization of apprentices, trainees and journeymen under this part shall be in conformity with the equal employment opportunity requirements of Executive Order 11246, as amended, and 29 CFR Part 30.

(5) **Compliance with Copeland Act requirements** - The Contractor shall comply with the requirements of 29 CFR Part 3, which are incorporated by reference in this contract.

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

(7) **Contract termination: debarment** - A breach of the contract clauses in 29 CFR 5.5 may be grounds for termination of the contract, and for debarment as a Contractor and a Subcontractor as provided in 29 CFR 5.12.

(8) **Compliance with Davis-Bacon and Related Act requirements** - All rulings and interpretations of the Davis-Bacon and Related Acts contained in 29 CFR parts 1, 3, and 5 are herein incorporated by reference in this contract.

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

(10) **Certification of eligibility** - (i) By entering into this contract, the Contractor certifies that neither it (nor he or she) nor any person or firm who has an interest in the Contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(ii) No part of this contract shall be subcontracted to any person or firm ineligible for award of a Government contract by virtue of section 3(a) of the Davis-Bacon Act or 29 CFR 5.12(a)(1).

(iii) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

16. CONTRACT WORK HOURS AND SAFETY STANDARDS ACT

(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-half times 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 the Contractor and any Subcontractor responsible therefor shall be liable for the unpaid wages. In addition, such Contractor and Subcontractor shall be liable to the United States for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer or mechanic, including watchmen

and guards, employed in violation of the clause set forth in paragraph (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 -** NYCDOT 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 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.

17. NO GOVERNMENT OBLIGATION TO THIRD PARTIES

No Obligation by the Federal Government

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

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

18. PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS AND RELATED ACTS (31 U.S.C. 3801 et seq, 49 CFR Part 31, 18 U.S.C. 1001, 49 U.S.C. 5307)

(1) The Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § § 3801 et seq., and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 C.F.R. Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on the Contractor to the extent the Federal Government deems appropriate.

(2) The Contractor also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

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

19. TERMINATION (49 U.S.C. Part 18, FTA Circular 4220.1E)

The Contractor agrees to include these provisions in all subcontracts in excess of $10,000.

a. Termination for Convenience (General Provision) NYCDOT may terminate this contract, in whole or in part, at any time by written notice to the Contractor when it is in the Government's best interest. The Contractor shall be paid its costs, including contract close-out costs, and profit on work performed up to the time of termination. The Contractor shall promptly submit its termination claim to NYCDOT to be paid the Contractor. If the Contractor has any property in its possession belonging to NYCDOT, the Contractor will account for the same, and dispose of it in the manner NYCDOT directs.

b. Termination for Default [Breach or Cause] (General Provision) If the Contractor does not deliver supplies in accordance with the contract delivery schedule, or, if the contract is for services, the Contractor fails to perform in the manner called for in the contract, or if the Contractor fails to comply with any other provisions of the contract, NYCDOT may terminate this contract for default. Termination shall be effected by serving a notice of termination on the contractor setting forth the manner in which the Contractor is in default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner of performance set forth in the contract.

If it is later determined by NYCDOT that the Contractor had an excusable reason for not performing, such as a strike, fire, or flood, events which are not the fault of or are beyond the control of the Contractor, NYCDOT, after setting up a new delivery of performance schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

c. Opportunity to Cure (General Provision) NYCDOT, in its sole discretion may, in the case of a termination for breach or default, allow the Contractor [an appropriately short period of time] in which to cure the defect. In such case, the notice of termination will state the time period in which cure is permitted and other appropriate conditions.

If Contractor fails to remedy to NYCDOT's satisfaction the breach or default or any of the terms, covenants, or conditions of this Contract within the period of time specified by NYCDOT after receipt by Contractor or written notice from NYCDOT setting forth the nature of said breach or default, NYCDOT shall have the right to terminate the Contract without any further obligation to Contractor. Any such termination for default shall not in any way operate to preclude NYCDOT from also pursuing all available remedies against Contractor and its sureties for said breach or default.

d. Waiver of Remedies for any Breach In the event that NYCDOT elects to waive its remedies for any breach by Contractor of any covenant, term or condition of this Contract, such waiver by NYCDOT shall not limit NYCDOT's remedies for any succeeding breach of that or of any other term, covenant, or condition of this Contract.

e. Termination for Default (Supplies and Service) If the Contractor fails to deliver supplies or to perform the services within the time specified in this contract or any extension or if the Contractor fails to comply with any other provisions of this contract, NYCDOT may terminate this contract for default. NYCDOT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. The Contractor will only be paid the contract price for supplies delivered and accepted, or services performed in accordance with the manner or performance set forth in this contract.

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If, after termination for failure to fulfill contract obligations, it is determined that the Contractor was not in default, the rights and obligations of the parties shall be the same as if the termination had been issued for the convenience of NYCDOT.

f. Termination for Default (Construction) If the Contractor refuses or fails to prosecute the work or any separable part, with the diligence that will insure its completion within the time specified in this contract or any extension or fails to complete the work within this time, or if the Contractor fails to comply with any other provisions of this contract, NYCDOT may terminate this contract for default. NYCDOT shall terminate by delivering to the Contractor a Notice of Termination specifying the nature of the default. In this event, NYCDOT may take over the work and complete it by contract or otherwise, and may take possession of and use any materials, appliances, and plant on the work site necessary for completing the work. The Contractor and its sureties shall be liable for any damage to NYCDOT resulting from the Contractor's refusal or failure to complete the work within specified time, whether or not the Contractor's right to proceed with the work is terminated. This liability includes any increased costs incurred by NYCDOT in completing the work.

The Contractor's right to proceed shall not be terminated nor the Contractor charged with damages under this clause if:

1. the delay in completing the work arises from unforeseeable causes beyond the control and without the fault or negligence of the Contractor. Examples of such causes include: acts of God, acts of NYCDOT, acts of another Contractor in the performance of a contract with NYCDOT, epidemics, quarantine restrictions, strikes, freight embargoes; and

2. the Contractor, within [10] days from the beginning of any delay, notifies NYCDOT in writing of the causes of delay. If in the judgment of NYCDOT, the delay is excusable, the time for completing the work shall be extended. The judgment of NYCDOT shall be final and conclusive on the parties, but subject to appeal under the Disputes clauses.

If, after termination of the Contractor's right to proceed, it is determined that the Contractor was not in default, or that the delay was excusable, the rights and obligations of the parties will be the same as if the termination had been issued for the convenience of NYCDOT.

g. Termination for Convenience of Default (Cost-Type Contracts) NYCDOT may terminate this contract, or any portion of it, by serving a notice or termination on the Contractor. The notice shall state whether the termination is for convenience of NYCDOT or for the default of the Contractor. If the termination is for default, the notice shall state the manner in which the contractor has failed to perform the requirements of the contract. The Contractor shall account for any property in its possession paid for from funds received from NYCDOT, or property supplied to the Contractor by NYCDOT. If the termination is for default, NYCDOT may fix the fee, if the contract provides for a fee, to be paid the contractor in proportion to the value, if any, of work performed up to the time of termination. The Contractor shall promptly submit its termination claim to NYCDOT and the parties shall negotiate the termination settlement to be paid the Contractor.

If the termination is for the convenience of NYCDOT, the Contractor shall be paid its contract close-out costs, and a fee, if the contract provided for payment of a fee, in proportion to the work performed up to the time of termination.

If, after serving a notice of termination for default, NYCDOT determines that the Contractor has an excusable reason for not performing, such as strike, fire, flood, events which are not the fault of and are beyond the control of the contractor, NYCDOT, after setting up a new work schedule, may allow the Contractor to continue work, or treat the termination as a termination for convenience.

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20. GOVERNMENT-WIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT)
(49 CFR 29.220(b), 49 CFR 29.940 and 49 CFR 29.945, Executive Orders 12549/12689)

Executive Orders 12549/12689, as implemented by 49 CFR Part 29, prohibits NYCDOT and sub-grantees from contracting for goods and services from organizations that have been suspended or debarred from receiving Federally-assisted contracts. As part of their applications each year, NYCDOT is required to submit a certification (Appendix C) to the effect that NYCDOT will not enter into contracts over $25,000 with suspended or debarred contractors and that they will require the Contractors (and subcontractors) to make the same certification to them. The Contractor agrees to include these provisions in its subcontracts over $25,000.

The certification in this requirement is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, NYCDOT may pursue available remedies, including suspension and/or debarment. The bidder or proposer agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The bidder or proposer further agrees to include a provision requiring such compliance in its lower tier covered transactions.

21. PRIVACY ACT (5 U.S.C. 552)

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

(1) The Contractor agrees to comply with, and assures the compliance of its employees with, the information restrictions and other applicable requirements of the Privacy Act of 1974, 5 U.S.C. § 552a. Among other things, the Contractor agrees to obtain the express consent of the Federal Government before the Contractor or its employees operate a system of records on behalf of the Federal Government. The Contractor understands that the requirements of the Privacy Act, including the civil and criminal penalties for violation of that Act, apply to those individuals involved, and that failure to comply with the terms of the Privacy Act may result in termination of the underlying contract.

(2) The Contractor also agrees to include these requirements in each subcontract to administer any system of records on behalf of the Federal Government financed in whole or in part with Federal assistance provided by FTA.

22. CIVIL RIGHTS REQUIREMENTS (29 U.S.C. § 623, 42 U.S.C. § 2000, 42 U.S.C. § 6102, 42 U.S.C. § 12112, 42 U.S.C. § 12132, 49 U.S.C. § 5332, 29 CFR Part 1630, 41 CFR Part 60 et seq.)

(1) Nondiscrimination - In accordance with Title VI of the Civil Rights Act, as amended, 42 U.S.C. § 2000d, section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, section 202 of the Americans with Disabilities Act of 1990, 42 U.S.C. § 12132, and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, age, or disability. In addition, the Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

(2) Equal Employment Opportunity – The following equal employment opportunity requirements apply to the underlying contract:

(a) Race, Color, Creed, National Origin, Sex - In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal transit laws at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable equal employment opportunity requirements of U.S. Department of Labor (U.S. DOL) regulations, "Office of Federal

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Contract Compliance Programs, Equal Employment Opportunity, Department of Labor," 41 C.F.R. Parts 60 et seq., (which implement Executive Order No. 11246, "Equal Employment Opportunity," as amended by Executive Order No. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," 42 U.S.C. § 2000e note), and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of the Project. The Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Age - In accordance with Section 4 of the Age Discrimination in Employment Act of 1967, as amended, 29 U.S.C. § § 623 and Federal transit law at 49 U.S.C. § 5332, the Contractor agrees to refrain from discrimination against present and prospective employees for reason of age. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(b) Disabilities - In accordance with Section 102 of the Americans with Disabilities Act, as amended, 42 U.S.C. § 12112, the Contractor agrees that it will comply with the requirements of U.S. Equal Employment Opportunity Commission, "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 C.F.R. Part 1630, pertaining to employment of persons with disabilities. In addition, the Contractor agrees to comply with any implementing requirements FTA may issue.

(c) The Contractor also agrees to include these requirements in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

23. BREACHES AND DISPUTE RESOLUTION (49 CFR Part 18, FTA Circular 4220.1E)

All contracts in excess of $100,000 shall contain provisions or conditions which will allow for administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as may be appropriate. FTA will not substitute its judgment for that of NYCDOT unless the matter is primarily a federal authority having proper jurisdiction.

Disputes - Disputes arising in the performance of this Contract which are not resolved by agreement of the parties shall be decided in writing by the authorized representative of NYCDOT [title of employee]. This decision shall be final and conclusive unless within ten (10) days from the date of receipt of its copy, the Contractor mails or otherwise furnishes a written appeal to the [title of employee]. In connection with any such appeal, the Contractor shall be afforded an opportunity to be heard and to offer evidence in support of its position. The decision of the [title of employee] shall be binding upon the Contractor and the Contractor shall abide be the decision.

Performance During Dispute - Unless otherwise directed by NYCDOT, Contractor shall continue performance under this Contract while matters in dispute are being resolved.

Claims for Damages - Should either party to the Contract suffer injury or damage to person or property because of any act or omission of the party or of any of his employees, agents or others for whose acts he is legally liable, a claim for damages therefore shall be made in writing to such other party within a reasonable time after the first observance of such injury of damage.

Remedies - Unless this contract provides otherwise, all claims, counterclaims, disputes and other matters in question between NYCDOT and the Contractor arising out of or relating to this agreement or its breach will be decided by

arbitration if the parties mutually agree, or in a court of competent jurisdiction within the State in which NYCDOT is located.

Rights and Remedies - The duties and obligations imposed by the Contract Documents and the rights and remedies available there under shall be in addition to and not a limitation of any duties, obligations, rights and remedies otherwise imposed or available by law. No action or failure to act by NYCDOT or Contractor shall constitute a waiver of any right or duty afforded any of them under the Contract, nor shall any such action or failure to act constitute an approval of or acquiescence in any breach there under, except as may be specifically agreed in writing.

24. STATE AND LOCAL LAW DISCLAIMER

The use of many of the suggested clauses are not governed by Federal law, but are significantly affected by State law. The language of the suggested clauses may need to be modified depending on state law, and that before the suggested clauses are used in the NYCDOT's procurement documents, NYCDOT should consult with its legal division.

25. DISADVANTAGED BUSINESS ENTERPRISE (DBE) (49 CFR Part 26)

The newest version on the FTA's Disadvantaged Business Enterprise (DBE) program became effective July 16, 2003. The rule provides guidance to grantees on the use of overall and contract goals, requirement to include DBE provisions in subcontracts, evaluating DBE participation where specific contract goals have been set, reporting requirements, and replacement of DBE subcontractors. Additionally, the DBE program dictates payment terms and conditions (including limitations on retainage) applicable to all subcontractors regardless of whether they are DBE firms or not.

This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The NYCDOT's overall goal for DBE participation is **9%**.

The Contractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of this DOT-assisted contract. Failure by the Contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as NYCDOT deems appropriate. Each subcontract the Contractor signs with a Subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b).

Bidders/Offerors are required to document sufficient DBE participation to meet these goals or, alternatively, document adequate good faith efforts to do so, as provided for in 49 CFR 26.53. Award of this contract is conditioned on submission of the following:

1. The names and addresses of DBE firms that will participate in this contract;

2. A description of the work each DBE will perform;

3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal;

5. Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

6. If the contract goal is not met, evidence of good faith efforts to do so.

The successful bidder/offeror will be required to report its DBE participation obtained through race-neutral means throughout the period of performance.

d. The Contractor is required to pay its Subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the Contractor's receipt of payment for that work from the NYCDOT**.** In addition**,** the Contractor may not hold retainage from its Subcontractors. The Contractor is required to return any retainage payments to those subcontractors within 30 days after the subcontractor's work related to this contract is satisfactorily completed. The Contractor is required to return any retainage payments to those Subcontractors within 30 days after incremental acceptance of the Subcontractor's work by the NYCDOT and Contractor's receipt of the partial retainage payment related to the Subcontractor's work.

e. The Contractor must promptly notify NYCDOT, whenever a DBE Subcontractor performing work related to this contract is terminated or fails to complete its work, and must make good faith efforts to engage another DBE Subcontractor to perform at least the same amount of work. The Contractor may not terminate any DBE Subcontractor and perform that work through its own forces or those of an affiliate without prior written consent of NYCDOT.

26. INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The preceding provisions include, in part, certain Standard Terms and Conditions required by USDOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by USDOT, as set forth in FTA Circular 4220.1E are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The Contractor shall not perform any act, fail to perform any act, or refuse to comply with any of NYCDOT's requests which would cause NYCDOT to be in violation of the FTA terms and conditions.

27. DRUG AND ALCOHOL TESTING (49 U.S.C. § 5331, 49 CFR Parts 653 and 654)

FTA's drug and alcohol rules, 49 CFR 653 and 654, respectively, are unique among the regulations issued by FTA. First, they require that NYCDOT ensures that any entity performing a safety-sensitive function on NYCDOT's behalf (usually Contractor and/or Contractors) implement a complex drug and alcohol testing program that complies with Parts 653 and 654. Second, the rules condition the receipt of certain kinds of FTA funding on NYCDOT's compliance with the rules; thus, NYCDOT is not in compliance with the rules unless every entity that performs a safety-sensitive function on NYCDOT's behalf is in compliance with the rules. Third, the rules do not specify how NYCDOT ensures that its Contractors comply with them.

NYCDOT does so depends on several factors, including whether the Contractor is covered independently by the drug and alcohol rules of another Department of Transportation operating administration, the nature of the relationship that NYCDOT has with the Contractor, and the financial resources available to NYCDOT to oversee the Contractor's drug and alcohol testing program. In short, there are a variety of ways that NYCDOT can ensure that it's Contractor and/or contractors comply with the rules.

The Contractor agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, and permit any authorized representative of the United States Department of Transportation or its operating administrations, the State Oversight Agency of New York, or NYCDOT, to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

testing process. The contractor agrees further to certify annually its compliance with Parts 653 and 654 before January 30th and to submit the Management Information System (MIS) reports before March 15th to the Commissioner of NYCDOT or designee. To certify compliance the Contractor shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

The Contractor agrees further to [Select a, b, or c] (a) submit upon request a copy of the Policy Statement developed to implement its drug and alcohol testing program; OR (b) adopt NYCDOT's policy statement as required under 49 CFR 653 and 654; OR (c) submit for review and approval before January 30th, a copy of its Policy Statement developed to implement its drug and alcohol testing program. In addition, the Contractor agrees to: (to be determined by NYCDOT, but may address areas such as: the selection of the certified laboratory, substance abuse professional, or Medical Review Officer, or the use of a consortium).

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

DISADVANTAGED BUSINESS ENTERPRISE UTILIZATION GOALS
for
Federal Transit Administration Projects

New York City Department of Transportation

The New York City Department of Transportation has established the following Disadvantaged Business Enterprise (DBE) utilization goal for this contract. The goal is expressed as a percentage of the total federal share of the contract. It is the Contractor's responsibility to secure DBE participation in the contract work to satisfy this goal, and to document acceptable good-faith efforts taken to fulfill the goal. Utilization is measured as the amount actually paid to DBE's, not the contract bid price for the work.

Disadvantaged Business Enterprise Utilization Goal 9.0%

A list of currently certified Disadvantaged Business Enterprises - Construction Related Firms can be obtained by contacting any of the following:

MTA - New York City Transit
Office of Business Programs
2 Broadway - 16th Floor
New York, NY 10004
Telephone: (646) 252-1372

Niagara Frontier Transportation Authority
181 Ellicott Street
Buffalo, New York 14203
Tele: (716) 855-7300

New York State Department
Of Transportation
Contract Audit Bureau DBE Unit
50 Wolf Road, 1st Floor South
Albany, New York 12232
Fax: 518-457-1675
Telephone: (518) 457-9679

Port Authority of NY & NJ
Office of Civil Rights
2 Broadway, 16th Floor
New York, New York 10004
Tele: 646-252-1378

Or go to the Unified Certification Program for NYS on the web: http://biznet.nysucp.net/

Disadvantaged Business Enterprise Officer

The Bidder shall designate and enter below the name of the Disadvantaged Business Enterprise Officer who will have the responsibility for effectively administering and promoting an active Disadvantaged Business Enterprise Program at its firm and who must be assigned adequate authority and responsibility to do so.

Bidder Designated DBE Officer:_____
Name, Title
Telephone Number:_____
Fax Number:_____
E-Mail Address: _____

RETURN THIS PAGE WITH BID

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Federal Transit Administration Third Party Contract Requirements

This contract is subject to the Federal Transit Administration (FTA) requirements for implementing the U.S. Department of Transportation (USDOT) regulations for the following areas:

A. Disadvantaged Business Enterprise (DBE) Requirements

The successful Proposer will be required to meet a NYCDOT 9.0% Disadvantaged Business Enterprise (DBE) goal; 9.0% of the total value of the FTA funds in the contract should be subcontracted to a DBE firm or firms. To be qualified as a DBE, a firm should agree to abide by the statements from a governmental or quasi-governmental agency that adheres to Federal Regulation 49 CFR Part 26 such as:

MTA - New York City Transit, Office of Business Programs, 2 Broadway- 16th Floor, New York, NY 10004. Telephone (646) 252-1372.

New York State DOT, Office of Equal Opportunity Development & Compliance,
50 Wolf Road, 1st Floor, Albany, New York 12232. Telephone (518) 457-1129.

Niagara Frontier Transportation Authority, 181 Ellicott Street, Buffalo, New York 14203, Tele: (716) 855-7300

Port Authority of NY & NJ, Office of Civil Rights, 2 Broadway, 16th Floor, New York, New York 10004, Tele: 646-252-1378

Or go to the Unified Certification Program for NYS on the web: http://biznet.nysucp.net/

All applicants and recipients shall agree to abide by the statements in paragraphs (1) and (2) listed below:

1 "Policy. It is the policy of USDOT that DBE's as defined in 49 CFR Part 26 shall have the maximum opportunity to participate in the performance of contracts financed in whole or in part with Federal funds under this agreement. Consequently, the DBE requirements of 49 CFR Part 26 apply to this agreement."

2 "DBE Obligation. The recipient or its contractor agrees to ensure that DBE's as defined in 49 CFR Part 26 have the maximum opportunity to participate in the performance of contracts and subcontracts financed in whole or in part with Federal funds provided under this agreement. In this regard, all recipients or contractors shall take all necessary and reasonable steps in accordance with 49 CFR Part 26 to ensure that DBE's have the maximum opportunity to compete for and perform contracts. Recipients and their contractors shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of US DOT-assisted contracts."

Because this is a federally funded project with its own DBE requirement (noted above) no separate NYC M/WBE program condition will apply to this contract. Further information or questions can be directed to:

New York City Department of Transportation
ACCO, Office of Contract Compliance
40 Worth Street, Room 1228
New York, NY 10013
Telephone: (212) 442-7597
Facsimile: (212) 442-7587
Attention: Charles Bartolotta, DBE Representative

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

REQUIRED CONTRACT PROVISIONS*

DBE Program

USDOT-assisted contracts that NYCDOT lets will include, as appropriate, the model contract provisions that are included as Exhibit B and incorporated herein. NYCDOT shall have discretion to modify the provisions for particular contracts as needed. These required contract provisions consist of:

A. Notice of DBE requirements in the Invitation for Bids
B. General Conditions
   1. DBE Program
   2. Prompt Payment to Subcontractors
C. Special Provisions
   1. DBE Participation Goal (where applicable)

A. Assurances – Section 26.13

Each **financial assistance agreement** signed with a NYCDOT operation administration (of a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of l986 (31 U.S.C. 3801 et. seq.).

Each **contract signed with a contractor (and each subcontract the prime contractor signs with a subcontractor)** must include the following assurance:

The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

B. Prompt Payment to Subcontractors

In accordance with NYCDOT's DBE Program, the Contractor shall pay any Subcontractors approved by NYCDOT for work that has been satisfactorily performed no later than seven (7) days from the date of the Contractor's receipt of progress payments by NYCDOT. Within thirty (30) days of satisfactory completion of all work required of the Subcontractor. Contractor shall release any retainage payments withheld to the Subcontractor.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Exhibit C

Determining Good Faith Efforts

In determining whether or not a bidder/proposer not in compliance with NYCDOT's DBE contract goal may be awarded a NYCDOT contract, NYCDOT must decide if the efforts the bidder/proposer made to obtain DBE participation and attainment of specific contract goals were made in good faith. Efforts to meet the established goals that are unsubstantiated or insubstantial are not good faith efforts.

In order to award a contract to a bidder/proposer that has failed to meet the stated contract goal, NYCDOT must determine that a competitor actively and aggressively sought to meet the goal. Kinds of efforts that are considered demonstrative of a "good faith effort" include, but not limited to the following documented actions pursuant to 49 CFR Part 26:

1. Whether the contractor attended any pre-solicitation or pre-bid meetings that were scheduled by the recipient to inform DBEs of contracting and subcontracting opportunities;

2. Whether the contractor advertised in general circulation, trade associations, and minority-focus media concerning the subcontracting opportunities;

3. Whether the contractor provided written notice to a reasonable number of specific DBEs that their interest in the contract was being solicited, in sufficient time to allow the DBEs to participate effectively;

4. Whether the contractor followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;

5. Whether the contractor selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal (including, where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);

6. Whether the contractor provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract;

7. Whether the contractor negotiated in good faith with interested DBEs, not rejecting DBES as unqualified without sound reasons based on a thorough investigation of their capabilities;

8. Whether the contractor made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by the recipient or contractor; and

9. Whether the contractor effectively used the services of available minority community organizations; minority contractor groups; local, state and federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBE's.

   The DBE Representative will review the data submitted under this section to determine whether the DBE requirements have been satisfied through good faith efforts.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

Exhibit F

(SAMPLE PRIME CONTRACTOR AWARD LETTER)

Date

Prime Contractor Winner, Inc.
Attn: Mr. Buck Stops Here, President
1111 Bottom Line Street
Anywhere, New York 10000

Re: Contract Name and/or Description

Dear Mr. Here:

Your Company was awarded and recently executed the above listed contract with NYCDOT. Part of the consideration in awarding the contract was the Disadvantaged Business Enterprise (DBE) participation that you listed in the bid/proposal document.

You have listed the following DBE firm(s) and the dollar amounts of their subcontracts:

ABC Electrical Co.	**Electrical Contracting**	**$xx,xxx**
DEF Plumbing	**Plumbing Contracting**	**$xx,xxx**
GHI Roofing	**Roofing Contracting**	**$xx,xxx**
JKL Printing Co.	**Printing**	**$xx,xxx**

The DBE firm(s) listed above represent(s) your commitment to NYCDOT's DBE program and each respective DBE firm.

To ensure the integrity of the DBE program, NYCDOT has developed DBE compliance procedures that should be followed during this contract. NYCDOT's DBE Department and Contract Administrator should be notified in writing prior to any material changes from the above commitments. Also, any changes should be for real and substantial reasons. Frivolous and/or unsubstantiated changes are unacceptable.

Please provide to the DBE Department, within 3 calendar days of execution a copy of your executed subcontract with each DBE firm. A letter of commitment signed by both an authorized representative of your firm and the DBE firm may be submitted instead of signed subcontracts. The letter should verify the subcontract dollar amount, the general work scope, **and affirm the absence of subcontract restrictions or requirements that are unfair, burdensome, outside of normal business practices, unjustly punitive, etc…** There should be a letter for **each** DBE firm.

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

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Also, you **must** attach NYCDOT's **DBE Expenditure Report** (see contract compliance manual) with **each** invoice/payment request that you submit to NYCDOT's Contract Administrator. This report is designed to provide an accounting of monthly and year-to-date payments made to the DBE firm(s) that you have subcontracted with above.

The DBE Expenditure Report reflects the dollars that **will be paid** to each DBE firm from your **submitted invoice/payment request.** Evidence of payments (i.e. copy of canceled checks, copy of check register, etc.) may be periodically requested. NYCDOT **may not** authorize payment unless the DBE Expenditure Report accompanies your invoice/payment request.

Finally, please submit a DBE projected work schedule (i.e. a breakdown by month of expected DBE activity). Updates of the projected work schedule should be submitted as needed over the life of the contract.

Failure to comply may result in breach of contract and it may jeopardize future contracts with NYCDOT.

If you have any questions, please contact the DBE Department at (212) 442-7597.

Thank you for your continued commitment and cooperation.

Cordially,

DBE Representative

cc: Every DBE Firm Listed Above
Appropriate Project Manager, NYCDOT
Contracts Administrator, NYCDOT
Purchasing Administrator, NYCDOT
DBE File, NYCDOT
Others as needed

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION PLAN

NEW YORK CITY DEPARTMENT OF TRANSPORTATION
FEDERAL TRANSIT ADMINISTRATION FUNDED CONTRACTS

PIN NO. _____

Name of Prime Contractor			
Name of Project			
Project/Contract No.		Total Bid Amount	
DBE Goal %		Total DBE $ Amount	

Name of DBE Subcontractor	Address	Contact Person	Scope of Work	Dollar Value of Work ($)	Percent (%)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
			Total DBE Dollars/%		

The undersigned will enter into formal agreement with the DBE's listed above for work in this schedule conditioned upon the award of a contract by New York City Department of Transportation.

_____ _____ _____
Signature of Contractor Representative **Telephone Number** **Date**

FEDERAL TRANSIT ADMINISTRATION THIRD PARTY REQUIREMENTS

PRIME CONTRACTOR'S DBE PAYMENT SUMMARY REPORT

CONTRACT NO:	CONTRACTOR:	DBE % COMMITTED:
CONTRACT DESCRIPTION:		
ORIGINAL AMOUNT OF CONTRACT:	REVISED CONTRACT AMOUNT:	
INVOICE NO:	INVOICE PERIOD:	MONTHS REMAINING ON CONTRACT:
INVOICE AMOUNT:	AMOUNT DUE TO DBE'S:	PERCENTAGE PAID TO DBE'S THIS INVOICE:
TOTAL PAID TO DATE:	TOTAL PAID TO DBE'S TO DATE:	PERCENTAGE PAID TO DBE'S TO DATE:

DBE PAYMENT SUMMARY AND HISTORY

DBE UTILIZED	BRIEF DESCRIPTION OF WORK PERFORMED	DBE PROJECT COMMITMENT AMOUNT	PAYMENT UNDER THIS INVOICE	% OF INVOICE	TOTAL PAID TO DATE	% OF TOTAL COMMITTED

AUTHORIZED SIGNATURE:	TITLE:	DATE:
PREPARER SIGNATURE:	TITLE:	DATE:

PLEASE ATTACH CLARIFICATION, COMMENTS, AND EXPLANATIONS AS NEEDED. FAILURE TO COMPLY WITH THE DBE REQUIREMENTS AND/OR INTENTIONALLY REPORTING FALSE OR MISLEADING INFORMATION MAY RESULT IN ACTION AGAINST THE CONTRACTOR UP TO AND INCLUDING CONTRACT TERMINATION, DEBARMENT AND LEGAL ACTION.

STANDARD CLAUSES FOR ALL NEW YORK STATE CONTRACTS

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16. No Arbitration
17. Service of Process

STANDARD CLAUSES FOR NYS CONTRACTS

The parties to the attached contract, license, lease, amendment or other agreement of any kind (hereinafter, "the contract" or "this contract") agree to be bound by the following clauses which are hereby made a part of the contract (the word "Contractor" herein refers to any party other than the State, whether a contractor, licenser, licensee, lessor, lessee or any other party):

1. EXECUTORY CLAUSE. In accordance with Section 41 of the State Finance Law, the State shall have no liability under this contract to the Contractor or to anyone else beyond funds appropriated and available for this contract.

2. NON-ASSIGNMENT CLAUSE. In accordance with Section 138 of the State Finance Law, this contract may not be assigned by the Contractor or its right, title or interest therein assigned, transferred, conveyed, sublet or otherwise disposed of without the previous consent, in writing, of the State and any attempts to assign the contract without the State's written consent are null and void. The Contractor may, however, assign its right to receive payment without the State's prior written consent unless this contract concerns Certificates of Participation pursuant to Article 5-A of the State Finance Law.

3. COMPTROLLER'S APPROVAL. In accordance with Section 112 of the State Finance Law (or, if this contract is with the State University or City University of New York, Section 355 or Section 6218 of the Education Law), if this contract exceeds $15,000 (or the minimum thresholds agreed to by the Office of the State Comptroller for certain S.U.N.Y. and C.U.N.Y. contracts), or if this is an amendment for any amount to a contract which, as so amended, exceeds said statutory amount, or if, by this contract, the State agrees to give something other than money when the value or reasonably estimated value of such consideration exceeds $10,000, it shall not be valid, effective or binding upon the State until it has been approved by the State Comptroller and filed in his office.

4. WORKERS' COMPENSATION BENEFITS. In accordance with Section 142 of the State Finance Law, this contract shall be void and of no force and effect unless the Contractor shall provide and maintain coverage during the life of this contract for the benefit of such employees as are required to be covered by the provisions of the Workers' Compensation Law.

5. NON-DISCRIMINATION REQUIREMENTS. To the extent required by Article 15 of the Executive Law (also known as the Human Rights Law) and all other State and Federal statutory and constitutional non-discrimination provisions, the Contractor will not discriminate against any employee or applicant for employment because of race, creed, color, sex, national origin, sexual orientation, age, disability, genetic predisposition or carrier status, or marital status. Furthermore, in accordance with Section 220-e of the Labor Law, if this is a contract for the construction, alteration or repair of any public building or public work or for the manufacture, sale or distribution of materials, equipment or supplies, and to the extent that this contract shall be performed within the State of New York, Contractor agrees that neither it nor its subcontractors shall, by reason of race, creed, color, disability, sex, or national origin: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. If this is a building service contract as defined in Section 230 of the Labor Law, then, in accordance with Section 239 thereof, Contractor agrees that neither it nor its subcontractors shall by reason of race, creed, color, national origin, age, sex or disability: (a) discriminate in hiring against any New York State citizen who is qualified and available to perform the work; or (b) discriminate against or intimidate any employee hired for the performance of work under this contract. Contractor is subject to fines of $50.00 per person per day for any violation of Section 220-e or Section 239 as well as possible termination of this contract and forfeiture of all moneys due hereunder for a second or subsequent violation.

6. WAGE AND HOURS PROVISIONS. If this is a public work contract covered by Article 8 of the Labor Law or a building service contract covered by Article 9 thereof, neither Contractor's employees nor the employees of its subcontractors may be required or permitted to work more than the number of hours or days stated in said statutes, except as otherwise provided in the Labor Law and as set forth in prevailing wage and supplement schedules issued by the State Labor Department. Furthermore, Contractor and its subcontractors must pay at least the prevailing wage rate and pay or provide the prevailing supplements, including the premium rates for overtime pay, as determined by the State Labor Department in accordance with the Labor Law.

7. NON-COLLUSIVE BIDDING CERTIFICATION. In accordance with Section 139-d of the State Finance Law, if this contract was awarded based upon the submission of bids, Contractor affirms, under penalty of perjury, that its bid was arrived at independently and without collusion aimed at restricting competition. Contractor further affirms that, at the time Contractor submitted its bid, an authorized and responsible person executed and delivered to the State a non-collusive bidding certification on Contractor's behalf.

8. INTERNATIONAL BOYCOTT PROHIBITION. In accordance with Section 220-f of the Labor Law and Section 139-h of the State Finance Law, if this contract exceeds $5,000, the Contractor agrees, as a material condition of the contract, that neither the Contractor nor any substantially owned or affiliated person, firm, partnership or corporation has participated, is participating, or shall participate in an international boycott in violation of the Federal Export Administration Act of 1979 (50 USC App. Sections 2401 et seq.) or regulations thereunder. If such Contractor, or any of the aforesaid affiliates of Contractor, is convicted or is otherwise found to have violated said laws or regulations upon the final determination of the United States Commerce Department or any other appropriate agency of the United States subsequent to the contract's execution, such contract, amendment or modification thereto shall be rendered forfeit and void. The Contractor shall so notify the State Comptroller within five (5) business days of such conviction, determination or disposition of appeal (2NYCRR 105.4).

9. SET-OFF RIGHTS. The State shall have all of its common law, equitable and statutory rights of set-off. These rights shall include, but not be limited to, the State's option to withhold for the purposes of set-off any moneys due to the Contractor under this contract up to any amounts due and owing to the State with regard to this contract, any other contract with any State department or agency, including any contract for a term commencing prior to the term of this contract, plus any amounts due and owing to the State for any other reason including, without limitation, tax delinquencies, fee delinquencies or monetary penalties relative thereto. The State shall exercise its set-off rights in accordance with normal State practices including, in cases of set-off pursuant to an audit, the finalization of such audit by the State agency, its representatives, or the State Comptroller.

10. RECORDS. The Contractor shall establish and maintain complete and accurate books, records, documents, accounts and other evidence directly pertinent to performance under this contract (hereinafter, collectively, "the Records"). The Records must be kept for the balance of the calendar year in which they were made and for six (6) additional years thereafter. The State Comptroller, the Attorney General and any other person or entity authorized to conduct an examination, as well as the agency or agencies involved

in this contract, shall have access to the Records during normal business hours at an office of the Contractor within the State of New York or, if no such office is available, at a mutually agreeable and reasonable venue within the State, for the term specified above for the purposes of inspection, auditing and copying. The State shall take reasonable steps to protect from public disclosure any of the Records which are exempt from disclosure under Section 87 of the Public Officers Law (the "Statute") provided that: (i) the Contractor shall timely inform an appropriate State official, in writing, that said records should not be disclosed; and (ii) said records shall be sufficiently identified; and (iii) designation of said records as exempt under the Statute is reasonable. Nothing contained herein shall diminish, or in any way adversely affect, the State's right to discovery in any pending or future litigation.

11. IDENTIFYING INFORMATION AND PRIVACY NOTIFICATION. (a) FEDERAL EMPLOYER IDENTIFICATION NUMBER and/or FEDERAL SOCIAL SECURITY NUMBER. All invoices or New York State standard vouchers submitted for payment for the sale of goods or services or the lease of real or personal property to a New York State agency must include the payee's identification number, i.e., the seller's or lessor's identification number. The number is either the payee's Federal employer identification number or Federal social security number, or both such numbers when the payee has both such numbers. Failure to include this number or numbers may delay payment. Where the payee does not have such number or numbers, the payee, on its invoice or New York State standard voucher, must give the reason or reasons why the payee does not have such number or numbers.

(b) PRIVACY NOTIFICATION**.** (1) The authority to request the above personal information from a seller of goods or services or a lessor of real or personal property, and the authority to maintain such information, is found in Section 5 of the State Tax Law. Disclosure of this information by the seller or lessor to the State is mandatory. The principal purpose for which the information is collected is to enable the State to identify individuals, businesses and others who have been delinquent in filing tax returns or may have understated their tax liabilities and to generally identify persons affected by the taxes administered by the Commissioner of Taxation and Finance. The information will be used for tax administration purposes and for any other purpose authorized by law.

(2) The personal information is requested by the purchasing unit of the agency contracting to purchase the goods or services or lease the real or personal property covered by this contract or lease. The information is maintained in New York State's Central Accounting System by the Director of Accounting Operations, Office of the State Comptroller, 110 State Street, Albany, New York 12236.

12. EQUAL EMPLOYMENT OPPORTUNITIES FOR MINORITIES AND WOMEN. In accordance with Section 312 of the Executive Law, if this contract is: (i) a written agreement or purchase order instrument, providing for a total expenditure in excess of $25,000.00, whereby a contracting agency is committed to expend or does expend funds in return for labor, services, supplies, equipment, materials or any combination of the foregoing, to be performed for, or rendered or furnished to the contracting agency; or (ii) a written agreement in excess of $100,000.00 whereby a contracting agency is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon; or (iii) a written agreement in excess of $100,000.00 whereby the owner of a State assisted housing project is committed to expend or does expend funds for the acquisition, construction, demolition, replacement, major repair or renovation of real property and improvements thereon for such project, then:

(a) The Contractor will not discriminate against employees or applicants for employment because of race, creed, color, national origin, sex, age, disability or marital status, and will undertake or continue existing programs of affirmative action to ensure that minority group members and women are afforded equal employment opportunities without discrimination. Affirmative action shall mean recruitment,

employment, job assignment, promotion, upgradings, demotion, transfer, layoff, or termination and rates of pay or other forms of compensation;

(b) at the request of the contracting agency, the Contractor shall request each employment agency, labor union, or authorized representative of workers with which it has a collective bargaining or other agreement or understanding, to furnish a written statement that such employment agency, labor union or representative will not discriminate on the basis of race, creed, color, national origin, sex, age, disability or marital status and that such union or representative will affirmatively cooperate in the implementation of the contractor's obligations herein; and

(c) the Contractor shall state, in all solicitations or advertisements for employees, that, in the performance of the State contract, all qualified applicants will be afforded equal employment opportunities without discrimination because of race, creed, color, national origin, sex, age, disability or marital status.

Contractor will include the provisions of "a", "b", and "c" above, in every subcontract over $25,000.00 for the construction, demolition, replacement, major repair, renovation, planning or design of real property and improvements thereon (the "Work") except where the Work is for the beneficial use of the Contractor. Section 312 does not apply to: (i) work, goods or services unrelated to this contract; or (ii) employment outside New York State; or (iii) banking services, insurance policies or the sale of securities. The State shall consider compliance by a Contractor or subcontractor with the requirements of any Federal law concerning equal employment opportunity which effectuates the purpose of this section. The contracting agency shall determine whether the imposition of the requirements of the provisions hereof duplicate or conflict with any such federal law and if such duplication or conflict exists, the contracting agency shall waive the applicability of Section 312 to the extent of such duplication or conflict. Contractor will comply with all duly promulgated and lawful rules and regulations of the Governor's Office of Minority and Women's Business Development pertaining hereto.

13. CONFLICTING TERMS. In the event of a conflict between the terms of the contract (including any and all attachments thereto and amendments thereof) and the terms of this Appendix A, the terms of this Appendix A shall control.

14. GOVERNING LAW. This contract shall be governed by the laws of the State of New York except where the Federal supremacy clause requires otherwise.

15. LATE PAYMENT. Timeliness of payment and any interest to be paid to Contractor for late payment shall be governed by Article 11-A of the State Finance Law to the extent required by law.

16. NO ARBITRATION. Disputes involving this contract, including the breach or alleged breach thereof, may not be submitted to binding arbitration (except where statutorily authorized), but must, instead, be heard in a court of competent jurisdiction of the State of New York.

17. SERVICE OF PROCESS. In addition to the methods of service allowed by the State Civil Practice Law & Rules ("CPLR"), Contractor hereby consents to service of process upon it by registered or certified mail, return receipt requested. Service hereunder shall be complete upon Contractor's actual receipt of process or upon the State's receipt of the return thereof by the United States Postal Service as refused or undeliverable. Contractor must promptly notify the State, in writing, of each and every change of address to which service of process can be made. Service by the State to the last known address shall be sufficient. Contractor will have thirty (30) calendar days after service hereunder is complete in which to respond.

Appendix A

Appendix A

Buy America Certification

Certification requirement for procurement of steel, iron, or manufactured products.

Certificate of Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it will meet the requirements of 49 U.S.C. 5323(j)(1) and the applicable regulations in 49 CFR Part 661.

Date _____

Signature_____

Company Name_____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(1)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(1), but it may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Certification requirement for procurement of buses, other rolling stock and associated equipment.

Certificate of Compliance with 49 U.S.C. 5323(j)(2)(C).

The bidder or offeror hereby certifies that it will comply with the requirements of 49 U.S.C. 5323(j)(2)(C) and the regulations at 49 CFR Part 661.

Date _____

Signature _____

Company Name _____

Title _____

Certificate of Non-Compliance with 49 U.S.C. 5323(j)(2)(C)

The bidder or offeror hereby certifies that it cannot comply with the requirements of 49 U.S.C. 5323(j)(2)(C), but may qualify for an exception pursuant to 49 U.S.C. 5323(j)(2)(B) or (j)(2)(D) and the regulations in 49 CFR 661.7.

Date _____

Signature _____

Company Name _____

Title _____

Appendix B

Appendix B

DISCLOSURE OF LOBBYING ACTIVITIES

I _____ hereby certifies on behalf of _____
name and title of company representative name of company

will file the certification required by 49 CFR Part 20, "New Restrictions on Lobbying." Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose the name of any registrant under the Lobbying Disclosure Act of 1995 who has made lobbying contacts on its behalf with non-Federal funds with respect to that Federal contract, grant or award covered by 31 U.S.C. 1352. Such disclosures are forwarded from tier to tier up to the recipient.

The Contractor certifies, to the best of his or her knowledge and belief, that:

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

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for making lobbying contacts to an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form--LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions [as amended by "Government wide Guidance for New Restrictions on Lobbying," 61 Fed. Reg. 1413 (1/19/96).

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

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

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

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

_____ Signature of Contractor's Authorized Official

_____ Name and Title of Contractor's Authorized Official

_____ Date

Appendix C

Appendix C

CERTIFICATION OF A CONTRACTOR REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Contractor _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.

5. The Contractor agrees to provide NYCDOT with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to NYCDOT.

NOTE: If for any reason the Contractor is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

THE CONTRACTOR, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

_____

Signature and Title of Authorized Official

_____

Date

CERTIFICATION OF A SUBCONTRACTOR/SUPPLIER REGARDING DEBARMENT, SUSPENSION AND OTHER RESPONSIBILITY MATTERS

The Subcontractor/Supplier _____, certifies to the best of its knowledge and belief, that it and its principals:

1. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

2. Have not within a three-year period preceding this proposal been convicted of or had a civil judgment rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or Local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

3. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or Local) with commission of any of the offenses enumerated in paragraph (2) of this certification; and

4. Have not within a three-year period preceding this proposal or bid had one or more public transactions (Federal, State or Local) terminated for cause or default.

5. The Subcontractor agrees to provide the Contractor with immediate written notice if, at any time, it learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances. Each Subcontractor or Vendor for the Contractor shall provide the same updated notice to the Contractor and the Contractor shall be solely responsible for collecting, updating and submitting updated information to NYCDOT.

NOTE: If for any reason the Subcontractor/Supplier is unable to certify to any of the statements in this certification, the Contractor shall attach an explanation to this certification.

THE SUBCONTRACTOR/SUPPLIER, _____ CERTIFIES OR AFFIRMS THE TRUTHFULNESS AND ACCURACY OF THE CONTENTS OF THE STATEMENTS SUBMITTED ON OR WITH THIS CERTIFICATION AND UNDERSTANDS THAT THE PROVISIONS OF 31 U.S.C. SECTIONS 3801 ET SEQ. ARE APPLICABLE THERETO.

_____
Signature and Title of Authorized Official

_____
Date

Contractor must require all Subcontractors/Suppliers to complete this certification and Contractor shall submit the certifications to NYCDOT as they are received.

NEW YORK CITY
DEPARTMENT OF TRANSPORTATION

DIVISION OF BRIDGES

P.I.N. 84108SIBR330

Contract No. HBR1217

REQUEST FOR PROPOSAL
REHABILITATION OF RAMP STRUCTURES AT THE ST. GEORGE STATEN ISLAND FERRY TERMINAL

BIN # 2269730, 2269740, 2269750, 2269760, 2269770, 2269780, 2269790, 2270170, 2270180

Date Advertised _____

Proposals _____

Ordered On _____

Date Completed _____

Contractor _____

Worked By_____

Checked By _____

Date _____

_____
Contractor

_____

Dated_____, 20_____

_____

APPROVED AS TO FORM
CERTIFY AS TO LEGAL AUTHORITY

_____
Acting Corporation Counsel

_____

Dated_____, 20_____

_____

EXAMINED AND FOUND CORRECT

_____
Contract Clerk

_____
Entered in the Comptroller's Office

Dated_____, 20_____

_____
First Assistant Bookkeeper